

(1997) 04 BOM CK 0027

In the Bombay High Court

Case No : Writ Petition No. 1680 of 1997

Balkrishna Arjun Jadhav and others

APPELLANT

Vs

Thane Municipal Corporation and others

RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 — Section 88, 89
Maharashtra Town Planning Scheme Rules, 1974 — Rule 17, 19

Citation : (1998) 1 BomCR 299 : (1997) 3 MhLj 260

Hon'ble Judges : M.B. Shah, C.J.; S.S. Nijjar, J

Bench : Division Bench

Advocate : M.M. Vashi, for the Appellant; R.S. Apte and Miss R.C. Nichani, for the Respondent

Judgement

M.B. Shah, C.J.—Heard the learned Counsel for the parties.

2. In our view, there is no substance in this petition. Notices dated 19th February 1997 u/s 89 of the Maharashtra Regional Town Planning Act, 1966 ("the MRTP Act, for short) are issued to the petitioners. It has been pointed out that Town Planning Scheme (the Scheme for short) in respect of the area in question is finalised in the year 1985. According to the Scheme, the plot in dispute is allotted to respondents Nos. 4 to 8. As some persons trespassed upon the land in question after finalisation of the Scheme, respondents Nos. 4 to 8, filed writ petition bearing No. 1404 of 1989 in this Court against the Corporation for a direction to hand over actual and physical possession of the said land. In the said writ petition, the Division Bench of this Court (N.D. Vyas and S.S. Nijjar, JJ.) passed an order directing respondents to hand over actual possession of the land in dispute. Thereafter, the Corporation has issued notices under sections 89 of the Act on 19th February 1997.

3. After expiry of 30 days period, the petitioners herein have approached this Court. They have also filed civil suit, The learned Counsel for the petitioners submitted that in view of the fact that there is a specific order passed by this

Court in Writ Petition No. 1404 of 1989, the civil suit is not maintainable, hence the petitioners have filed the present writ petition.

4. Considering the provisions of the MRTP Act, in our view, there is no substance in this writ petition. Notice as provided u/s 89 of the Act is issued. There is no question of issuing separate show cause notice u/s 89 and thereafter notice for vacating the premises. As provided u/s 89 of the Act, notice is already issued to the petitioners who are trespassers.

5. Section 89 of the Act reads as under :---

"89. Power of Planning Authority to evict summarily.---(1) On and after the day on which a final scheme comes into force, any person continuing to occupy any land which he is not entitled to occupy under the final scheme may, in accordance with the prescribed procedure be summarily evicted by the Planning Authority or any of its officers authorised in that behalf by that authority.

(2) If the Planning Authority is opposed or impeded in evicting such person or taking possession of land from such person, the Commissioner of Police, or as the case may be, the District Magistrate shall at the request of the Planning Authority enforce the eviction of such person or ensure delivery of possession of land to the Planning Authority as may be necessary."

Rule 19 of the Maharashtra Town Planning Scheme Rules, 1974 provides for the procedure of eviction u/s 89 of the Act which reads as under :

"19. Procedure of eviction u/s 89.--- For eviction u/s 89, the Planning Authority shall serve a notice upon the person to be evicted requiring him to vacate the land, within such reasonable time (which shall not be less than 30 days from the date of service thereof) as may be specified in the notice. If the person to be evicted fails to comply with the requirement of the notice, the Planning Authority shall take steps through a duly authorised officer to remove such person; and in case the said officer is opposed or impeded, take further action as provided in sub-section (2) of section 89 in evicting such person or taking possession of the land from such person."

Considering the aforesaid section and the statutory rule, it is apparent that there is compliance of the principles of natural justice. If the person has any right over the property or that he is not affected by the final scheme approved u/s 88, then he has a right to lodge objection after receipt of the notice.

6. Validity of similar provision was considered by the Supreme Court in the case of Babubhai and Co. and Others Vs. State of Gujarat and Others, . The Court upheld the validity of section 54 of the Bombay Town Planning Act, 1955, and similar Rule 27 under Bombay Town Planning Rules, by holding that the question of summary eviction arises at the stage of execution of the Town Planning Scheme against the occupants who have ceased to be entitled to occupy the plots in their occupation. The said power is conferred upon the Local Authority itself - a highly responsible body - and the power is to be exercised by it in an

objective manner by considering whether under the Final Scheme occupants are entitled to occupy the land in question. In that case, the land in possession of the petitioners was allotted for construction of roads and other public purposes. Thereafter, the Municipal Corporation called upon the petitioners to hand over possession of the land in their occupation, which they were not entitled to occupy. By filing writ petition, it was, inter alia, contended that section 54, which provides for summary eviction by service of notice contemplated thereunder, was opposed to the principles of natural justice, inasmuch as no opportunity was contemplated to be afforded to the occupants of such lands to show cause against the proposed eviction. That contention was negated by the High Court and Supreme Court by holding that the power is given to the Local Authority itself - a highly responsible body - and that power is required to be exercised by it in objective manner by reference to the Final Scheme and its interpretation whether the occupants are occupying the lands which they are not entitled to occupy. Thereafter, the Court held as under :---

"Further we are in agreement with the High Court that the power conferred upon the Local Authority is a quasi-judicial power which implies that the same has to be exercised after observing the principles of natural justice, that is to say, the decision that the occupants are not entitled to occupy the plots in their occupation has to be arrived at after hearing such occupants and that too by passing a speaking order which implies giving of reasons and that ensures that application of mind to only germane or relevant material on the record eschewing matter extraneous and irrelevant. Moreover any order of summary eviction based on any extraneous, non-germane, irrelevant or mala fide considerations would be subject to the writ jurisdiction of Court."

