

(1990) 06 BOM CK 0018

In the Bombay High Court

Case No : Writ Petition No. 1597 of 1987

Jiwan Nath Razdan

APPELLANT

Vs

The State of Maharashtra and others

RESPONDENT

Date of Decision : 22-06-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 26
Maharashtra Housing and Area Development Act, 1976 — Section 185, 2(4), 66
Maharashtra Housing and Area Development Board (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981 — Regulation 2, 21
Transfer of Property Act, 1882 — Section 54

Citation : AIR 1991 Bom 196 : (1990) 3 BomCR 306

Hon'ble Judges : H.H. Katharia, J

Bench : Single Bench

Advocate : Aspi Chinoy and B.H.P. Sharma, for the Appellant; B.N. Shroff, Virendra V. Tulzapurkar and Ms. K.K. Pradhan, for the Respondent

Judgement

1. On or about Nov. 15, 1965, the petitioner was posted as Settlement Officer-cum-Deputy Custodian of Evacuees Property in the office of the Regional Settlement Commissioner at Bombay. Respondent No. 4 was an employee of Glaxo Laboratories India Limited at Bombay and was transferred to Delhi in the year 1965. One K. K. Kapoor who is the brother-in-law of respondent No. 4 negotiated with the petitioner on behalf of respondent No. 4 and the petitioner was put in possession of a residential flat bearing No. 9.67/650 situate at M.I.G. Colony, Gandhi Nagar, Bandra (East) Bombay (hereinafter referred to as "the suit premises") on a monthly compensation of Rs. 250/-. The said flat was taken on hire-purchase basis by respondent No. 4 from the Maharashtra Housing Board and the period of hire-purchase was to expire on 31-7-1979. According to the petitioner, he had made all the payments of the Maharashtra Housing Board towards the hire-purchase agreement whereas it is the case of respondent No. 4 that in fact he had made all the payments. The petitioner contended that sometimes he made payments to one V. K. Sibal, brother-in-law of K. K. Kapoor. He also contended that he had made the final payment on February 22, 1983

thus completing full payments. In the meantime, in 1973 the Maharashtra Housing Board had adopted proceedings against the petitioner and respondent No; 4 in which an eviction order was passed against both. In the year 1974, petitioner preferred an appeal against the said eviction order in which he made a statement that he was a caretaker of respondent No. 4 in respect of the suit premises. Respondent No. 4 had also preferred an appeal and by a common order dated 17-5-1974 both the appeals were allowed. Thereafter, the Competent Authority of the Board (the second respondent) issued a show cause notice dated 5-6-1986 to the petitioner under Sec. 66 of the Maharashtra Housing and Area Development Act, 1976 (hereinafter referred to as the "said Act of 1976") as to why eviction proceedings should not be taken against him. On 31-7-1986, the Competent Authority passed an order of eviction against the petitioner. The petitioner preferred an appeal to the Appellate Officer of the Board (the third respondent) who by his order dated 4-12-1986 dismissed the petitioner's appeal. In the meanwhile, on 6-3-1983, petitioner made an application to Maharashtra Housing Board on diverse circulars of the Board from time to time that the premises in question be regularised in his favour.

2. Being aggrieved by the aforesaid eviction orders dated 31-7-1986 of the Competent Authority and dated 4-12-1986 of the Appellate Authority, the petitioner invoked writ jurisdiction of this Court by filing this petition under Article 26 of the Constitution. The writ petition was admitted on 7-5-1987 when a direction was given to the Board to consider and proceed with the application of the petitioner regarding regularisation of the suit premises.

