

(1972) 03 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No's. 1686 and 1687 of 1969

Bennett Coleman and Co. Ltd.

APPELLANT

Vs

Velji Lakshmi and Co., a firm and Others

RESPONDENT

Date of Decision : 20-03-1972

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)
City of Bombay (Building Works Restriction) Act, 1944 — Section 3

Citation : AIR 1973 Bom 86 : (1972) 74 BOMLR 628 : (1972) MhLj 867

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : S. J. Sorabjee and H. C. Turana, instructed by Chimanlal Shah and Co., Attorney, for the Appellant; R.P. Bhatt, instructed by Amarchand and Mangaldas, Attorneys, for the Respondent

Judgement

1. These two petitioners under Article 227 of the Constitution raise an interesting question with regard to the interpretation of Section 13(1)(hhh) of the Bombay Rents, Hotel Lodging House Rates, Control Act, 1947, in connection with a notice issued by the Municipal Commissioner for Greater Bombay which runs as follows :

CORPORATION BOMBAY TOWN PLANNING ACT, 1954, TOWN PLANNING SCHEME BOMBAY CITY NO.1. NOTICE NO.FE/221.

To

The Times of India,

Owner : Original Plot No. 37,

Elphinstone Estate Section.

WHEREAS the Government of Bombay has been pleased to sanction the above scheme u/s 51 of the Bombay Town Planning Act, 1954 (XXVII of 1955) on the 4th September, 1957, and to fix the 1st December, 1957, as the date on which the scheme shall come into operation AND WHEREAS the Notification relating to

such sanction has been published under No. TPB-1054-M, Local Self Government and Public Health Department at page 2611 of Part I of the Bombay Government Gazette dated the 12th September, 1957 and since u/s 53 of the said Act all rights and liabilities created by said Scheme shall come into force from the 1st December, 1957, the date notified by Government in their above notification AND WHEREAS you are aware that the land delineated on the Scheme Plans (which may be inspected, if necessary, at the office of the City Engineer, Town Planning Scheme No.1, Bombay Municipal Corporation) upon which your temporary structure stands, is affected by the said scheme AND WHEREAS all the rights of the Local Authority under the Bombay Town Planning Act, 1954 and the Bombay Town Planning Rules, 1955 are hereby expressly reserved AND WHEREAS you were permitted under the City of Bombay (Building Works Restriction) Act 1944 to erect a temporary structure on the terms and conditions mentioned in the said permit AND WHEREAS you agreed to pull down or remove the building or work whenever required by me to do so, you are hereby called upon to pull down and remove the entire building or work in respect of which permission was granted under Permit No. 51/1520/TP dated 23rd December, 1947, on or before 30th October, 1958, failing which I shall cause the building or work to be pulled down or removed u/s 489 of the Bombay Municipal Corporation Act and shall seek to recover the cost thereof as provided by that Municipal Act.

Please note that this notice is being served strictly with prejudice to the rights of the local authority under the Bombay Town Planning Act, 1954 and the Bombay Town Planning Rules 1955 which rights are hereby expressly reserved.

Dated this 19th September day of 1958.

Sd/- Municipal Commission, For Greater Bombay."

2-3. The circumstances in which the said notice was issued by the Municipal Commissioner to the Petitioners may be briefly stated as under :

4. The subject-matter of dispute between the petitioners and the respondents-Nos. 1 and 2 consists of a godown situated at Masjid Siding Road, Kurla Street, Bombay - 1 bearing Ward No. 6-B of Original Plot No. 37, Elphinstone Estate Section. The petitioners Bennett Coleman and Co. Ltd., were lessees of the plot, Original Plot No. 37, of Elphinstone estate. They had constructed godowns prior to 1944. In the disaster of Bombay docks explosion of 1944 these godowns were affected along with many other structures in that area due to explosions. At that time the Government of India Act, 1935, was in existence. The Government of Bombay in exercise of the powers vested in him by virtue of proclamation dated November 4, 1939, issued by him u/s 93 of the Government of India Act, 1935, made an act called "The City of Bombay (Building Works Restriction) Act (Bombay Act No. 18 of 1944). The Act was published in the Bombay Government Gazette, Part IV dated December 22, 1944. By Section 2 of that Act, the definitions under the Bombay Municipal Act, 1888 were applied to the provisions of that Act. Section 3 of the Act provided -

