
(1990) 10 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 2086 of 1988

Harishchandra Mahadeo Mistry

APPELLANT

Vs

V.V. Afzalpurkar and others

RESPONDENT

Date of Decision : 08-10-1990

Acts Referred:

Maharashtra Housing and Area Development Act, 1976 — Section 2(4), 66, 90

Citation : AIR 1991 Bom 177 : (1991) 1 BomCR 531 : (1991) 1 MhLj 24 : (1991) MhLj 24

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : P.V. Sathe for S.K. Mali, for the Appellant; U.G. Kerkar, Asstt. Govt. Pleader, for the Respondent

Judgement

Ashok Agarwal, J.—The present petition seeks to challenge an order of eviction passed by the Competent Authority under S. 66(1) of the Maharashtra Housing and Area Development Act, 1976. The premises in question is a tenement bearing No. 25/542 in cuffe Parade, Colaba Transit Camp. The same was allotted to the petitioner in January 1984 for residential purposes since the tenement which was in his occupation required structural repairs.

2. On 5th December, 1986 the Competent Authority (III) appointed under the aforesaid Act issued a show cause notice to the petitioner to show cause why he should not be evicted. The grounds on which the petitioner was sought to be evicted was that he was running an unauthorised video business and was also storing cold drinks in front of the said premises. In response to the said notice the petitioner appeared before the Competent Authority through an Advocate. After the necessary evidence was recorded, the Competent Authority by its judgment and order dated 22nd July 1987 passed a final order of eviction against the petitioner calling upon him to vacate the suit premises within seven days from the date of the service of the said order. Being aggrieved, the petitioner preferred an appeal being Appeal No. 52 of 1987 before the Appellate Officer. By

order dated 14th September 1987 the appeal was dismissed. The petitioner was thereafter evicted from the premises on 15th September 1987. The petitioner, however, filed in this Court Writ Petition No. 4696 of 1987. By an order dated 30th September 1987 this Court recorded the undertaking given by the petitioner that he as also the members of his family would not use the said premises for screening video shows. The Court directed the respondents to restore possession of the premises to the petitioner and directed the re-hearing of the appeal.

3. The appeal was thereafter re-heard and by the impugned judgment and order dated 11th April 1988 the appeal of the petitioner was dismissed. Consequently, the order of eviction was confirmed. Taking exception to the above orders, the petitioner has preferred the present petition.

4. Shri Sathe, the learned Counsel appearing on behalf of the petitioner submitted that the impugned order of eviction which is purported to have been passed u/s 66 is without jurisdiction. According to him, the provision which would apply to the present case is Section 90 of the Act. According to him, Section 90 is the self-contained Code in respect of temporary accommodation. Section 90(5) in so far as is relevant provides that the use and occupation of the temporary accommodation allotted to an occupier shall be subject to other terms and conditions as the Board may from time to time determine. Sub-clause (14) of the said section provides as under:--

"(14) If such occupier has accepted any temporary accommodation allotted to him under this section, he shall vacate the same forthwith, and if he does not vacate forthwith or within such time as the Board may permit in writing, he shall be liable to be evicted therefrom under the provisions of Chapter VI of this Act as if such person was in unauthorised occupation of the Authority premises."

5. Placing reliance on the aforesaid clause, Shri Sathe contended that the temporary accommodation which is contemplated in Section 90 but for the deeming clause are not "authority premises". According to him, the said temporary accommodation on account of this deeming provision were to be authority premises only when the occupier fails to vacate the temporary accommodation, after an order in that behalf has been passed. It is only in such a situation that the occupier would be liable to be evicted under Chapter VI as if such a person was in unauthorised occupation of the authority premises. Shri Sathe next contended that Regulation 33 provides that where the occupiers of a building has been dishoused, it is obligatory on the Board to provide them with alternate accommodation. Clause (4) of Regulation 33 provides as under:--

"(4) On allotment of a tenement in a transit camp, every allottee shall be subject to the provisions of Chapter VIII, and before occupying the tenement allotted to him shall execute an agreement in form IX on the appropriate stamp paper at his cost."

Shri Sathe pointed out that it is practically common ground that no agreement

was got executed from the petitioner in Form IX as required under the aforesaid clause. However, Shri Sathe points out that under Form IX which has been prescribed under the Regulations, there is a clause being clause No. 16(2) which provides that if there is any dispute regarding the use of the premises allotted to a person, the same shall be referred to the Board and the decision on the question shall be final and binding on him. According to Shri Sathe if there was any dispute in regard to the user of the temporary accommodation by the petitioner the only course open was the one provided under clause 16(2) of the agreement in Form IX of the Regulations. He, therefore, contended that the Competent Authority had no jurisdiction to initiate proceedings u/s 66 of the Act.

6. Section 2(4) defines authority premises as under:--

"Authority premises" means any premises belonging to, or vesting in the Authority, or taken on lease by the Authority, or entrusted to, or placed at the disposal of, the Authority for management and use for the purposes of this Act."

I have not made a reference to the explanation appearing in the said sub-clause (4) as the same is not material to the facts of the present case. The above definition in my view, is broad enough to include the suit premises which have been allotted to the petitioner by way of temporary accommodation. It is true that sub-clause (14) of Section 90 does provide that if a person fails to vacate the temporary accommodation after an order in that behalf is passed, he shall be liable to be evicted under the provisions of Chapter VI as if such person was in unauthorised occupation of the Authority premises. The said provision, in my view, does not detract from a temporary accommodation being authority premises as defined u/s 2(4) of the Act. Once the suit premises are held to be authority premises then the provision of Section 66 will apply. Section 66 appears in Chapter 6 of the Act. Section 66(1)(v) provides that if the Competent Authority is satisfied that a person authorised to occupy any authority premises has otherwise acted in contravention of any terms expressed or implied under which he is authorised to occupy such premises, the Competent Authority may, for reasons to be recorded in writing, by a notice, order the occupier to vacate. The Competent Authority in the present case had issued a show cause notice u/s 66(2) of the Act. In response to the said notice the petitioner appeared and after the necessary evidence was recorded and an opportunity was given to the petitioner to show cause, the impugned order of eviction was passed. Hence, in my view, the contention of Shri Sathe that the impugned orders are without jurisdiction is without merit and the same is rejected.

