

(1970) 01 BOM CK 0009

In the Bombay High Court

Case No : Spl. Civil Application No"s. 1578 to 1580 of 1969

Piadam Fernander

APPELLANT

Vs

K.M. Ramesh and Others

RESPONDENT

Date of Decision : 22-01-1970

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 354, 354(1), 488
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1), 15
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 227

Citation : AIR 1970 Bom 376 : (1970) 72 BOMLR 569 : (1970) MhLj 939

Hon'ble Judges : Bhasme, J

Bench : Single Bench

Advocate : F.S. Nariman, S.R. Shah and D.T. Gandhi, for the Appellant; R.B. Andhyarjina, instructed by Vaccha and Co., Attorneys, for the Respondent

Judgement

1. This is a group of five Special Civil Applications by the defendants-tenants whose eviction has been ordered by the courts below u/s 13(1)(hhh) of the Bombay Rent Act from the suit premises. The five suits were heard together as common questions of law and fact were involved and for the very reason this judgment will dispose of all these five applications.

2. The plaintiffs are owners of a property situate at 35, 3rd Marine Lines, Dhobi Talao, Bombay and portions of that property are occupied by the defendants as tenants. On 21-7-1958 the plaintiffs received a notice from the Municipal Corporation u/s 354(1) of the Municipal Corporation Act requiring the plaintiffs to pull down the structure on the ground that it was in a dangerous condition. On receipt of this notice the plaintiffs initiated proceedings u/s 507 of the Municipal Corporation Act and the Chief Judge of the Court of Small Causes at Bombay passed an order in their favour on 29-1-1959 granting time to the defendants to vacate the premises on or before 30-9-1959. On 7-4-1961 the plaintiffs gave a notice terminating the defendants' tenancy on the ground that they wanted vacant possession for carrying out the order of the Municipal Corporation

regarding the demolition of the building. On 1-8-1961 the Municipal authorities decided to act departmentally and demolish the structures in exercise of the powers conferred on them u/s 488 of the Municipal Corporation Act. On 18-9-1961 the defendants made representations against the proposed action and the Municipal authorities on a certain undertaking given by the defendants to the Commissioner stopped the demolition work and the labour charges Incurred by the municipal authorities amounting to Rs. 55/- were recovered from the defendants. Pursuant to their Undertaking the defendants completed the repair work within six weeks and by a letter dated 12-1-1962 informed the Municipal Commissioner accordingly. After the quit notice dated 1-8-1961 the plaintiffs filed the five suits on 23-12-1961 against the defendants claiming reliefs u/s 13(1) (hhh) of the Rent Act, The defendants resisted the suits on the ground that they had already carried out the repairs and there was no valid order In existence which required the plaintiffs to immediately demolish the suit building. In other words the defendants contended that the plaintiffs had no cause of action u/s 13(1)(hhh) against them on the strength of the notice given by the municipal authorities on 21-7-1958. At the trial the plaintiffs did not adduce any oral evidence nor did they examine any one of them. Similarly neither of the defendants have stepped into the witness-box. It appears that the parties went to the trial on the basis that it was a matter only for documentary evidence and the burden of proof, if any, was on the defendants. The defendants examined one witness on their behalf who happens to be the Municipal Engineer acquainted with certain facts relevant for the case.

3. The learned trial Judge considered the evidence on record and negated the defendants' contention that the order of notice of the Municipal authorities dated 21-7-1958 was no longer operative or effective for the purpose of the plaintiffs' suit u/s 13(1)(hhh). The defendants' contention that by reason of the repairs carried out by them to the satisfaction of the municipal authorities the notice u/s 354, became nugatory was rejected by the learned trial Judge. The learned trial Judge came to the conclusion that the plaintiffs had established that they required possession of the premises for the purpose of immediate demolition ordered by the municipal authorities. Accordingly the learned trial Judge passed a decree for possession in favour of the plaintiffs in all the five suits.

4. The defendants appealed to the Appellate Bench of the Court of Small Causes. The appeals were disposed of by a common judgment and the Appellate Bench came to the conclusion that the burden of proof was rightly thrown on the defendants; that the defendants had not led sufficient evidence to disprove the plaintiffs' case based upon the order of demolition passed by the municipal authorities, and as the municipal engineer examined by the defendants has not stated anything about the withdrawal or cancellation of the earlier order, the order must be held to be still in force and operative. For these reasons the Appellate Bench dismissed the appeals and confirmed the decree for eviction passed by the trial Court against the defendants.

