
(1959) 03 BOM CK 0002

In the Bombay High Court

Case No : Special Civil Application No. 340 of 1958

Narayan Laxman Koltewar and Others APPELLANT

Vs

State of Bombay and Others RESPONDENT

Date of Decision : 26-03-1959

Acts Referred:

Central Provinces and Berar Municipalities Act, 1922 — Section 15(1), 22, 45
Transfer of Property Act, 1882 — Section 105, 108, 4

Citation : AIR 1960 Bom 126 : (1959) 61 BOMLR 1284

Hon'ble Judges : Naik, J;Mudholkar, J

Bench : Division Bench

Advocate : P.N. Karekar, for the Appellant; N.L. Abhyankar and Spl. Govt. Pleader, for the Respondent

Judgement

Mudholkar, J.

(1) The petitioners were elected members of the Warora Municipality in the year 1955. After they were elected to the municipality they are alleged to have taken leases of certain rooms belonging to the municipality. It is because of this that the Commissioner exercising his powers u/s 22(2) of the C. P. and Berar Municipalities Act has declared that they have incurred a disqualification set out in Section 15 of the Act and have consequently ceased to be members of the municipality.

(2) It is contended on behalf of the petitioners that by merely taking leases of the rooms belonging to the municipality a member does not incur a disqualification u/s 15. The relevant part of that section runs thus:

"No person shall be eligible for election or nomination as a member of a committee, if such person-

x x x x x x

(1) has directly or indirectly any share or interest in any contract with, by or on

behalf of the committee, while owning such share or interest. Provided that in cases (e), (f) . . . and (j) the disqualification may be removed by an order of the State Government in this behalf and in case (1) the disqualification may be removed by an order of the Deputy Commissioner in this behalf."

According to Mr. Karekar what is objectionable is to have a share or interest in a contract and not in a transfer which has been effected by a municipality. He says that a lease is after all a transfer of property and since that is so it cannot be regarded as a contract. In our opinion, this is not quite correct. No doubt a lease is a transfer of property but there are various clauses in the lease and various covenants which are imported into it by Section 108 of the Transfer of Property Act which give rise to contractual right and obligation. Therefore, though a lease is a transfer it cannot be said to have ceased to be a contract altogether. No doubt some of the clauses of the Contract Act will not apply as they would to a contract which is wholly executable. But that is a different matter. there is no doubt that where there is a subsisting lease there are outstanding obligations, those obligations being of a continuing nature, it must follow that a lease of property from a municipality is a disqualification u/s 15(1) of the Act from being a member thereof.

(3) Then it is said that this disqualification has been removed because the permission of the Collector was obtained by the petitioners u/s 45 of Act. That section runs thus :

"(1) If any member, officer or servant of a committee is, without the written permission of the Deputy Commissioner, directly or indirectly interested in any contract made with such committee, he shall be deemed to have committed an offence u/s 168 of the Indian Penal Code.

(2) A member offer or servant of a committee shall not, by reason only of being a shareholder in or a member of, any incorporated or registered company, be deemed to be interested in any contract entered into between the company and the committee, but he shall not take part in any proceedings of the committee relating to any such contract."

It will be clear that this provision has nothing to do with incurring a disqualification or with the removal of a disqualification which has already been incurred u/s 15 (1) of the Act. The only object of the section is to release a member who has entered into a contract with a municipality from the liability of being proceeded against u/s 168 of the Indian Penal Code, which is entirely a different matter.

(4) Then it is said that two out of the four petitioners are not in possession of the leasehold premises and therefore they cannot be said to have incurred a disqualification. Now, what Section 15 speaks of is the existence of a share or interest in a contract and not the fact of being in possession of any property by virtue of a transaction entered into with a municipality. Here as already stated the outstanding obligations are under the leases and therefore whether any of

the petitioners is in possession or not would not take the case out of clause (1) of Section 15 of the Act.

(5) Then it was contended that the petitioners were not given an opportunity by the Commissioner order on the face of it says that the petitioners were called upon to show cause why action should not be taken against them u/s 22(2) of the C. P. and Berar Municipalities Act and that they pleaded that their action was covered by the permission granted to them by the Collector, Chanda. In the face of what the Commissioner has stated in the order we do not think that it is open to Mr. Karekar to advance the argument that the petitioners were not given an opportunity to be heard by the commissioner. Indeed, there is no clear averment to this effect in the petition. Mr. Karekar however says that the only notices which the petitioners got were those issued by the Deputy Collector, Chanda and that no notices were actually sent by the Commissioner. As already stated, in the absence of any clear averment on this point in the petition, we cannot take notice of it.

(6) The petition is without substance and is dismissed with costs. we discharge the rule.

(7) Petition dismissed.