
(1969) 08 BOM CK 0015

In the Bombay High Court

Case No : O.C.J. Miscellaneous Petition No. 572 of 1969

Dr. Mahadeo Dattatraya Joshi

APPELLANT

Vs

Municipal Corporation

RESPONDENT

Date of Decision : 14-08-1969

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 4
Constitution of India, 1950 — Article 14, 226, 227, 82
Specific Relief Act, 1963 — Section 6

Citation : (1970) 72 BOMLR 729

Hon'ble Judges : Vimadalal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vimadalal, J.—This is a petition under Article 226 of the Constitution of India filed by an erstwhile tenant of the Municipal Corporation (respondents No. 1) for a writ of certiorari to quash the order dated January 30, 1969, passed by respondent No. 1 as the Enquiry Officer in proceedings under Chapter V-A of the Bombay Municipal Corporation Act ordering the petitioner to vacate the said premises within a month of the date of service of the said order, and for a writ of mandamus against the respondents to withdraw and/or cancel the same.

2. It may at the outset be mentioned that the Bombay Rent Act is not applicable to the premises in the present case in so far as they are owned by the Bombay Municipal Corporation which is "a local authority" within the terms of Section 4 of the Bombay Rents etc. Act, 1947. The petition has come up before me only for acceptance and for the issue of a Rule in terms prayed for by the petitioner. As, however, it is common experience that several petitions are being filed by erstwhile tenants in cases in which the Bombay Rent Act is not applicable, or by erstwhile licensees, and sometimes even by trespassers ab initio, who have not a vestige of right to continue in possession of the premises in question, merely for the purpose of gaining time in which constitutional questions relating to the

validity of the procedure adopted for evicting them are sought to be raised, I had directed notice to be given to the respondents before the issue of a Rule and had three such petitions placed on Board for argument. The present petition is one of them. After all the three matters had been argued, I had reserved orders. I adopted that course at the admission stage because, in such cases, to admit the petition is to serve the very purpose for which such petitions are filed by petitioners viz., to continue in possession of the premises in question as long as possible, though as a matter of substantive law. they have no answer whatsoever to the landlords' claim for possession.

3. Two questions arise for determination on the petition at this stage : (1) whether the petitioner could be said to be a party aggrieved so as to be entitled to seek relief under Article 226 of the Constitution: and (2) whether, even if he could be said to be a party aggrieved, the Court should, in the exercise of its discretion, refuse to entertain his petition, on the ground that to do so would work injustice in a broad sense and would enable the petitioner to continue in possession when, as a matter of substantive law, he has no answer to the respondent's claim for possession. In addition to these two questions which would be of a general nature, as far as such petitions are concerned, a third question arises in the present petition and that is whether the petitioner has made out at least a prima facie case of excessive delegation of power by the Municipal Commissioner to the Enquiry Officer without providing any guide-lines and Section 105B of the Bombay Municipal Corporation Act is, therefore, void as violating Article 14 of the Constitution. I shall now proceed to consider each of these contentions.

4. As far as the first point is concerned, at the outset, it must be stated that the same does not appear to be covered by authority. Mr. Shah for the petitioner, however, argued that it has been laid down by a Division Bench of this Court in the case of K.K. Verma and Another Vs. Union of India and Another, that, unlike English law, although an erstwhile tenant may not have a right to continue in possession after the termination of his tenancy, his possession is juridical and that possession is protected by law viz., Section 9 of the Specific Relief Act, 1877, (which corresponds to Section 6 of the Specific Relief Act, 1963), and that an erstwhile tenant can never become a trespasser (at pp. 315-316). Mr. Shah also relied upon some other decisions to which, however, it is unnecessary to refer at this stage. Having regard to the view taken by the Division Bench in Verma's case, I must take the view that since the possession of the petitioner as an erstwhile tenant is juridical possession and is protected by statute, he has a right not to be dispossessed except by due process of law. If, therefore, he is sought to be dispossessed by a summary procedure which, according to him, cannot be said to be "due process of law", he is a party aggrieved and is entitled to maintain the petition. It may be mentioned that Mr. Shah also relied on the observations of the Supreme Court in the case of Munshi Ram v. Delhi Administration A.I.R.[1968] S.C. 702 in which it was stated that if a trespasser is in settled possession of land over a sufficiently, long time, acquiesced in by the

true owner, he is entitled to defend his possession even against the rightful owner. These observations were, however, made in connection with the right of private defence in a criminal case and are, in my opinion, not applicable to the point which I am now considering. This is clear from the fact that it has been held as far back as the year 1891 by a Division Bench of this Court in the case of *Amirudin v. Mahamad Jamal* ILR (1891) Bom. 685 that a trespasser ab initio, like the plaintiff in that case, could not maintain a suit u/s 9 of the Specific Relief Act, 1877. In the judgment in the said case, it was observed that the plaintiff having come into possession by putting a padlock on the defendant's room, and the defendant not having acquiesced in the same, the plaintiff's possession never became juridical possession which could give him the right to invoke the aid of the Court u/s 9 of the Specific Relief Act. A trespasser cannot, therefore, be said to be a party aggrieved if he were to file a petition under Article 226 in which he questioned the vires of the statutory procedure by which he was sought to be evicted. The possession of an erstwhile tenant being, however, juridical possession as held by the Division Bench in *Verma's* case cited above, he would be a party aggrieved and can maintain such a petition.