5. Mr. Nariman, who appears for the petitioners-tenants (defendants) has attacked the decree in ejectment passed against the defendants on the ground that the learned Judges of the lower Courts have misunderstood the scope of an enquiry u/s 13(1)(hhh) of the Rent Act. According to Mr. Nariman the said section gives a right to the landlord to recover possession of the premises from the tenant only when the court is satisfied that the Premises are required for the immediate purpose of demolition ordered by any local or competent authority. The burden of proof is certainly on the plaintiffs and in the present case the plaintiffs have not even stated in so many words that they in fact required the premises for such a purpose. A mere production of the order of demolition is not sufficient for obtaining a decree under the Rent Act against the defendants. The court will have to be satisfied after considering all the relevant circumstances and the evidence that there is such a valid order requiring immediate demolition of the premises. The court will have to consider the intervening circumstances for finding out whether or not the plaintiffs have made out a case for getting possession of the premises for the purpose of demolition. In the present case the Municipal Corporation has in fact, followed up its action u/s 354 by further steps u/s 488 of the Act After taking an undertaking from the defendants-tenants for effecting the necessary repairs to the premises the corporation has refrained from any further action u/s 488 of the Municipal Corporation Act. In view of these subsequent events the original order requiring demolition issued u/s 354(1) of the Act is no longer effective and cannot be the basis of an ejectment decree under the relevant provisions of the Rent Act.

6. Mr. Andhyarjina, who appears for the plaintiffs repels all these contentions and argues that the order dated 21-7-1958 is still operative and is a good and valid order; that the plaintiffs are exonerated only from penal liability by obtaining an order u/s 507 of the Municipal Corporation Act; that the plaintiffs have every right to obtain a decree u/s 13(1)(hhh) on the basis of the demolition order. It is not open to the court to go behind that order and consider extraneous circumstances and then uphold the defendants' contention that they in fact, had carried out the necessary repairs to the premises in pursuance of the undertaking given by them to the municipal authorities and even paid the charges incurred by the municipal authorities in connection with the further steps taken by the municipality for demolition of the premises and, consequently the order of the Municipal Corporation has become invalid and inoperative.

7. I have to examine these rival contentions and find out which of them should be accepted. For this purpose it is necessary to turn first to the provisions of Section 13(1)(hhh) of the Bombay Rent Act. The relevant part of that section reads thus:--

"13(1). Notwithstanding anything contained in this Act (but subject to the provisions of Section 15 a landlord shall be entitled to recover possession of any premises if the court is satisfied;

(hhh). that the premises are required for the immediate purpose of demolition

ordered by any local authority or other competent authority."

In the present case the Municipal Corporation, as stated above, had addressed a notice to the plaintiffs on 21-7-1958 u/s 354 of the Municipal Corporation Act requiring them to demolish the suit building on the ground that it was in a dangerous condition. This notice certainly will be an order within the meaning of Section 13(1)(hhh) issued by the local authority, i.e. the Municipal Corporation. The plaintiffs had the option either to demolish the suit building or to approach the Chief Judge, Court of Small Causes at Bombay u/s 507 of the Municipal Corporation Act for appropriate directions. Once an order is passed in their favour u/s 507 of the Municipal Corporation Act, they are exonerated from any penal liability under the provisions of the Municipal Corporation Act. But the plaintiffs by getting an order in their favour u/s 507 have not lost their distinct remedy which they can certainly pursue under the provisions of the Rent Act. In the present case the plaintiffs have filed the suits for getting a decree against the defendants u/s 13(1)(hhh) of the Rent Act. As stated above, even before the suit was filed by the plaintiffs, the municipal authorities attempted to demolish the suit building in exercise of their powers u/s 488. At that stage the defendants-tenants offered to effect the necessary repairs and they persuaded the municipal authorities to abandon the attempted demolition of the suit building. The municipal engineer Shri Madhusudhan Raghunath Kelkar has testified to these facts. To his knowledge the tenants had carried out the repairs and the work of demolition was stopped. He also stated that the present condition of the building did not warrant the pulling down of the suit building. In cross-examination he admitted that no letter has been issued by the Municipal Corporation withdrawing the original notice u/s 354. He also admitted that the Municipal Commissioner has not authorised the tenants to carry out any repairs in writing. If Mr. Andhyarjina's contention is accepted then on production of the demolition order the court will have to pass a decree for eviction against the defendants-tenants without any further enquiry. Mr. Andhyarjina is fair enough to concede that the court might examine the evidence only to find out about the existence of a valid subsisting order. In other words it was open to the defendants to adduce evidence and show that the notice was, in fact, withdrawn, waived or cancelled by the municipal authorities. If this is the limited scope of the enquiry, then Section 13(1)(hhh) would not have contained the words to the effect that the court must be satisfied about the existence of the ground on which possession is claimed by the landlord-plaintiffs. The court can only be satisfied after considering all the relevant circumstances and the evidence on record and after applying its mind even to the intervening circumstances since the passing of the earlier demolition order. In a given case the court might consider the intervening circumstances and record a finding that there is no immediate need for demolition of the suit building. An order may have been passed requiring the demolition of the building and thereafter change of circumstances can take place. The building after lapse of time and on account of the intervening circumstances may not remain in the same condition. In such a case if an attempt is made to