"Restriction on building works in certain area without permission : No person shall, during the period of one year from the date of commencement of this Act, do any work of erecting, re-erecting, constructing, reconstructing, adding to, altering or repairing and building, wall, or other structure, or any part thereof situated in the area described in the Schedule, or laying out any private street in the said area, except under the authority of a written permission granted by the Commissioner and except in accordance with such conditions, if any, as the Commissioner may think fit to specify in the permission.

Provided that the Provincial Government may by notification in the Official Gazette extend the period referred to in this section."

Section 5 of the Act lays down.

"Whoever contravenes the provisions of Section 3 shall, on conviction, be punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both."

The Explanation to that section lays down,

"If any person who is in occupation, possession or control of any land or building fails without lawful authority or excuse in respect of such land or building to comply or to secure compliance with the provisions of Section 3 or evades or attempts to evade the said provisions, he shall be deemed to have contravened the said provisions."

5. Section 6 empowered the Commissioner to remove or cause to be removed any work done in contravention of Section 3 and the expenses were recoverable under the Municipal Corporation Act as if the expenses were included in sub-section (1) of Section 190 of that Act. The Act is admittedly still in force, though the period of prohibition contained in Section 3 appears to have expired on December, 31, 1947.

6. In exercise of his powers u/s 3, the Municipal Commissioner granted a permit to the petitioners to build the proposed godown which is the subject-matter of dispute now between the petitioners and the respondents Nos. 1 and 2. The permission was granted to build godown "as per Plan submitted but subject expressly to the following conditions : (a) The provisions of the Municipal Act and bye-laws made thereunder in force from time to time shall be complied with: (b) the Commissioner may at any time direct the owner of the said premises to pull down or remove the work hereby permitted or any portion thereof forthwith or within such time as he may prescribe. No compensation shall be claimable by or payable to the owner. Further if any such direction is not complied with by the owner, the same may be enforced or carried out in the manner provided by Section 489 (1); (c) No compensation whatsoever, whether for damage, loss or injury, shall be claimable by or payable to the owner or any other person in respect of any work carried out pursuant to this permit, if the building wall comes within (i) the regular line of any street (ii) any improvement scheme that

may be made under the provisions of the Municipal Act (iii) any town planning scheme that may be made under Bombay Town Planning Act, 1915; (d) the conditions of this permit shall bind not only the owner of the said premises but also his heirs, executors, administrators; (e) no work shall be done within the regular line of the street." Below the permission granted, on behalf of the petitioners, it was endorsed that the above conditions were agreeable to the petitioners.

7. It is submitted on behalf of the petitioners that the Municipal Commissioner who issued the said permission was also empowered under the Bombay Town Planning Act, 1915 and the Bombay Municipal Corporation Act to impose conditions on owners before granting permission to build building. The petitioners constructed the temporary structure in accordance with the said permission which was granted on December 23, 1947. They used the structure upto 1953. Thereafter under an agreement dated December 21, 1953, the said temporary structure known as Godown No.2 was let out by the petitioners to the respondent No.1 for eleven months. The agreement was renewed from time to time upto August 31, 1957.

8. In the meanwhile the draft scheme dated July 3, 1957 which was sanctioned by the Government of Bombay on December 11, 1948, in exercise of the powers conferred by sub-section (2) of Section 14 of the Bombay Town Planning Act, 1915, was brought into force. On April 1, 1957, the Bombay Town Planning Act, 1954 came into force. The final Town Planning Scheme Bombay City No.1 (Mandvi and Elphinstone Estate) was sanctioned by the Government of Bombay so as to come into effect from December 1, 1957. By reason of the said final scheme, the Original Plot No. 37, bearing C. S. No. 130, was given final Plot No. 34 subject to further developments.