3. In support of the petition, Mr. Shinoy submitted that Maharashtra Housing and Area Development Authority (hereinafter referred to as "MHADA") did not have the necessary jurisdiction to pass the impugned orders. The submission of the learned Counsel is that once the entire amount towards the hire-purchase agreement was paid up, MHADA was left with no interest in the suit premises and, therefore, could not have passed the impugned orders thus interfering with the internal dispute between the petitioner and respondent No. 4. Mr. Chinoy also questioned the non-action on the part of MHADA in not finalising the application of the petitioner for regularisation of the suit premises and pending final disposal of the said regularisation application passing the eviction orders. We further urged that the impugned orders were biased and the MHADA has acted at the behest of respondent No. 4 and thus both law and equity are in favour of the petitioner. Mr. Chinoy also submitted that Regulation Nos. 2(z) and 21(4) of the Maharashtra Housing and Area Development (Estate Management, Sale, Transfer and Exchange of Tenements) Regulations, 1981 (hereinafter referred to as "the said Regulations") framed under Sec. 183 of the said Act of 1976 are ultra vires the provisions of Sec. 2(4) of the said Act and bad in law. Controverting the submissions of Mr. Chinoy, Mr. Shroff appearing on behalf of MHADA and the State Government and Mr. Tulzapurkar appearing on behalf of respondent No. 4 canvassed that respondent Nos. 2 and 3 acting for MHADA were within their powers to pass the impugned orders and they have in no way acted outside or

beyond the jurisdiction of MHADA. Mr. Tulzapurkar also urged that the petitioner has not only suppressed material facts from the Court but also made several incorrect and false statements in the writ petition on which grounds alone he should be non-suited and should not be granted any relief in exercise of the extraordinary writ jurisdiction of this Court under Art. 226 of the Constitution. On the point of regularisation of the suit premises in favour of the petitioner, Mr. Shroff and Mr. Tulzapurkar submitted that the petitioner was only a caretaker of the suit premises for respondent No. 4 and was not a tenant and that his application which was for transfer of the suit premises could not have been considered and granted by the Board. Both of them also urged that Regulation Nos. 2(z) and 21(4) of the said Regulations are quite consistent with the substantive provisions of law namely S. 2(4) of the said Act of 1976 and the same are neither ultra vires nor bad in law.

4. Chapter VI of the said Act of 1976 deals with the powers of MHADA to evict persons from "Authority premises" and to recover dues etc. As per S. 66, if the Competent Authority is satisfied that the person authorised to occupy any "Authority premises" committed certain acts, it may, for the reasons to be recorded in writing, after following a certain procedure, evict the said person from the "Authority premises". S. 2(4) of the said Act of 1976 defines "Authority premises" as under :

"2(4) "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 purpose of this Act;

Explanation :-- In this clause "Authority premises" includes any premises taken by a person from the Authority under hire-purchasing agreement, during the period any payments are to be made by such person to the Authority under such agreement or until such agreement is duly terminated."

Relying upon the explanation to S. 2(4), Mr. Chinoy argued that the moment payments in respect of the hire-purchase agreement are completely made the Authority ceases to have any interest in the premises regarding which the hire-purchase agreement was entered into and thereafter the Authority does not have any jurisdiction whatsoever to deal with the premises which ceases to be "Authority premises". In other words, according to Mr. Chinoy, the suit premises ceased to be "Authority premises" the moment the last and the final payment was made on 22-2-1983 and thereafter MHADA did not have any interest in the suit premises and could not have passed the impugned orders and should have left the petitioner and respondent No. 4 to settle their dispute between themselves. Mr. Shroff and Mr. Tulzapurkar controverted this submission of Mr. Chinoy and submitted that the premises do not cease to be "Authority premises" under the explanation to S. 2(4), the moment full and final payment with regard to the hire-purchase agreement was made and something more was required to be done i.e. conveying the property. Now, the scope of an explanation to the main provision of law is very much limited and at any rate the explanation does

not take place of the substantive law. In *Bihta Co-operative Development Cane Marketing Union Ltd., and Another Vs. The Bank of Bihar and Others*, it was held by the Supreme Court that "the explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section". The Privy Council in case of AIR 1934 188 (Privy Council) had observed that an explanation to the section is inserted only as an abundant caution. Again, the Supreme Court in *S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others*,

"It is now well settled that an explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

The object of an explanation to a statutory provision is-

- (a) to explain the meaning and intendment of the Act itself,
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
- (d) an explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and
- (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