5. I must now proceed to consider the second question formulated by me above viz., whether, even if the petitioner be a party aggrieved, the Court should, in the exercise of its discretion, refuse to entertain his petition on the ground that to do so would work injustice to the landlord, in so far as it would allow the petitioner to continue in possession till the disposal of the petition without a vestige of right under substantive law to be in possession thereof. Two Division Benches of this Court have declined to grant relief on this very ground in Writ Petitions under Article 226, one in the case of *State of Bombay v. Morarji* (1958) 61 Bom. L.R. 318, and the other in the case of *Paygonda Surgonda v. Jingonda* (1917) 68 Bom. L.R. 579. In *Morarji's* case, the landlord of certain premises filed a writ petition against the State to withdraw, cancel and set aside a requisition order passed in respect of a flat in his building, and to forbear from enforcing the same. The Court came to the conclusion that proper intimation u/s 6(3) of the Bombay Land Requisition Act had been given by the landlord, but refused to grant the relief sought by him, and allowed the appeal filed by the State, on the ground that the result of setting aside the requisition order which was sought to be impugned would be to throw out the government servant to whom it had been allotted and restore possession to the landlord when, in fact, the landlord was not staying there but had earlier given the premises for use to a third party. The Court, therefore, took the view (at p. 332) that in order to get relief from the Court on a writ petition, not only must the petitioner come with clean hands, not only must he not suppress any material facts, not only must he show the utmost good faith, but he must also satisfy the Court that the making of the order will do justice and that justice lies on his side. The Court came to the conclusion (at p. 333) that the said case was clearly a case where justice did not lie on the side of the petitioner, but was on the side of the State, and saw no reason why it should grant any relief to the petitioner. *Paygonda's* case referred to above is more

analogous to the present case in point of fact, in so far as, though the Court took the view that the Commissioner had erred in holding that he had no jurisdiction to entertain an appeal or a revisional application against the order of the Collector in proceedings relating to the execution of a decree for partition of land passed by a civil Court, it declined to grant relief to the petitioners because it came to the conclusion that the petitioners had filed Special Civil Application No. 1195 of 1966 in order that they could continue in possession of all the lands which were liable to be partitioned. The contention of the learned advocate for the petitioners in the said case that once the Court came to the conclusion that the Commissioner had failed to exercise the jurisdiction vested in him by law when he dismissed the petitioner's appeal, the Court ought to set aside the Commissioner's orders was repelled by the Court on the ground that it was not bound to do so, as interference under Articles 226 and 227 of the Constitution was discretionary and it was the settled practice of the Court not to interfere under those provisions unless it was necessary in the interests of justice to do so (at p. 386), The precise question whether the Court should countenance a petition which is filed merely with the object of continuing in possession, when the petitioner has no right to do so, arises in the present case also. These cases were, however, sought to be distinguished by Mr. Shah on behalf of the petitioner on the ground that no question of the Court exercising its discretion and refusing relief arises in a case in which violation of fundamental rights is alleged by the petitioner, as in the present case, A very recent decision of the Supreme Court, however, provides a complete answer to that contention of Mr. Shah, and that is, the unreported decision in *Tilokchand Motichand v. II. B. Munshi, C. S. T. Bombay* (1968) Writ Petition No. 56 of 1908, decided on November 22, 1968 (Supreme Court). That was a petition under Article 82 of the Constitution challenging the validity of a section of the Bombay Sales Tax Act. The Supreme Court by a majority dismissed the petition on the ground of delay though the right to move the Supreme Court under Article 82 is itself a fundamental right. The question before the Supreme Court in the said case was no doubt a different question viz., the question of delay, but the said decision shows that the Court can, in a proper case in the exercise of its discretion, refuse to grant relief to a petitioner even when fundamental rights are involved. To the same effect are the observations of the Supreme Court in another unreported decision in *Durga Prasad v. The Chief Controller of Imports and Exports* (1968) Civil Appeal No. 116 of 1965, decided on November 22, 1968 (Supreme Court) in which the observations of Gajendragadkar C. J. in an earlier decision of the Supreme Court in *Smt. Narayani Debi Khaitan v. The State of Bihar* (1964) Civil Appeal No. 140 of 1964 decided on September 22, 1964 (Supreme Court) that even in a case in which contravention of fundamental rights is alleged by the petitioner the Court can, in the exercise of its discretion, refuse to issue a writ if the petitioner has been guilty of laches, have been quoted with approval and followed. Turning to the facts of the present case, the position is that the petitioner, whose tenancy has been terminated and whose premises are not protected by the Rent Act, has no answer on merits to respondent No. I's claim for possession against him and