9. Under the final scheme certain regulations were also framed controlling the developments of the area under the scheme. Regulation 36 laid down.

"..... All temporary structures within the boundaries of a final plot i.e., those which have been permitted to be constructed by the Municipal Corporation u/s 15 of the Bombay Town Planning Act subject to a condition or under an agreement whereby such structures have to be removed by the owners concerned at their cost wherever called upon to do so by the Municipal Corporation shall be so removed within a period of two years from the date the final scheme comes into force." (underlining by me).

10. Regulation 36, however, gives power to the Municipal Commissioner in cases where genuine hardship may because to extend time.

Regulation 38 laid down,

"Any person, contravening any of the provisions of the scheme shall, on being convicted for such contravention, be liable to fine which may be intended to Rs. 1,000/- and in the case of continuing contravention of the aforesaid provisions,

he shall be liable to an additional fine which may extend to Rs. 10/- for each day closing which such contravention continues, after conviction for the first such contravention."

11. In view of these changes, by notice dated September 19, 1958, which is quoted above, the Municipal Commissioner called upon the petitioners to pull down and remove the godown failing which the Commissioner threatened to cause the building or work to be pulled down or removed. By a notice dated September 10, 1957, the petitioners, in their turn, called upon respondent No.1 to quit, vacate and deliver possession of the godown on the expiration of the month of October, 1957. By another notice dated February 22, 1960, the respondent No.1 was called upon to vacate the said godown at the expiration of the period mentioned therein. Respondent No.1 failed to do so. On April 18, 1960, the petitioners, therefore, filed R. A. E. Suit No. 181/1720 in the Court of Small Causes at Bombay against Respondents Nos. 1 and 2. Respondent No.2 was joined as defendant in the suit as he was also in occupation of the godown No.2.

12. The suit was resisted by the respondents 1 and 2 on several grounds. As no other ground survives at this stage or was referred to in the course of the arguments, it is enough to say that one of the grounds on which the respondents resisted the suit was that the permission granted by the Municipal Commissioner and the notice issued in pursuance of the said permission which are referred to above, did not constitute an order as required under " 13(1)(hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

13. The learned Judge who tried the suit rejected the contention and held that the godown was required by the petitioners for the immediate purpose of demolition ordered by the local authorities within the meaning of Section 13(1)(hhh). He ergative an ancillary contention in this connection that it could not be said that the premises were required for the immediate purpose of demolition within the meaning of Section 13(1)(hhh), inasmuch as the town planning scheme was held in abeyance and the worked of enforcement was to be kept pending finalisation of measure to indicate alternative accommodation to the tenants likely to be affected. The learned Judge held that whenever a notice to demolish was issued by the local authorities the purpose would have to be taken to be immediate even in spite of the fact that the actual implementation of the scheme may take some time, observing as follows :

"To repeat in a nut shell I would say that the remedy of eviction is given to the landlord u/s 13(1)(hhh) in order to keep in tact the powers of the local authority and to deprive the landlord as also his tenant from seeking any protection under the Rent Act. I think therefore that it would be sufficient compliance with the section by the landlord if he proves before the Court that he has been served with the notice of demolition by the local authority. Interpreting that the provisions of section as I do, I think that the plaintiffs have fulfilled the requisite of the requirement."

The respondent No.1 carried an appeal, against the decree of eviction passed by the learned Judge on the basis of this finding.