It is pertinent to note that had it been the intention of the legislature that on payment of full money the hire-purchase agreement was concluded and the premises would cease to be "Authority premises" they would have inserted a proviso to S. 2(4) and carved out a general principle of law and no explanation was necessary. In my opinion, therefore, the "Authority premises" which are the premises belonging to and vested in the Authority do not cease to be so merely because the full and final payment with regard to the hire-purchase agreement were made. In addition, the Board has to be divested of the property by conveying the same to the other party. Mr. Chinoy argued that an explanation to the section clarifies the substantive law and not that the substantive law will clarify the explanation in support of which proposition he relied upon the cases of (1) *Burmah Shell Oil Storage and Distributing Co. of India, Ltd. and Another Vs. The Commercial Tax Officer and Others*, , (ii) *Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another*, and (iii) a Division Bench judgment

of this Court in case of Malti Dadaji Mahajan v. Chief Executive Officer, Zilla Parishad, Wardha 1976 M LJ 109 : 1976 Lab IC 506, There is no dispute about this proposition of law made by Mr. Chinoy but I am not able to persuade myself to agree with his submission that on full and final payment of the amounts towards the hire-purchase agreement the "Authority premises" which belonged to and vested in the Authority would cease to be so. If that was so, nothing prevented the legislature to make specific provision in that regard or at least to carve out an exception by making a proviso to S. 2(4).

5. The question is, if on making full and final payment with regard to the hire-purchase agreement, the "Authority premises" were not to belong to and vest in the Authority then to whom would the same belong and vest in? In the matter of allotment of premises on the basis of deferred payment (i.e. hire-purchase basis) the said Regulations, framed under S. 185 of the said Act of 1976 with the previous sanction of the State Government, provide under Regulation 21 that in order to completely transfer the premises so as to cease as belonging to and vesting in the Authority a housing society has to be formed by the intended allottees and on formation of such a society, the Board should arrange to lease the property out to the housing society and thereupon the society shall hold the property purely as allottees of the Authority until all the allottees have paid the full purchase price of the tenements and all other outstanding dues, if any, to the Authority and the property is duly conveyed to the housing society provided that, where the allottees have paid the full purchase price and there are no outstanding dues to the authority, and the property is duly conveyed to the society, as provided in this Regulation, the tenancy executed in favour of the housing society shall stand terminated and the building shall cease to be "Authority premises" and the housing society shall hold the building as owner thereof subject, however, to the condition that the land beneath and appurtenant to the building shall be held on lease from the Authority. In other words, it is not enough that the full and final payment towards the hire-purchase agreement is made to the Board but further the Board has to lease out the property to the housing society formed by the allottees and unless the property is conveyed to the society, the premises would not cease to be "Authority premises". This gets support from the definition of the word "tenant" provided under Regulation 2(z) which reads as under :

"2(z) "tenant" in relation to a tenement means the person to whom a tenement is allotted either on lease, on payment of rent or on the basis of sale by differed payment (popularly referred to as a transaction in the nature of hire-purchase), till such person has paid all the equated instalments and other dues, if any, in respect of the tenement, and the building containing such tenement has been duly conveyed under a deed of sale to the housing society, company or the Association."

Again, Section 54 of the Transfer of Property Act, 1882 laid down that in case of tangible Immovable property of the value of one hundred rupees and upwards,

the same could be transferred only by a registered instrument. All this makes it amply clear that unless the property is properly conveyed, the same does not cease to be "Authority premises". There is lot of force in the contention of Mr. Shroff and Mr. Tulzapurkar that an explanation to S. 2(4) of the said Act of 1976 was necessary in order to remove ambiguity about the property belonging to and vested in the Authority of the Board with regard to the hire-purchase agreement the interpretation of which has many a time created problems.

6. Mr. Chinoy canvassed that the provisions of Regulation Nos. 2(z) and 21(4) of the said Regulations are ultra vires the provisions of S. 2(4) of the said Act of 1976 and thus bad in law inasmuch as explanation to S. 2(4) provides that the moment the full and final payment with regard to the hire-purchase agreement is made the premises ceases to be "Authority premises" whereas these two Regulations require that unless the property is conveyed to the tenant or the society, as the same may be, the same would remain "Authority premises" and to that extent the said Regulations are not consistent with the main provision of law, namely S. 2(4) and, therefore the said Regulations 2(z) and 21(4) be struck down as this subordinate legislation goes much beyond the limits of the parent statute. In order to substantiate his argument Mr. Chinoy invited my attention to a Division Bench judgment of this Court in case of N. P. Nathwani v. The Commissioner of Police 78 BLR 1 in which it was observed by Tulzapurkar, J. that :

"Even if the subordinate legislation has been enacted in good faith or with the best of intentions, the authority on whom power has been conferred has to act in accordance with and within the limits of the parent statute, and if it goes beyond the limits or enacts for non-specified purposes, then such subordinate legislation will have to be struck down as being outside the parent statute."

