
(1988) 01 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No's. 1077 to 1082 of 1983

Merwanjee F. Desai and Others

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 29-01-1988

Acts Referred:

Bombay Government Premises (Eviction) Act, 1955 — Section 12, 2, 3, 4, 4(1)
Bombay Government Premises (Eviction) Rules, 1960 — Rule 4

Citation : AIR 1988 Bom 271 : (1988) 2 BomCR 277 : (1988) 90 BOMLR 124

Hon'ble Judges : Sawant, J; Kolse-Patil, J

Bench : Division Bench

Advocate : V.V. Tulzapurkar and S.C. Dharmadhikari, instructed by Kanga and Co., S. Ganesh and Poonawala, instructed by Panday and Poonawala, for the Appellant; M.B. Mehra, Addl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Sawant, J.—The question that falls for consideration before us is whether the State Government has a right to prefer an appeal against the order of the Competent Authority under the Bombay Government Premises (Eviction) Act, 1955, hereinafter referred to as "the Act".

2. The relevant facts necessary to appreciate the point may be taken from Writ Petition No. 1080 of 1955. In that case the plot of land belonging to the State Government bearing C.S. No. 1A-1/241 of Byculla Division, Bombay was leased out to the petitioner Company, and was in their occupation since 1968. Since the Government wanted the plot for a public purpose, the Competent Authority issued a show cause notice to the petitioner under Sub-section (2) of Section 4 of the Act on 26th Nov., 1979. After hearing the petitioner, the authority came to the conclusion among other things that the plot was not needed for the public purpose and dropped the proceedings by its order of Dec. 15, 1980. Against the said order the State Government preferred an appeal purported to be u/s 7 of the Act to the Principal Judge of the City Civil Court, Bombay. A preliminary

objection was raised by the petitioner to the maintainability of the appeal. That objection was overruled by the learned Judge by the decision dated Dec. 3, 1982 impugned in this petition.

3. Before we refer to the relevant provisions of the Act, we may usefully refer to the Statement of Objects and Reasons of the enactment which read as follows:

"Government has allotted accommodation to Government servants and othes in Government premises like Bombay Development Department Chawls, Bombay. These premises have been in occupation for a long time and it has been noticed that the collection of rent is not entirely satisfactory. Similarly, there are cases of unauthorised occupation and sub-tenancies. It becomes difficult for Government to recover vacant possession of premises when there are heavy arrears of rent or in case of unauthorised occupation or when there is a breach of conditions of allotment. The filing of suits against unauthorised occupants and for the recovery of rent arrears involves a lengthy process as a result of which there is loss of revenue. In order, therefore, to enable Government to control and regulate the occupation of premises allotted for the use and occupation of Government servants and others and for certain other matters connected therewith, it is considered necessary to arm Government with effective powers to deal with cases of unauthorised occupation, subletting and arrears of rent. The proposed legislation is intended to provide remedy for all these matters".

This statement leaves no manner of doubt that the Act has been placed on the statute book with the sole purpose of arming the Government with a swift and summary power to evict the unauthorised occupants from its property and also to recover rent from the occupants which otherwise would involve the Government in an arduous and lengthy process by way of suits. At the same time it was also necessary to give a hearing to the occupants before any action was taken against them. It was therefore essential to create a suitable machinery and delegate to it the exercise of the executive power of the State. The statute was enacted to provide for such machinery. It is necessary to bear this in mind to understand and appreciate the relevant provisions of the Act.

4. Section 2 of the Act defines "competent authority" to mean an officer appointed u/s 3 and u/s 3 the State Government is given the power to appoint any officer who is holding or has held an office, which is in its opinion not below the rank of a Deputy Collector or an Executive Engineer for "carrying out the purposes of the Act". This provision itself indicates that the authority appointed to implement the objective of the Act is administrative and neither judicial nor quasi-judicial. It is well settled that even if the act is administrative, when it entails civil consequences, principles of natural justice have to be followed and the administrative authority is bound to hear the person who is likely to be affected by such act. The act does not envisage appointment of a judicial or quasi-judicial authority independent of the Government to resolve a dispute which may arise between the Government and the occupant of the Government premises after such a dispute has arisen between the two. Rather it authorises

the Government to appoint its own agency to initiate action on its behalf when the authority is satisfied that there is a default on the part of the occupant and decide the dispute itself by being the judge in its own cause and also further to implement its decision. That is evident from the provisions of Sections 4, 5 and 6 which deal with the powers of the authority.

