
(1972) 06 BOM CK 0011
In the Bombay High Court
Case No : Spl. C.A. No. 492 of 1968

Narayanlal Bansilal

APPELLANT

Vs

B.N. Mittle

RESPONDENT

Date of Decision : 16-06-1972

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1),
13(1)(hh), 13(1)(hhh)
Constitution of India, 1950 — Article 227

Citation : (1973) MhLj 477

Hon'ble Judges : G.N. Vidya, J

Bench : Single Bench

Advocate : Soli Sorabjee, Y.S. Chitale, Suresh M. Shah and Narayan B. Shetye,
for the Appellant; M.V. Paranjape and Mohan Rijhwani, for the Respondent

Final Decision : Allowed

Judgement

G.N. Vidya, J.—This Special Civil Application under Article 227 of the Constitution of India, raises an interesting question u/s 13 (1) (hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, with regard to the nature of the order of demolition contemplated under that sub-section.

2. The relevant facts are as follows: Petitioner No. 2 is the landlord. Petitioner No. 1 is the receiver of the properties belonging to petitioner No- 2 appointed by the High Court in mortgage suit No. 454 of 1949. Respondent No. 1 is the tenant of part of the said property situate at 156, Tardeo Road, Bombay. Part of the said premises which consists of only a ground floor is let to respondent No I as a monthly tenant. The petitioners terminated the tenancy of respondent No. 1 by notice dated March 30, 1960; thereafter respondent No. 1 is in the premises as a statutory tenant.

3. The premises fall within the regular line of the street drawn by the Bombay Municipal Corporation for Tardeo Road, Bombay. Relying on a notice dated November 21, 1960, which called upon petitioner No. 2 to set back the part of

the building abutting on Tardeo Road, which projected within the regular line of the street, the petitioners filed on December 23, 1960 a suit for possession u/s 13 (1) (hhh) against respondent No. 1. Respondent No. 2 was added as party defendant to the said suit though no relief was sought against him as respondent No, 2 was a defendant in the High Court suit No. 454 of 1949 as the guarantor of the mortgage debt.

4. The suit was resisted by respondent No. 1 on the ground that the notice given by the Municipality was at the instance of petitioner No. 2 and respondent No. 2 ; that it was nothing more than an intimation of disapproval u/s 346 of the Bombay Municipal Corporation Act, 1888; and that hence it did not amount to an order for immediate demolition of the premises u/s 13(1) (hhh). It is not necessary to set out the other contentions raised by respondent No, 1 as they were not referred to in the Courts below or in this Court.

5. The learned Judge of the Small Causes Court, who tried the suit, upheld the contention of respondent No. 1 and dismissed the plaintiffs' suit. The appellate Bench of that Court dismissed the appeal filed by the petitioners. The petitioners challenge the concurrent decisions in the above petition on the ground that the Courts below manifestly erred in law in holding that the notice dated November 21, 1960 was not an order for demolition within the meaning of section 13(1) (hhh).

6. The notice runs as follows:

INTIMATION OF DISAPPROVAL u/s 346 OF THE BOMBAY

MUNICIPAL CORPORATION ACT

E. B. No. 8886/A of

MEMORANDUM

MUNICIPAL OFFICE

Bombay, 21st November. 1960.

To

Shri V. G. Pitti, The Raja Bahadur Motilal Bombay Mill Ltd., People's Building, Sir Phirozshah Mehta Road, Fort, Bombay.

With reference to your Notice, dated 11-10-1960 and delivered on the same date and the Plans, Sections, specifications and Description and further particulars and details of your building at C. S. No 728, Tardeo Road furnished to me under your letter dated

I beg to inform you that I cannot approve of the building or work proposed to be erected or executed, and I therefore hereby formally intimate to you, u/s 346 of the Bombay Municipal Corporation Act, my disapproval thereof by reason :

(a) That the same will contravene the provisions of section 297. sub-section (3) of the said Act, in that the part of the building abutting on street is proposed to be projected within the regular line of the Street to the extent as shown on the block plan.