14. The Appellate Bench of the Court of Small Causes by its judgment dated December 10, 1968, reversed the decree on the grounds; (a) that the Municipal Commissioner was not entitled to call upon the petitioner to pull down the structure in question under any of the provisions of the Bombay Municipal Corporation Act or under the provisions of Bombay Town Planning Act, 1915 or the Bombay Town Planning Act, 1955; (b) that it was only under the agreement between the parties that the Commissioner laid down certain conditions and to which the petitioners agreed, that the Commissioner was entitled to call upon the petitioners to pull down the premises for which the permission was granted, and as the notice calling upon the petitioners to remove the structure was only by way of enforcing the said agreement it could not be considered to be an order by any local authority or other competent authority within the meaning of Section 13(1)(hhh). The Appellate Bench therefore held that there was no basis for the suit filed by the petitioners. The Appellate Bench further observed,

"..... By the by, it was argued on behalf of the appellants that the final scheme is still kept under abeyance and as such the requirement of respondent No.1 cannot be called for an immediate purpose of the demolition as ordered by the local authority. There is no substance in this argument, if the notice Ex. B can be construed as an order u/s 13(1)(hhh) of the Bombay Rent Act, the purpose for which the Respondent No.1 called upon the appellant to vacate would be for the immediate purpose of demolition as ordered by the local authority"

In other words, because the Appellate Bench came to the conclusion that the notice issued by the Municipal Commissioner dated September 19, 1958, was not an order within the meaning of Section 13(1)(hhh), the suit of the petitioners was dismissed with costs so far as possession was concerned.

15. The said conclusion of the Appellate Bench is challenged by the petitioners in the above petitioners as contrary to law. Mr.Sorabjee, the learned counsel for the petitioners, submitted that the Appellate Bench erred in law in holding that the notice which was issued by the Commissioner in connection with the permission granted u/s 3 of the City of Bombay (Building Works Restriction) Act, 1944 was not an order merely because the permission was subject to certain conditions which the petitioners had accepted as binding on them. Mr.Sorabjee argued that although the period in which Section 3 was in force expired on December 31, 1947, the petitioners having taken the permission before that day and having acted on that permission and built the structure according to the plan sanctioned by the Municipal Commissioner, could not contend that the conditions on which the permission was granted were not binding on them merely because the period mentioned in Section 3 expired. He further submitted that the view taken by the Appellate Bench that the notice issued on September 19, 1958 was merely a notice for enforcing an agreement ignores the powers of the Commissioner under the City of Bombay (Building Works Restriction) Act, 1949. In support of his

contention he also referred to a decision of Palekar, J., (as he then was), in Spl. Civil Appln. Nos. 2705 to 2712 and 2796 of 1976 decided on 1-4-1969 (Bom).

16. Mr.Bhatt, the learned Counsel for the respondents 1 and 2, tried to repel these arguments by relying on a decision of Bhasme, J., in Piadad Fernander Vs. K.M. Ramesh and Others, and contended that even though a notice was given by the Municipal Commissioner, it was incumbent on the landlord to satisfy the Court that the premises were required for the immediate purpose of demolition and it was also open to the tenants to show that having regard to the facts and circumstances of the case, the initial order of the municipal authorities had lost its efficacy. He also sought to support the reasoning of the Appellate Bench because the notice given by the Municipal Commissioner was intended to enforce the conditions agreed to by the petitioners and the notice cannot be construed as an order particularly as it was not under the provisions of any Act in force. He contended that even though the permission was granted subject to conditions and the petitioners built the structure in pursuance of that permission, as the period during which the restrictions operated u/s 3 expired on December 31, 1947 and the restrictions ceased to exist thereafter, the permission and the conditions had no legal efficacy; and the Municipal Commissioner had no power to rely on the permission and the conditions for issuing the notice of demolition with reference to those conditions. He also contended that apart from the permission and the conditions, the Municipal Commissioner had no power under any other enactment to issue that order. In other words, he contended that the notice issued by the Municipal Commissioner even if it is considered to be an order of demolition was an order which was not authorised by any provisions of any law.