Section 4 gives power to the competent authority to evict occupants under certain circumstances. Before passing an order of eviction the authority has to issue a notice to the person concerned to show cause as to why the eviction order should not be passed against him. This implies that before issuing the show cause notice itself the authority has to satisfy itself that one or the other cause mentioned in the section for evicting the person has arisen. Thus the decision to initiate the action is to be taken by the authority itself. When pursuant to the show cause notice the person concerned appears and shows cause, the authority holds inquiry and sits in judgment over its own action, and the defence against it. The authority itself then sets in motion machinery to implement its own decision, if necessary by using force. If there is any property left in the vacated premises, the authority is given power to dispose it of by public auction. The section also empowers the authority to cancel its order of eviction under certain circumstances.

Section 5 gives the competent authority power to recover rent or damages for unauthorised occupation as "arrears of land revenue whereas Section 6 empowers the authority to require the State Government or the local authority to deduct from the occupant's salary the rent of the premises, if the occupant is their employee.

These provisions therefore show that the powers to initiate the action for eviction or recovery of rent or damages to decide the dispute as well as to implement it are all vested in one and the same authority. It is therefore no more than an extended arm or department of the Government and for all purposes is the Government itself. When this is so, for the State Government to claim a right of appeal against the decision of the Competent Authority is to claim the said right against its own decision which claim is palpably untenable.

5. The provisions of Section 7 which provides for appeal against the order of the Competent Authority make the position still clearer. It reads as follows:

"7(1) An appeal shall lie from every order of the competent authority, made in respect of any Government premises, u/s 4 or Section 5 to an appellate officer who shall be the District Judge of the district in which the Government premises are situate, or such other judicial officer in that district, being a judicial officer of not less than ten years" standing, as the District Judge may designate in this behalf.

(2) An appeal under Sub-section (1) shall be preferred--

(a) in the case of an appeal from an order u/s 4, within thirty days from the date

of the service of the notice relating to the order under Sub-section (1) of the section; and

(b) in the case of an appeal from an order u/s 5, within thirty days from the date of the service of the notice relating to the order under Sub-section (1) or (2) of that section, as the case may be;

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the competent authority, the appellate officer may stay the enforcement of that order for such period, and on such conditions as he may deem fit.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(5) For the purposes of this section, Greater Bombay shall be deemed to be a district and the Principal Judge of the City Civil Court, Bombay, shall be deemed to be the District Judge of the district."

These provisions show that appeals are provided only against orders of the competent authority passed u/s 4 or 5. The only orders that can be passed u/s 4 or 5 are of eviction, cancellation of eviction orders and of recovery of rent and damages. In other words, the only party aggrieved by such orders will be the occupants or unauthorised occupants and not the Government. That the legislature has also the same intent is clear from the period of limitation provided under Sub-section (2) of Section 7. The period is to be calculated from the date of the service of the notice relating to the order u/s 4(1), Section 5(1) or Section 5(2). The orders under the said provision have to be served only on the occupants. This is clear from the Bombay Government Premises (Eviction) Rules, 1960, made u/s 12 of the Act. Rule 4 which lays down the mode of service of notices under Sub-sections (1) and (2) of Sections 4 and 5 have only the occupants in mind. Forms "A" to "D" of the said Rules also leave no doubt on the subject, since their contents show that the relevant notices are to be given only to persons concerned and not to the Government.

6. Section 9 further leaves no manner of doubt that there is no distinction between the Competent authority and the State Government and that the actions of the former are in effect those of the latter. It provides immunity to the actions taken by both under the Act. .

7. Thus the object and the scheme of the enactment show that what is conferred on the competent authority, is the executive power of the Government. The authority is the sole Judge to decide whether an action for eviction or for recovery of arrears of rent should or should not be initiated. Likewise, the authority is vested with the power to drop the proceedings of eviction or recovery of rent or damages if it is satisfied that no grounds exist for eviction or recovery.

So also it is for the authority to decide what time to grant to pay the arrears to remedy the breaches and to cancel the order of eviction or not. The actions of the authority being on behalf of the Government, no appeal is provided to the Government against them.

8. We are, therefore, satisfied the neither u/s 7 of the Act nor under any other provisions of the enactment, a right to prefer an appeal against any of the decisions of the competent authority has been conferred on the State Government. We, therefore, answer the question accordingly.

9. In view of our answer as above, the petitioners in all the petitions are entitled to succeed. All the petitions are, therefore, allowed. The impugned orders in the petitions are set aside and the Rules issued in all the petitions are made absolute with no order as to costs.