

(2004) 09 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No. 2051 of 2004

Fundacio Privada Intervida

APPELLANT

Vs

Additional Commissioner, Pune Division and Another

RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:

Maharashtra Rent Control Act, 1999 — Section 24(2), 40, 42

Citation : (2005) 2 ALLMR 48 : (2005) 2 BomCR 231 : (2005) 2 MhLj 769

Hon'ble Judges : Daga V.C., J

Bench : Single Bench

Advocate : Rahul Tarse, instructed by Udwadia and Udeshi, for the Appellant;
Y.R. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Daga V.C., J.—Rule returnable forthwith by consent of parties. Respondent No. 1 is a formal party, whereas Counsel appearing for the respondent No. 2 waives service.

2. Heard Counsels for the rival parties. Perused record of the petition.

3. This petition is directed against the order dated 7th November, 2003 whereby the revision filed by the applicant licensor (respondent No. 2) seeking directions against the Competent Authority to decide his claim for compensation and damages on merits after due inquiry came to be allowed.

4. The challenge set up in the petition is that the Competent Authority appointed under the provisions of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as "the said Act") has no jurisdiction to determined the financial liability of the licensee and direct payment thereof u/s 42 of the said Act.

Contextual facts :

5. The contextual facts depict that the petitioner, a registered charitable trust, was a licensee of the premises owned by the respondent No. 2. The respondent

No. 1 is the revisional authority u/s 44 of the said Act.

6. The Leave and Licence Agreement was entered into between the petitioner and respondent No. 2 on 21st May, 1999, initially, for a period of 11 months. It was renewed from time to time. However, it expired on 28th February, 2002. The petitioner-licensee, in spite of the expiry of the licence period, did not vacate the suit premises. Consequently, respondent No. 2- licensor was required to initiate action u/s 42 of the said Act to evict licensee from the premises. The said proceedings came to be registered as Eviction Petition No. 39 of 2002. During the pendency of these proceedings, petitioner-licensee vacated suit premises, with the result, a purshis came to be filed on 28th March, 2002 by the licensee stating that they have handed over possession of the suit premises to the licensor on 19th August, 2002. In turn, the licensor also filed a purshis, on the same date, acknowledging the receipt of possession and execution of possession receipt dated 19th August, 2002 with a specific mention that both parties shall have right to get their claims in respect of licence charges, damages, security deposits and other monetary claims decided from the competent Court. The Competent Authority, without considering this aspect of the purshis, without adjudicating upon the claim of the licensor for damages, dropped the proceedings vide its order dated 26th August, 2002.

7. The respondent No. 2 licensor initiated fresh proceedings u/s 42 of the said Act to seek review of the earlier order dated 26th August, 2002 so as to get the said order set aside and also prayed for determining damages u/s 24(2) of the said Act. The said proceeding came to be registered as Application No. 22 of 2002.

8. On being notice opponent/petitioner herein; appeared and opposed the said application. They stated-in-opposition that the applicant-licensor had no cause of action of file such application. That he was estopped from claiming any damages and/or raising any contention since the similar proceedings were disposed of by an order dated 26th August, 2002 and that the Competent Authority, having dropped the proceedings, has no jurisdiction to determine damages or saddle any liability on the licensee as claimed by the landlord/respondent No. 2.

9. The submissions made by the petitioner licensee found favour with the Competent Authority, who was pleased to hold that Section 42 of the said Act does not permit any landlord to claim damages or compensation in absence of any prayer for eviction of the licensee. There is no provision under the Section 42 to grant any damages or compensation. It was further held that Section 45, no doubt, gives power to the Competent Authority to execute order of eviction, but it does not give any power to determine or effect monetary recovery from the licensee. It was, thus, held that the Competent Authority has no jurisdiction to entertain second application. That is how respondent No. 1 rejected the application in question vide its order dated 3rd January, 2003 and refused to set aside its earlier order dated 26th August, 2002.

10. The respondent No. 2-licensor preferred two revision applications before the Additional Commissioner, Pune Division, Pune u/s 44 of the said Act; one on 25th November, 2002 against the order dated 26th August, 2002 being Revision Application No. 901 of 2002, whereby the proceedings u/s 42 of the said Act bearing No. 39 of 2002 were dropped. The Second Revision Application No. 75 of 2002 filed on 28th February, 2003 was against the order dated 3rd January, 2003 was against the order dated 3rd January, 2003 passed on Application No. 22 of 2002. Since the parties were common, facts were identical and dispute related to one and the same premises, both revisions came to be decided by a common order dated 7th November, 2003. Both orders of the Competent Authority were set aside. The proceedings were remitted back to the Competent Authority with directions to hear both parties and decide the claim of compensation and damages by holding due inquiry.