7. Considering the aforesaid law laid down by the Supreme Court, in our view, there is no question of issuing two show cause notices. Once the show cause notice is issued why an affected person should not be evicted, as provided u/s 89, he is entitled to make representation or raise objection that he is entitled to occupy the plot in his occupation under the Town Planning Scheme or for such other relief. In that case, if the objections are raised, the Town Planning Authorities are bound to consider them and pass a speaking order by considering relevant material on record, but there is no question of issuing two notices - one to show cause and thereafter, again, a notice for eviction. In this context, it should be noted that neither the Supreme Court, nor the Gujarat High Court, has taken such view in the aforesaid case of M/ s Babubhai & Co., that two show cause notices are required to be issued. In our view, after receipt of notice as provided under Rule 17, occupants can only raise the contention that they are entitled to occupy the land in question and, if such objection is raised, the authority is bound to consider it and decide it by passing a speaking order on the basis of Final Scheme.

8. However, the learned Counsel for the petitioners relied upon the decision rendered by the learned Single Judge of this Court in the case of Kakubhai Kanji

and others v. Smt. Vidyavati Shankarlal Gupta and others, 1995(3) Bom.C.R. 177, wherein the Court, after relying upon the aforesaid decision in the case of M/s. Babubhai & Co., held that the show cause notice, prior to eviction notice, was a condition precedent before taking summary action. In our view, with respect, it is difficult to agree with the reasoning given in the case of Kakubhai Kanji (supra) because, as stated above, the Supreme Court has negated a similar contention that a section which provides for summary eviction by service of notice contemplated therein was opposed to the principles of natural justice inasmuch as no opportunity was contemplated to be afforded to the occupants of such lands to show cause against the proposed eviction. The Supreme Court has not held that issuance of a show cause notice or giving an opportunity of hearing to the parties was a condition precedent before summary eviction. What the Court has stated is that power is given to highly responsible body, viz., the Local Authority, and that power is to be exercised in an objective manner with reference to the Final Scheme and its interpretation whether the occupants are occupying the lands which they are not entitled to occupy. This power given to the Local Authority is a quasi-judicial power, which implies that the same has to be exercised after observing the principles of natural justice, that is to say, the decision that the occupants are not entitled to occupy the plots in their occupation has to be arrived at after hearing such occupants and that too by passing a speaking order, which implies giving reasons, but this would not mean that the notice prescribed under the statutory provisions or the rules is not sufficient to comply with the principles of natural justice. After receipt of the notice, if the occupants raise an objection that they are entitled to retain the possession of the land in question, the Local Authority is required to pass a speaking order, after considering the relevant material on record.

9. Considering the Scheme of the Act and the limited enquiry which is required to be held by the Local Authority under the Town Planning Act, there is no question of issuing second show cause notice. After the notice as required u/s 89 read with Rule 17 is issued, if a person is authorised to occupy the land in dispute under the Scheme, he can raise such contentions and point out to the authority to that effect. If that is done, the authority is bound to consider the said contentions. It should be remembered that the principles of natural justice are followed at every stage before finalisation of the Town Planning Scheme. After it is finalised, the enquiry is of limited nature. If the concept of first show cause notice and hearing and thereafter second notice as contemplated u/s 89 is introduced, it would be against the statutory provisions, as the enquiry contemplated u/s 89 read with Rule 17 is of limited character depending upon the objective criteria whether the person is entitled to occupy the land or not under the Scheme. Further, the provisions of section 89 read with Rule 17 nowhere provide for prior notice and hearing and thereafter taking steps u/s 89 of the Act and the Rules thereunder. It is well established that the requirement of natural justice depends upon the circumstances of the case, the nature of the inquiry and that there cannot be a strait jacket or rigid formula. It depends, to a

great extent, on the facts and circumstances of the case, the frame-work of law under which the inquiry is held and the constitution of the tribunal and the body of persons appointed for that purpose. In the present case, as held by the Supreme Court, the power is given to a local authority a highly responsible body - and that power is to be exercised on the basis of the Final Scheme.

10. Dealing with a similar contention with regard to the principles of natural justice and prior notice in the case of Union of India and another Vs. W.N. Chadha, , the Supreme Court, in paragraph 82 of its judgment, quoted with approval that the right to prior notice and opportunity of hearing arises only by implication from the duty to act fairly and it may equally be excluded having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision and fairness in action does not demand its implication. After discussing other judgments on the point, the Court, in paragraph 89, held as under :---

"Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report u/s 173(2) follows in trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram par term superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but where the occasion for its attraction exists at all."

11. The Supreme Court in the case of M/s. Babubhai & Co., (supra) has specifically held that the power of summary eviction is conferred upon the Local Authority - a highly responsible body and the power is to be exercised by it in an objective manner "with reference to the Final Scheme and its interpretation whether the occupants are occupying the lands which they are not entitled to occupy". The Act itself provides the procedure for evicting the persons who are not entitled to occupy the lands.

12. Hence, there is no substance in this petition and it is, therefore, rejected.

13. At the request of the learned Counsel for the petitioners, time to vacate the plot in question is granted upto 11th June 1997 on the condition that all the petitioners occupying the plot shall file the usual undertaking to hand over vacant and peaceful possession to the Municipal Corporation on or before 11th June 1997. Undertaking to be filed on or before 28th April 1997.

14. In the meanwhile, respondents are directed not to forcibly evict the occupants of the plot in question.

15. Petition dismissed.