7. Shri Sathe next placed reliance on Section 66(6) which in so far as is relevant, provides that if a person who has been ordered to vacate any premises under sub-clause (i) or (v) of clause (a) of sub-section (1), within seven days of the date of service of the notice pays to the authority the rents or compensation or amount in arrears or carries out or otherwise complies with the terms contravened by him to the satisfaction of the Competent Authority, such Authority shall on such terms, if any (including the payment of any sum by way

of damages or compensation for the contravention aforesaid), in lieu of evicting such person under sub-section (3) cancel his order made under sub-section (1), and thereupon, such person shall continue to hold the premises on the same terms on which he held them immediately before such notice was served on him. Shri Sathe pointed out that the petitioner had been held liable for eviction u/s 66(1)(a)(v) on the ground that he had used the temporary accommodation which had been allotted to him for residence for the purpose of screening video films and for selling cold drinks to the customers. According to Shri Sathe Section 66(6) gave an opportunity to an occupier who had been found to contravene the terms expressed or implied to make good the contravention within a period of seven days. If the occupier within the stipulated period ceases to contravene the said terms, it was obligatory upon the authority to cancel the order of eviction and to permit the petitioner to continue in the premises on the same terms on which he held him (sic) immediately before the order was served upon him. Shri Sathe submitted that no such opportunity was given to the petitioner. Consequently, the petitioner has been deprived of the valuable right which has been conferred by Section 66(6).

8. Shri Sathe further pointed out that the petitioner has given an undertaking to this Court on 30th September 1987 in Writ Petition No. 4696 of 1987. The petitioner has thereafter ceased to use the suit premises for screening of video films. According to Shri Sathe this should be construed as a substantial compliance of Section 66(6) and hence the impugned order of eviction should not be executed against the petitioner.

9. Shri Kerkar, the learned Assistant Government Pleader appearing on behalf of the respondents, however, submitted that all that Section 66 provides is the giving of an opportunity. The same was available to the petitioner. The petitioner has not availed of that opportunity within the stipulated time of seven days. If he has ceased to use the premises for screening video films with effect from 30th September 1987, the same would not come to his rescue to obviate the impugned order of eviction. According to Shri Kerkar the petitioner had appeared before the Competent Authority through an Advocate. It would therefore, be reasonable to infer that the petitioner was properly advised.

10. In my view, the provisions of Section 66(6) carve out an execution in the orders that can be passed for eviction. The grounds of eviction are provided in Section 66(i) to (vi). Sub-section (6) makes a reference only to clauses (i) and (v) of Section 66(1)(a). The benefit of sub-section (6) is restricted to orders of eviction passed on the ground of non-payment of rent or compensation and in respect of contravention of terms under which the occupier is authorised to occupy the premises. If an order of eviction is passed on either of the two grounds, sub-section (6) affords an opportunity to the occupier to avoid the order of eviction being executed on making payment of the arrears of rent or compensation within seven days of the date of the service of the order and in the case of contravention of the terms by complying with the terms contravened

within the said period of seven days. On the occupier complying with the above conditions a duty is cast upon the Competent Authority for permitting the occupier to continue to hold the premises on the said terms on which he held him (sic) immediately before the order of eviction was served upon him. The said section contains a mandatory provision for it provides that, such authority shall..... In my view implicit in the said provision on the part of the Competent Authority to bring it to the notice of the occupier the right which is contained in the said sub-section (6). What follows is that whenever there is an order of eviction passed u/s 66(1)(1) or (v), the order of eviction should itself give notice of the opportunity which is available to the occupier, which is provided in sub-section (6). If the order is silent in this behalf, the occupier will have no notice of the valuable rights which have been engrafted in the said provision. It would, therefore, be in the interest of justice that whenever orders of eviction are passed on the ground contained in Section 66(1)(a) or (v) of the Act, the said order itself should give notice to the occupier of his right to make payment of the arrears or to remedy the contravention within the period of seven days. It is only when the occupier fails to make payment or remedy the contravention or pay the damages or compensation in lieu of the contravention within the stipulated period of seven days that an order of eviction can be executed. In the present case, such an opportunity was not offered to the petitioner. The petitioner, however, since, the date of his undertaking dated 30th September 1987 has ceased to use the suit premises for screening of video films and for sale of cold drinks. In my view, the petitioner was not given an opportunity to remedy the contravention so as to avail of the benefit of Section 66(6). The petitioner has stopped using the suit premises for the unlawful purposes with effect from 30th September 1987. This will be substantial compliance as provided u/s 66(6). Since there is a provision for directing the petitioner to make payment of a sum by way of damages or compensation for the contravention, it would meet the ends of justice if the petitioner is directed to pay the respondents a sum of Rs. 250/- within a period of one month from today. On the aforesaid payment being made the impugned order of eviction dated 22nd July 1987 passed by the Competent Authority (III), Maharashtra Housing and Area Development Authority, Bombay in Case No. 131 and confirmed by the judgment and order dated 11th April 1988 passed by the appellate officer in Appeal No. 52 of 1987 will stand quashed. In default, the aforesaid order shall be executed against the petitioner.

Rule absolute in the above terms. There shall be no order as to costs.

11. Order accordingly.