11. The above order is the subject-matter of challenge in this writ petition filed under Articles 226 and 227 of the Constitution of India.

Submissions:

12. Learned Counsel appearing for the petitioners contends that Section 42 of the said Act nowhere gives power or authority or jurisdiction to the Competent Authority to grant or award claim for monetary compensation or damages as such the Competent Authority has no power to entertain any prayer to determine any claim on this count. Learned Counsel for the petitioner relied upon the provisions of sections 23, 24 and 39 to 48 of the said Act in support of his submissions. He also relied upon the judgments of this Court; one delivered in the case of Ramchandra Keruji Deokar Vs. Raghunath Shankar Bichakar, and another delivered in the case of Jasmeet Hoon Vs. Smt. Rita Johar and Others, .

13. Per contra, learned Counsel appearing for respondent No. 2 urged that, looking at, the scheme of Section 24 read with Section 42 of the said Act the powers given to the Competent Authority are subject to the provisions of sections 22, 23 and 24 of the said Act. Section 24(2) contemplates that any licensee who does not deliver possession of the premises to the landlord on expiry of the period of license and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority, has to pay damages at double the rate of licence fee or charge of the premises fixed in the Agreement of License. In his submission, looking to the entire scheme of the said Act, the Competent Authority has power not only to award compensation, damages and direct recovery thereof till the date of dispossession but has power to decide all incidental issues arising between the parties while proceeding with the proceedings u/s 42 of the said Act. He, thus, submits that the Competent Authority could not have dropped the proceeding vide its order dated 26th August, 2002 without determining and awarding the amount of compensation and damages. He, thus, submits that the Revisional Authority rightly set aside the orders passed by the Competent Authority and remitted the matter back to it for adjudication of claim for compensation and/or damages.

Crux of the issue :

14. The crux of the issue for consideration is as to whether or not the Competent Authority has jurisdiction to pass an order determining compensation or damages u/s 42 of the said Act.

Statutory Provision :

15. Before considering the rival submissions, it is necessary to take review of the relevant provisions governing the issue.

24. Landlord entitled to recover possession of premises given on licence on expiry.

(1).....

(2) Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence.

(3).....

40. Appointment of Competent Authority.

(1) The State Government may, by notification in the Official Gazette, appoint one or more persons to be called Competent Authority for the purpose of exercising the powers conferred, and for performing the duties imposed, on him under this Act in such local area as may be specified in the said notification; and one or more such Competent Authorities may be appointed for one or more such local areas.

(2) A person to be appointed as Competent Authority shall be one-

(a) who is holding or has held an office, which in the opinion of the State Government, is not lower in rank than that of a Deputy Collector; or

(b) who is holding or has held a post of a Civil Judge, Junior Division; or

(c) who has been for not less than five years an Advocate, enrolled under the Advocates Act, 1961.

42. Special provisions for making application to Competent Authority by landlord to evict tenant or licensee.

Notwithstanding anything contained in this Act or any other law for the time being in force or any contract to the contrary or any judgment or decree or order of any Court, but subject to the provisions of sections 22 or 23 or 24 as the case may be; a landlord may submit an application to the Competent Authority, signed and verified in a manner provided in Rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908, as if it were a plaint, to the

Competent Authority having jurisdiction in the area in which the premises are situated, for the purpose of recovery of possession of the premises from the tenant or licensee, as the case may be.

Consideration

16. The function of adjudicating upon disputes between two individuals or between the State and an individual is normally vested in courts. The Constitution of India makes provisions for well-ordered, and well regulated, hierarchical judicial system, but it will be wrong to suppose that the courts enjoy monopoly of the entire business of adjudication. Side by side with the courts, innumerable administrative bodies have sprung up to carry on function of adjudication in a variety of situations. These bodies, created by legislation, determine a variety of applications, claims and controversies. Sometimes, the task of adjudication is merely an incidental administration; sometimes, it is more than incidental and it begins to assume a very close resemblance with the work usually assigned to the judiciary. This practice of vesting adjudicatory functions in person, bodies or institutions outside the ordinary hierarchy or regular law courts is becoming increasingly pronounced with the passage of time. The trend is not unique to India as it has been manifesting itself in England, the United States and practically in every democratic country.

17. The vast paraphernalia outside the courts which is created as a concomitant of the modern administration can in one sense be designated as "administrative adjudication" in so far as it is set up with a view to promote and help the administrative process in the country. But there is another way of characterizing the adjudicatory bodies, viz.; quasi judicial, implying thereby that they follow the process which is both "judicial" as well as "administrative". In India, technically speaking, the term "quasi judicial" and sometimes "Tribunal" is applied to these bodies. The quasi judicial bodies or adjudicatory bodies follow what are called the principles of natural justice.