17. In view of these contentions, the first point that arises for determination in this case is as to whether on a proper reading and construction of the permission whose conditions are quoted above and the notice which is also quoted above, it can be argued by the respondents Nos. 1 and 2 that it is not an order by any local authority. In my judgment, the notice given by the Commissioner on September 19, 1958 is clearly an order of demolition by the Municipal Commissioner. The argument on behalf of the respondents that it is not authorised by law is misconceived. The City of Bombay (Building Works Restriction) Act, 1949, as stated above, is still in force. If any permission was granted during the period in which the restrictions were in force u/s 3 and that permission was subject to conditions which the Commissioner could have imposed, it cannot be contended that the person who contravened the conditions or was bound by the conditions could not be dealt with under Sections 5 and 6 of the said Act. Section 3 categorically says that no person shall, during the period in which the restrictions were in existence construct a structure except under the authority of a written permission granted by the Commissioner and except in accordance with such conditions. There can be no doubt that the Municipal Commissioner had power to impose conditions and ask the petitioners to agree to those conditions.

17-A. The mere fact that the petitioners had agreed to those conditions does not affect in any manner the legal effect of the permission granted by the Municipal Commissioner or the legal nature of the exercise of the powers by the Commissioners u/s 3. As long as the structure built under that permission stood and the other provisions of the Act remained in force, the Commissioner could exercise the powers u/s 6 to remove that structure. Mr.Bhatt may be right in his submission that notwithstanding the issue of an order by a local authority or other competent authority it is possible for the Court to insist that the order must continue to have efficacy as held by Bhasme, J., in *Piudad Fernander Vs. K.M. Ramesh and Others*, cited above. Whether in face the order has lost its efficacy will depend upon the facts and circumstances of each case. So far as the present case is concerned there is nothing to show that the order issued by the Municipal Commissioner has lost its efficacy. The trial Court was, therefore, right in its view that the notice dated September 19, 1958 was an order requiring the landlord to demolish the structure within the meaning of Section 13(1)(hhh).

18. As I have held that the order passed by the Municipal Commissioner was within his powers it is unnecessary for me to consider the question as to whether the view taken by Palekar, J., in *Spl. Civil Applns. Nos. 2705 to 2712 and 2796 of 1967 (Bom)* and *K. K. Desaid, J., in Civil Revn. Appln. No. 1162 of 1960, decided on 5-2-1965 (Bom)*, that once the order is issued it was not open to the Court to either question the efficacy of the order or circumstances held in abeyance. In the present case as stated above, there are no such circumstances under which the operation of the notice was held in abeyance. In the present case as stated above, there are no such circumstances. Immediately after receipt of the notice, the petitioners terminated the tenancy of respondent No.1 and soon thereafter filed the present suit.

19. Mr.Bhatt strenuously urged that in any event the Court must be satisfied in every case u/s 13(1)(hhh) that the premises were required for the immediate purpose of demolition. He contended that it was common ground that the Town Planning Scheme in Bombay was in abeyance. He also submitted that his clients undertake to the Court to deliver possession of the suit premises the moment the Town Planning Scheme is in Abeyance for the very fact that persons like Mr.Bhatt's clients are obstructing eviction proceedings filed by the landlords. It may be that there are very many other reasons for its abeyance. The question that the Court must consider u/s 13(1)(hhh) is as to whether the landlord is entitled to recover possession as the premises are required for the immediate purpose of demolition. It may be that some landlords would like to postpone the removal of the structure. But where a landlord bound by the notice, wants to comply with the notice issued to him by the Municipal Commissioner without delaying further in the matter and perhaps is eager to co-operate with the authorities in enforcing the Town Planning Scheme it cannot be said that he does not require the premises for the purpose of demolition.

20. In the result, the petition succeeds. The decree passed by the Appellate

Bench is set aside and the decree passed by the trial Court is restored. Same order will follow in Special Civil Application No. 1687 of 1969 which arises from the same judgment of the Appellate Bench in an appeal filed by defendant No. 2. Rule in both the cases made absolute. Respondents 1 and 2 to pay the costs of the petitioners in one set throughout.

21. Petition allowed.