get an ejectment order on the basis of the earlier demolition order then the Court can certainly say that the order cannot be considered to be operative in the changed set of circumstances. The evidence on record clearly shows that the tenants have effected the necessary repairs to the suit building. The municipal authorities, at any rate, were satisfied about the sound condition of the building. This can be inferred from the fact that the municipal authorities had abandoned any further action u/s 488 of the Municipal Corporation Act. The effect of their giving up the attempted demolition is that the original order issued by them u/s 354 is no longer operative. The various steps contemplated by Sections 354 and 488 of the Corporation Act are taken in their order. As a result of their attempted action u/s 488, the Municipal Corporation has by implication withdrawn its earlier notice u/s 354. It is not necessary in every case that the authorities should issue express orders cancelling their requisitions. Even from their subsequent conduct it is possible to infer that the initial direction is withdrawn by them.

8. Mr. Nariman has relied upon an un-reported decision of this Court in C. R. A. Nos. 1734 to 1748 of 1965, D/- 14-8-1967 (Bom), Patel, J. was considering a similar case in which after the issue of the initial notice u/s 354 of the Municipal Corporation Act certain circumstances had intervened. The tenants and the landlord had entered into an agreement with the consent of the Municipal Corporation under which the tenants were allowed to continue to stay in the building for a period of five years. After the expiry of the five years the landlord filed a suit against the tenants claiming possession u/s 13(1)(hhh) of the Rent Act on the basis of the earlier order of the municipal authorities u/s 354 of the Act. An argument was made on behalf of the tenants that on account of the intervening circumstances the earlier notice had lost all its efficacy and the building was no longer urgently required by the landlord for the purpose of demolition. Mr. Justice Patel has interpreted the word "immediate" appearing in Section 13(1)(hhh) in the following manner and that interpretation is of considerable assistance while deciding the points now raised before me:--

"In my view, the word "immediate" in the above clause has been used by the legislature with some intent. If the legislature wanted to provide that the landlord should be entitled to recover possession for the purpose of demolition of the property ordered by the Corporation there should have been no necessity of using the word "immediate" and even then the meaning it would have borne would be the same which Mr. Dhanuka wants me to give to the above clause. It must be remembered in this connection that between the issuing of the notices by the Municipal Corporation for demolition of the premises and the filing of a suit many things might intervene and though at one time the Corporation might have thought that a building was in such a ruinous condition that it must be ordered to be demolished, the same state of affairs might not continue to exist after the lapse of a few years. The word "immediate" must be given its due effect in the context."

Mr. Andhyarjina for the plaintiffs tried to distinguish this case on the ground that

in the present case the landlords have pursued their remedy shortly after the receipt of the notice u/s 354 without any loss of time. The landlords first obtained an order u/s 507 and thereafter proceeded with the filing of the suit against the tenants. But the ratio of the case decided by Justice Patel does not depend upon the mere lapse of a number of years. While giving due effect to the word "immediate" Justice Patel emphasised that the intervening circumstances will have to be taken into account while deciding the efficacy of the earlier order issued by the municipal authorities. If that is so, then in the present case also I find that after issuing the order the municipal authorities have proceeded further with their action u/s 488 and finally abandoned the demolition work on their being satisfied that the building is no longer in a dangerous condition. This fact, in my judgment, considerably affects the efficacy of the original demolition order. The court cannot blindly accept the order as a document complete in itself and proceed to order the eviction of the tenants.

9. Mr. Andhyarjina relied upon another unreported decision of this Court in C. R. A. No. 1162 of 1960 with C. R. A. No. 1163 of 1960, D/- 5-2-1965 (Bom) by K.K. Desai, J.