18. It may be emphasized that some of the bodies are engaged in the task of adjudicating in cases in which a citizen is at an issue with a Government Department or is under an obligation under a statutory scheme, as for example, cancellation of a licence and the proceedings involved therein. Quite a few of these bodies are concerned with disputes between citizens inter se in which the administration has no direct interest and is not a party to the controversy in question, as for example, rent Tribunals, labour Tribunals etc.

19. The shortage of housing during the Second World War resulted in the power of the landlords to evict tenants and their freedom to fix rent for their premises. Since the shortage has been persisting, the control is still continuing and various statutes have been enacted by the states in India. The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as amended by the Maharashtra Rent Control Act, 1999 is one of such example. The statute empowers the State Government to appoint courts and/or Competent Authority to decide disputes,

such as fixation of standard rent and eviction of tenants. Before making any order that prejudicially affects any person, the authority under the said Act is required to give that person reasonable opportunity of being heard. In or before him, he has to follow as far as may be, the practice and procedure of a Court including the recording or evidence which means as far as possible the provisions of the CPC are required to be followed. He is empowered to award such costs to any party as he considers reasonable. He has the powers of Civil Court under the CPC when trying an application in respect of summoning and enforcing the attendance of any person and examining him on oath, requiring discovery and production of documents, etc. The orders passed under the said Act are executable, if passed by the Civil Court as a decree, and if passed by the Competent Authority, then that authority itself has been given the power to execute even by using such force as may be necessary to comply with the order of exaction.

20. The concept of jurisdiction also needs consideration. Jurisdiction means authority to decide. Whenever a judicial Tribunal is required to inquire into a question of law or fact, for the purpose of giving decisions on it. The question whether the Tribunal has jurisdiction depends upon the section to which it owes its birth. The Tribunal empowered to determine claim under a particular legislation has the jurisdiction to determine all questions of law and fact relating to that claim subject to the provisions of the Act. Thus, a Tribunal like the one in this case, is empowered to determine claim for compensation for loss of office has a jurisdiction to determine all questions of law and fact relating to the measure of compensation. It does not exceed its jurisdiction by determining any such questions." Section 24 of the said Act, which lays, "not. withstanding anything contained in this Act, a licensee in possession or occupation of premises given to him or licence for residence shall deliver possession of such premises to the landlord on expiry of the period of license; and on the failure of the licensee to so deliver possession of the licensed premises, a landlord shall be entitled to recover possession of such premises from a licensee, on the expiry of the period of licence, by making an application to the Competent Authority, and, the Competent Authority, on being satisfied that the period of licence has expired shall pass an order for eviction of a licensee." "Any licensee who does not deliver possession of the premises to the landlord on expiry of the period of licence and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority shall be liable to pay damages at double the rate of the licence fee or charge of the premises fixed under the agreement of licence".

21. The dissection of the above section makes it clear that any licensee, who does not deliver possession of the premises to the landlord on the expiry of the period of license and continues to be in possession of the licensed premises till he is dispossessed by the Competent Authority is liable to pay damages at double the rate of the license fee or charge of the premises fixed under the Agreement of Licence. Section 40 deals with the appointment of the Competent Authority for the purpose of exercising powers conferred, and for performing

duties imposed, on him under the Act. If that be so the conjoint reading of sections 24 and 40 and the scheme of the said Act would make it absolutely clear that the Competent Authority is not only entitled to recover possession of the premises of dispossess the licensee but also has power to award compensation as contemplated u/s 24(2) of the said Act. Thus, the power to determine an award and/or compensation and/or damages and/or monetary part of the liability is not only incidental to the power to evict but a specific duty coupled with power, to determine this liability, is bestowed on the Competent Authority. The Competent Authority vide its order dated 26th February, 2002 could not have dropped the proceedings without determining compensation or damages u/s 24(2) of the said Act. Merely because possession was delivered by the licensee that by itself was not sufficient to take away jurisdiction of the Competent Authority to decide claim for damages. In my opinion, the view of the Competent Authority was based on mistaken reading of Section 42. Even if possession is delivered by the licensor before initiation of the eviction proceedings still the Competent Authority will have jurisdiction to entertain and determine claim u/s 24(2) of the said Act. In this view of the matter, the petition has no substance. The view taken in the impugned order by the revisional authority is in consonance with the provisions of the said Act.

22. In the result petition is dismissed, for the reasons recorded herein and also for the reasons recorded in the impugned order with no order as to costs.

23. The Competent, Authority is directed to decide the remanded proceedings on its merits as expeditiously as possible, at any rate, within six months from the date of receipt of this order.