(b) That, pursuant to the provisions of section 208, sub-section (1) of the said Act, I require the whole part of the building abutting on Tardeo Road which projects, within the regular line of the said street to the extent as shown on the block plan to face set back to the regular line of the said street. The exact position of the regular line of the street will be marked on the ground by this office Asstt. Engineer (Survey) on application.

The proper gutters and down pipes are not intended to be put up to prevent water dropping from the eaves of the roof on the public street

That the drainage work generally is not intended to be executed in accordance with the Municipal requirements.

Subject to your so modifying your intentions as to obviate the before mentioned objections and meet my requirements, but no otherwise, you will be at liberty to proceed with the said building or work at any time before the 21st day of November 1971, but not so as to contravene any of the provisions of the said Act, as amended as aforesaid or any rule, regulation or by-law made under that Act at the time in force.

It is to be understood that the foundations must be excavated down to hard soil and that this intimation gives no right to build upon ground which is not your property.

The position of the (sic) is and other appurtenances in the building should be so arranged as not to necessitate the laying of drains inside the building.

The Water arrangement must be carried out in strict accordance with the Municipal if requirements.

Your attention is drawn to the objection and notes on the reverse.

Sd/- Assistant Engineer D2 Ward, Bombay Municipal Corporation. Assistant Engineer

7. The notice is in the printed form prescribed for an intimation of dis approval u/ s 346 of the Bombay Municipal Corporation Act. It refers to the notice which petitioner No. 2 and respondent No. 2 had sent on October II, 1960 along with the plans, sections and specifications and description and further particulars and details of the addition to the building which the petitioners intended to make. It is not in dispute that the time mentioned in the notice may be extended by the Municipal Corporation. Section 346 of the Bombay Municipal Corporation Act, runs as follows:

346. (1) If the Commissioner disapproves of any building or work of which notice

has been given as aforesaid or of any portion or detail thereof; by reason that the same will contravene some provision of this Act or some by-law made hereunder at the time in force or will be unsafe, he may, at any time within thirty days of the receipt of the notice or of the plan, section, description or further information if any, called for u/s 338, 340 or 343, as the case may be, by a written notice intimate to the person who gave the notice first hereinbefore in this section mentioned his said disapproval and the reason for the same, and prescribed terms subject to which the building or work may be deemed to be approved by him.

(2) The person who gave the notice concerning any such building or work may proceed with the same, subject to the terms prescribed as aforesaid but not otherwise, at any time within one year from the date of receipt by him under sub-section (1) of the written notice in this behalf, but not so as to contravene any of the provisions of this Act or any bye-law made hereunder at the time in force.

That section must be read along with sections 342 to 345 and other relevant sections. It is clear that section 342 requires inter alia every person who intends to make any alteration or repairs to a building to give to the Commissioner in a prescribed form u/s 344 notice of his said intention. That notice must state the intention specifying the position of the building in which such work is to be executed, the nature and extent of the intended work, the particular part or parts of such work which is or are intended to be used for human habitation and the name of the person whom he intends to employ to supervise its execution. On receipt of this notice u/s 342, the Commissioner must verify as to whether all the necessary information is supplied, and if he deems it necessary to get any further additional information, he may at any time within 30 days of the receipt of the notice u/s 342 require the person who gave the notice to furnish plans and sections of the building of the intended new work. Section 346 casts on the Commissioner a duty to give notice intimating the person who gave the notice u/s 342 his disapproval and the reasons for the same and the prescribed terms subject to which the building or work is approved by him.