10. The municipal authorities in this case had issued a notice calling upon the owner to demolish the unauthorised construction within a certain prescribed time. The owner thereafter terminated the tenancy of the tenants on the ground that municipal authorities had ordered immediate demolition of the premises. As a result of the representations made by the tenants and on an undertaking given that the premises will be vacated within two years or earlier, the municipal authorities suspended the operation of their earlier notice. In these circumstances the owner had filed a suit against the tenant for eviction u/s 13(1) (hhh) of the Rent Act. The tenant resisted the suit on the ground that the case was not covered by Section 13(1)(hhh) as the earlier notice regarding demolition was held in abeyance by the municipal authorities. The learned trial Judge and the Appellate Bench of the Court of Small Causes negated the defence. The tenant challenged the eviction decree by approaching this Court u/s 115 of the Civil Procedure Code. Justice K.K. Desai refused to interfere with the order of the lower courts principally on the ground that this court had no jurisdiction u/s 115 of the CPC to interfere with the orders of the lower courts unless there was some error of jurisdiction. Incidentally Mr. Justice K.K. Desai also made certain observations in the judgment with regard to the construction, which the appellate Bench of the Court of Small Causes, had adopted in respect of the provisions of Section 13(1)(hhh) as correct and that he was in complete agreement with the discussion and finding made. Mr. Andhyarjina strongly relied upon these observations and argued that Justice K.K. Desai, in fact, took the view that the mere fact that the operation of the notice was held in abeyance by the municipal authorities is not sufficient to non-suit the landlord. Once the landlord approached the court armed with a notice or order addressed to him by the municipal authorities requiring the immediate demolition of the structure, the condition precedent is satisfied and a decree for eviction must follow u/s 13(1)

(hhh) of the Act.

11. I am not inclined to accept this submission of Mr. Andhiyarjina. Justice K.K. Desai had refused to interfere principally on the ground that no case for interference was made out by the petitioner u/s 115 of the Civil Procedure Code. It was not necessary to record a further finding on merits and hold that the lower courts were right in adopting a certain construction of Section 13(1)(hhh). These observations are clearly obiter. Moreover Justice K.K. Desai had not stated in his judgment any particular reasons or the exact discussion of law made by the lower courts, which was found to be correct by him. I prefer to follow the later unreported judgment of Justice Patel where an identical question of law was debated, fully argued and decided.

12. On a consideration of the facts and circumstances of this case, I am disposed to hold that it is open to a court hearing the landlord's suit u/s 13(1)(hhh) of the Kent Act to enquire and find out whether there is valid subsisting order of the municipal authorities, requiring the immediate demolition of the suit premises. The landlord can certainly produce such an order and rely upon the fact that he is directed by the municipal authorities to effect immediate demolition of the premises. But it is open to the defendants to adduce evidence and bring facts to the notice of the court and show that the efficacy of the demolition order is considerably impaired on account of the subsequent or intervening events. If the court is satisfied that having regard to the facts and circumstances of the case, the initial order of the municipal authorities has lost its efficacy, then the court may not pass a decree for eviction against the tenants.

13. In the present case, as stated earlier, the municipal authorities, after issuing the first requisition addressed to the landlords, decided to act departmentally and demolish the premises. In fact the municipal authorities while engaged in the act of demolition through their contractors abandoned the further work only on condition that the tenants will effect the necessary repairs to the satisfaction of the municipal authorities. As told by the Municipal Engineer, the repairs were, in fact, made. The tenants also paid the labour charges incurred by the municipal authorities while they were engaged in the demolition work and thereafter no further action was either contemplated or in fact taken by the municipal authorities. All these intervening facts and events clearly show that the urgency Implicit in the demolition order is no longer in existence. No emergent action is required in the matter. Once the court is convinced about all this, the court cannot act on the earlier order and proceed to pass a decree for eviction. The satisfaction that is contemplated by Section 13(1)(hhh) of the Rent Act is not a mere formal thing. The court must apply its mind to all the facts and circumstances of the case including the order of demolition and then come to the conclusion one way or the other i.e., whether or not a decree for eviction should be passed against the tenant. The landlord is merely carrying out the order issued by the municipal authorities, who have issued the order in public interest. If the municipal authorities are no longer interested in the demolition of the

premises, the landlord cannot be allowed to use it as a handle or lever to somehow evict the tenants from the suit premises.

14. Lastly Mr. Andhyarjina argued that at any rate, there is no case for interference under Article 227 of the Constitution. He argued that the two courts of facts have considered the evidence, recorded the finding and then expressed a certain view in the matter. There is no error of law apparent on the face of the record. Merely difference of opinion is not sufficient justification for this Court to act under Article 227 of the Constitution.

15. I am not disputing the proposition of law enunciated by Mr. Andhiyarjina. In my view, however, in the present case there is a clear error of law when the two courts below misconstrued the provisions of the Rent Act and then proceeded to pass a decree for eviction against the tenants. I have accepted the facts proved and findings made by the courts below and I am merely correcting a patent error of law which can certainly be done in exercise of the powers of superintendence vested in this Court under Article 227 of the Constitution of India.

16. In the result the petitions succeed, the decree for eviction passed in all the five suits is set aside (and?) the plaintiffs suit is dismissed. In the circumstances there will be no order as to costs through out in all the five suits.

17. Petitions allowed.