If Regulations 2(z) and 21(4) were to travel beyond S. 2(4) they had to be struck down but, in my opinion, these two Regulations are quite consistent with the provision of S. 2(4) because the "Authority premises" which belong to and vest in the Authority of the Board will not cease to be "Authority premises" merely on making payments with regard to the hire-purchase agreement but the same will have to be properly conveyed to the society or the tenant. It has to be first divested from the ownership of the Board. I, therefore, do not feel that Regulations 2(z) and 21(4) are ultra vires the provisions of S. 2(4) and thus bad in law.

7. Mr. Chinoy then urged that the eviction orders against the petitioner could not have been passed by MHADA without considering his application for regularisation of the suit premises. He relied upon an order passed by this Court (Puranik, J.) in case of Sopen Sakharam Khouade v. State Manager (RR) B.H. & D. Board, Bandra, in writ petition No. 1069 of 1987, on 6-3-87 which reads as under :

"On perusal of the affidavit it is obvious that the original allottee respondent No. 5 had applied much earlier for transfer of allotment in favour of the petitioner

and that the said application is still pending. In the ordinary course, subject to certain conditions the allotment is likely to be transferred in favour of the petitioner. Mr. Bhatkar also states on inquiry that in fact such application is pending. Hence in the interest of justice the order of eviction dated 26-3-1985 passed by Competent Authority and confirmed by Appellate Authority on 17-3-1986 are quashed and set aside and the Competent Authority is directed to first dispose of the application of respondent No. 5 regarding transfer in favour of the petitioner."

As pointed out by Mr. Shroff and Mr. Tulzapurkar the said order passed by this Court at the time of admission of the writ petition is not relevant to the facts of this case inasmuch as in the said case the original allottee respondent had applied for transfer of allotment in favour of the petitioner during the pendency of which the petitioner could not have been evicted and, in the facts and circumstances of that case, in the interest of justice, Puranik, J. passed the aforesaid order. It is also pertinent to note that the so called application for regularisation made by the petitioner on 6-3-1983 to the Estate Manager of the Bombay Housing and Area Development Board speaks in terms of transfer of the suit premises and not in terms of regularisation of the same. Mr. Shroff is also correct in submitting that regularisation is not a matter of right and the petitioner could not have claimed the suit premises for which respondent No. 4 had made all the payments.

8. I find no substance in the submission of Mr. Chinoy that the impugned orders were biased as although the petitioner was sought to be evicted, respondent No. 4 was not. To put it mildly, it does not lie in the mouth of the petitioner to say so. Merely because he was evicted as an unauthorised occupant of the suit premises, does not mean that respondent No. 4 should also be evicted whether or not there was cause or reason for doing so.

9. In view of my finding on the crucial point that MHADA had the necessary jurisdiction to pass the impugned orders, I do not find it necessary to deal with the contention of Mr. Tulzapurkar that the petitioner had suppressed material facts from this Court and had also made several incorrect and false statements in this writ petition and on that ground alone his petition should be dismissed and no relief should be granted to him though Mr. Tulzapurkar has pointed out quite some material from the record to substantiate his argument which has been very ably answered by Mr. Chinoy. There is no need for this Court to enter into an arena of controversy about the disputed questions of facts between the parties.

10. In this view of the matter, the writ petition fails and the same stands rejected. Rule is accordingly discharged but with no order as to costs.

11. At this stage, a request is made on behalf of the petitioner that this order may be stayed for a reasonable time. It is directed that no action will be taken by the respondents on the basis of this order for a period of four weeks from today.

12. Order accordingly.