8. The notice quoted above, therefore, though described as intimation of disapproval u/s 346, in fact imposes terms of approval u/s 346 (1). One of the terms imposed is u/s 298 (1) which runs as follows:

298 (1) If any part of a building abutting on a public street is within the regular line of such street, the Commissioner may, whenever it is proposed-

(a) to rebuild such building or to take down such building to an extent exceeding one-half thereof above the ground level, such half to be measured in cubic feet; or

(b) to remove, re-construct to make any addition to any portion of such building which is within the regular line of the street, in any order which he issues, u/s 345 or 346, concerning the re-building, alteration or repair of such building require such building to be set back to the regular line of the street.

9. Thus the notice in so far as the said condition is concerned is a valid notice by the Municipal Corporation to petitioner No. 2 and respondent No. 2 under sections 346 and 298 for demolishing and setting back portion of the structure or the building, which encroached on the regular line of the street determined u/s 297 of the Act. It is manifestly an order for demolition of the portion of the structure or building encroaching on the regular line of the street. It is an order for immediate demolition as no reconstruction or alteration can be made without complying with it. I do not see any reason why such an order is not an order for the immediate purpose of demolition which is contemplated by section 13 (1) (hhh).

10. However, as the two Courts have held that it is not such an order it is necessary to consider the reasons given by them for their conclusion, which according to Mr. Paranjape, the learned counsel for respondent No. I-tenant, are valid reasons. Turning to the judgment of the trial Judge I find that he has proceeded on the footing that because the notice was merely an intimation of disapproval of the plan suggested by the petitioners, it does not give any direction to remove the building nor impose any time limit. He observed further,

That requirement is clearly contingent upon the proposal of the plaintiffs and since they are required to set back the whole building to the regular line of the street the plaintiffs proposal is as good as dead, as it is impossible to carry out the construction in the form in which it was proposed, and in that case there is no obligation on the plaintiffs to demolish the building falling within the regular line of the street. It is worth noticing that the local authority has not thereafter pursued the matter as obviously the objection was meant for the particular proposal and was communicated because u/s 346 of the Bombay Municipal Corporation Act the Municipal Commissioner or the Engineer to whom powers are delegated by him is required to intimate his disapproval and state his reason for the same. In these circumstances, such intimation cannot be considered as an order to demolish the existing building.

The reasons are contrary to the provisions of sections 346 and 298. While disapproving the proposal it was open to the local authority to insist on immediate demolition of the structure u/s 296 (1).

11. The appellate Bench in substance agreed with the view of the trial Court stating as follows :

We may point out that the appellants had proposed to put up an upper floor on the one storeyed structure, which fell within the regular line of the street and in reply to this proposal, the Municipal Commissioner said that he could not approve of the building work proposed to be erected or executed, and he, therefore, formally intimated to the appellants his disapproval thereof. He then went on to state that this was by reason of his requiring the whole of the building abutting on the Tardeo Road, which projected within the regular line of the said street, to be set back to the regular line of the said street.

It has further observed,

All that the Commissioner was doing in this notice, in our view, was that he was intimating to the appellants that the reason for refusal to give permission to the appellants to carry out the proposed work was that the Commissioner would require the building to be set back to the regular line of the street. It may well be that the Commissioner intended otherwise, but if he did so, it was his duty to have made the position quite clear and distinctly to have made an order as he was undoubtedly empowered to do u/s 298 (1) of the Bombay Municipal Corporation Act. Had he done so, we would have no hesitation whatsoever in granting a decree against the first respondent under clause (hhh) of section 13 (1) of the Bombay Rent Control Act of 1947.

12. It is very difficult to appreciate what the appellate Bench meant by this last reason given, Perhaps what they meant was that the Commissioner should have mentioned, on the top of the printed notice, in addition to what was printed, the words "and notice of demolition u/s 298 (1)". Section 298 refers to orders u/s 345 or 346. It does not prescribe any particular form for issuing an order u/s 298 (1). As already stated, section 346 contemplates not merely stating of reasons for disapproval but also intimation of prescribed terms subject to which the building or work "may be deemed to be approved by him". In my judgment, the appellate Bench completely lost sight of the contents of section 31G (1) in assuming that the notice relied on by the plaintiffs was not sufficient to constitute an order of demolition u/s 298 (1).