will ultimately have to hand over possession, in one or the other proceeding adopted against him. He no doubt seeks to challenge the validity of the summary procedure which has been resorted to against him under the provisions of Chapter VA of the Bombay Municipal Corporation Act, but, even if that challenge succeeds, its only effect would be to permit the petitioner to continue in possession of the premises in question without a vestige of a right in substantive law to do so. That would, in my opinion, be analogous to the position as it entailed in Paygonda's case cited above. Interference by this Court under Article 226 being discretionary, and it being the settled practice of this Court not to interfere unless it is necessary to do so in the interests of justice, and justice being in the present case on the side of respondent No. 1, in my opinion, I should not, entertain this petition, but should dismiss it summarily. It is not as if the result of the view taken by me would be that the validity of the provisions of Chapter V-A of the Bombay Municipal Corporation Act could never be challenged in a Court of law for it is not difficult to conceive of a case in which, even though the Rent Act may not be applicable, the validity of the notice to quit might be challenged on a plausible ground. In the decision of the Supreme Court in the case of N. I. Caterers Ltd. v. State of Punjab AIR [1957] S.C. 1581, Section 5 of the Punjab Public Premises Act, 1959, was declared void as offending Article 14 of the Constitution. The question which I am now considering viz. whether the Court should, in the exercise of its discretion, refuse to enter) in a petition in which the petitioner has no substantive right at all to remain in possession, for to do so would be to permit the petitioner to play for time and continue in possession, did not, however, arise, for the High Court of Punjab had already entertained the petition and the same came before the Supreme Court at the stage of appeal. The view which I am taking in the present case cannot, therefore, be said to be contrary to that decision.

6. Even on merits the present petitioner does not have a prima facie case to warrant the issue of a Rule. The only ground which Mr. Shah relied upon was ground (e) in para. 9 of the petition which is to the effect that the provision for blanket delegation of the very extensive and wide powers conferred upon the Municipal Commissioner to subordinate officers, without prescribing any limits for the exercise thereof and without providing any directions under which such important delegation could be exercised, was opposed to the basic and fundamental principle of the Constitution and Section 105B, therefore, violated Article 14 of the Constitution and was void. The last part of that ground is non-sequitur in relation to the first part of it for Section 105B does not deal with delegation of hit? powers by the Commissioner at all which is a subject dealt with by Section 68 of the Bombay Municipal Corporation Act, It is a ground which is different from the challenge under Article 14 of the Constitution which were mooted before my brothers Mody and Chandrachud and which was repelled by them in their judgment dated August 21, 1967 in Misc. Petition No. 478 of 1966 and Spl. C. As Nos. 1116 and 1338 of 1966. The ground of challenge before those learned Judges was that Section 105 gave to the Municipal Commissioner

an unguided, unfettered discretion whether he should have recourse to one or the other of the two procedures available to him viz. the summary procedure under Chapter V-A, or the ordinary procedure by way of a suit, and permits him to pick and choose between occupiers and occupiers of municipal premises. It may be mentioned that in that case my brothers Mody and Chandrachud distinguished the Supreme Court's decision in the case of Northern India Caterers referred to above and held that though their conclusion was that there were no principles to guide the Commissioner in the exercise of the discretion to resort to one or the other of the two procedures and to pick and choose between the different occupiers of municipal premises, the procedure under Chapter V-A was substantially similar to the procedure by way of an ordinary suit and was not more drastic or more prejudicial than the ordinary procedure followed in Courts of law and there was, therefore, no denial of equality and the impugned provisions did not violate Article 14 of the Constitution. Ground (e) in para. 9 is different from the plea of discrimination that was raised before my brothers Mody and Chandrachud in the said case. In my opinion, however, there is no substance in ground (e) in the present case for the simple reason that what the Enquiry Officer, to whom the Commissioner delegates these powers, has to determine in proceedings under Chapter V-A is precisely the same as that which the Municipal Commissioner himself is called upon to determine in proceedings under the said Chapter. The provisions of Chapter V-A themselves provide the limits for the exercise of powers by the Municipal Commissioner or the Enquiry Officer, as the case may be, though as held by my brothers Mody and Chandrachud in the case cited above, they do not provide any guiding principles as to the cases in which the procedure under Chapter V-A should or should not be resorted to. There is still less substance in the other grounds stated in para. 9 of the petition and, indeed, the only ground which Mr. Shah pressed before me was ground (e) which has been dealt with above. I have, therefore, come to the conclusion that, on merits also, the petitioner has failed to make out even a prima facie case for the issue of a Rule.

7. In the result, I decline to entertain this petition and dismiss the same summarily.