13. Mr. Paranjape, the learned counsel for respondent No. 1, sought to support the reasoning of the two Courts firstly, by submitting that if the landlord bona fide required the premises for reconstruction he should have filed a suit u/s 13 (1) (hh) and not u/s 13 (1) (hhh). This argument is untenable because the grounds u/s 13 (1) are not mutually exclusive. If the landlord satisfies the Court with regard to any one of the grounds he is entitled to possession. Secondly, he submitted that the orders of demolition contemplated by section 13 (1) (hhh) are orders like the orders of demolition u/s 354, which can be enforced u/s 489 of the Bombay Municipal Corporation Act and not orders like the one issued by the Municipal Corporation in the present case on November 21, 1960 u/s 346. He argued that the Municipal Corporation could not compel the landlord to undertake the work of building the additional floor after the landlord recovered possession from the tenant and that unless the landlord actually builds the additional floor, which he was not bound to do, the Municipal Corporation could not enforce the demolition directed u/s 298 (1).

14. Mr. Sorabjee, the learned counsel for the petitioners, stated on behalf of his clients, one of whom as stated above is the Court Receiver, that as soon as the possession is recovered from the tenant they will hand over the possession of the suit property to the Municipal Corporation for immediate demolition in order to comply with the requirement of section 298 (2) as mentioned in the notice. This statement should be sufficient to repel the argument of Mr. Paranjape.

15. However, I find no merit in the argument because having regard to the scarcity of accommodation in the city of Bombay and eagerness of property holders to develop their property, it is difficult to imagine at the present moment whether a property holder would take the property in a busy locality like Tardeo and would not immediately undertake the development for constructing more accommodation for business and residence. If he wants to reconstruct he must demolish immediately the encroachment. In any event if the landlords do not demolish the structure within a reasonable time, perhaps, the tenant can file a suit for recovering possession on the ground that he and the Court were deceived since the required demolition was not effected, though there is no specific section to that effect in the Bombay Rent Act.

16. Mr Paranjape next submitted that such a conditional demolition depending on the condition of a choice of the landlord is not contemplated u/s 13 (1) (hhh). He argued that if the Municipality wanted to remove the encroachment on the regular line of the street they should have taken action u/s 296 and acquired the property subject to the provisions of sections 90, 91 and 92 of the Bombay Municipal Corporation Act. The Municipal Corporation had not done so and have merely disapproved the proposal made by the landlord for developing the property. Hence it could not be said that the Municipality had compelled the landlord to demolish the structure. There is no substance in this contention. The Municipal Corporation may have the powers to acquire u/s 296. That does not in any way detract from the powers of the Municipal Corporation to pass an order u/s 298.

17. In my judgment, the two Courts below erred in law in holding that the notice dated November 21, 1960 did not have the effect of an order of demolition as required u/s 13 (1) (hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, for the reasons stated already. It is not disputed that if the landlord wants to develop the property as suggested by him in his plans he is compelled to demolish immediately the encroachment on the regular line of the street as ordered u/s 298 (1) in the said notice. When an order in exercise of powers under several sections of the Municipal Corporation Act is passed it cannot be said that it is not an order under this section merely because the order calls itself an intimation of disapproval u/s 346. Nor is it necessary to state at the top of the order that it is an order u/s 298 (1). Ordinarily the word "order" signifies a direction or command by an authority having power to give such direction or command. There can be no doubt that the direction given in the notice dated November 21, 1960 is an order u/s 298 (1) which is specifically referred to in the said notice.

18. In the result, the petition succeeds. The decrees passed by the two Courts below dismissing the plaintiffs' suit are set aside. The plaintiffs' suit is decreed in terms of prayer (a) of the plaint and respondent No. 1 is ordered and decreed to hand over to plaintiff No. 1 possession of the suit premises. Respondent No. 1 shall pay the costs of the petitioners in all the Courts. Rule made absolute.