
(1992) 10 BOM CK 0005

In the Bombay High Court

Case No : Criminal Writ Petition No. 1076 of 1992

Rahimtulla Khan

APPELLANT

Vs

Commissioner of Police Gr. Bom. and Others

RESPONDENT

Date of Decision : 16-10-1992

Acts Referred:

Citation : (1993) 1 BomCR 377

Hon'ble Judges : S.W. Puranik, J;E.S. Da'Silva, J

Bench : Division Bench

Advocate : Shahbi K. Jain, for the Appellant; N.M. Kachare, Assistant Public Prosecutor, for the Respondent

Judgement

S.W. Puranik, J.—Petitioner is the husband of detenue---Smt. Nabvat Nisha alias Baidawali who has been detained by an order dated 2-6-1992 passed by the 1st respondent u/s 3(1) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drugs Offenders Act, 1981. The petitioner challenges the said detention.

2. We have heard Mr. S.K. Jain, the learned Counsel for petitioner and Mr. N.M. Kachare, the learned Public Prosecutor for respondents. We have also perused the grounds raised in the petition and the affidavit in reply filed by the detaining authority and filed on behalf of the Home Department.

3. Even though several grounds have been raised by Mr. Jain impugning the order of detention, we find that this petition can be disposed of on the question whether the acts referred to in the grounds of detention constitute activities of the detenue prejudicial to the maintenance of public order.

4. It is, therefore, necessary to briefly summarise the grounds of detention. They are at Annexure "C", to the petition. Ground 1 states that since 1991, the detenue has from time to time encroached upon about 4 to 5 acres of Survey No. 263 at Malwani Village, in Taluka-Borivali, Bombay Suburban District. Ground 2 indicates that having encroached, the detenue has unauthorisedly constructed

huts and sold them and also pieces of land to needy persons for various amounts and that the detinue does not issue receipts but demands excess amounts from the occupants under threats of assault and of eviction.

5. After these two grounds which would indicate that the detinue is a slumlord within the definition of section 2(f) of the said Act, we come to other grounds not numbered as such but constituting about 12 statements of the occupants of the said area. All these statements have been recorded during April and May 1992. These 12 statements are by named occupants of the said slums and almost all of them are identical. They generally state that sometime in the year 1991 the detinue had sold them either a piece of land over which they constructed a hut or sold them a hut constructed in the said area with the land for various slums. They further state that on 4th January 1992, the staff of the Collector's Office demolished all the huts on this survey number in one raid. It is only then that these occupants came to know that the lands do not belong to the detinue but are Government lands. All these statements further indicate that these occupants then on their own constructed new huts in the same place and continued to reside there and all the 12 statements then say that the detinue has thereafter been demanding additional amount either by way of rent or by way of compensation on the pretext that the land has become costlier and also on giving assurance that these huts will be regularised subsequently. They also allege that in the event of default by any of the occupants to the demands of the detinue, they are threatened with assault or abused with the assistance of gundas.

6. After these 12 statements, the grounds of detention proceed to state that the land was surveyed through the Maintenance Surveyor and the city Survey Office staff in May 1992 and the unauthorised structures constructed of bamboo sticks and gunny bag clothes were noticed in the area. It is verified from the City Survey Office that this survey number is a Government land.

7. On the basis of above grounds the detaining authority was satisfied that the detinue is a slumlord and his activities are such as are causing or calculated to cause harm, alarm, danger and feeling of insecurity amongst a section of people in the localities of Charkop Kandivali. Charkop Marve Linking Road, Malwani Village, Kandivali (West). He is also satisfied that he has a propensity of indulging in similar prejudicial activities in future thereby necessitating him preventive detention.

8. As already stated, Mr. S.K. Jain, for the petitioner raised several points including the submission supported by documents that in fact it is the detinue who has been filing complaints to the Malwani Police Station against these persons and other slumlords who have been harassing her. It is further contended by Mr. Jain that the detinue had filed a suit against some of the persons whose statements have been relied upon by the detaining authority. He also contended that in a pending suit on the Original Side of the High Court pertaining to this very piece of land, the detinue had applied for being an intervener party in the said suit by way of Chamber Summons. The said cases

are pending. He also pointed out that because of various incidents of harassment to the petitioner and apprehending arrest for false charges, the detinue had applied to the Sessions Judge for Anticipatory Bail when, on 18th May 1992, the Malwani Police Station reported that there were no complaints against the detinue and that there was no likelihood of any arrest. It is in these circumstances, the Anticipatory Bail Application was withdrawn. However, Mr. Jain pointed out that at about the same time, Malwani Police Station sponsored the proposal for detention of the detinue which was approved by the Home Department on 12th May and the impugned order came to be issued on 2nd June 1992.

9. We need not go into the other aspects canvassed on behalf of the detinue. Suffice it to say that even admitting all the averments in the grounds of detention to be true, we do not find that any single ground is made out which would indicate an activity of the part of the detinue prejudicial to maintenance of public order. The encroachment on government land can be taken care of by the ordinary law of the land so also the incidents of cheating the occupants and selling them government land at premium prices without receipt can also be taken care of under the ordinary law of the land. The activities as described by them such as threats given by the detinue to the occupants for demand of compensation from them are individual acts between the detinue and the individual occupants separately. They are also not likely to affect the even tempo of life of society. We must make particular note of the fact that none of the occupants seems alarmed or senses any feeling of insecurity in as much as all of them have narrated their grievances about the threats and cheating and have disclosed their full identity knowing fully well that these names will be communicated to the detinue. These are not in camera statements and they were not given under any assurance of protection by the police. This act itself will show that there was no sense of insecurity among the very occupants in the slum area allegedly created by the detinue.

10. Therefore, on the plain reading of the grounds of detention and on analysis of the same, we do not find that even any single ground exists which would indicate any activity prejudicial to the maintenance of the public order. In the absence of the same, the detaining authority has no power to issue orders of preventive detention which are so drastic in nature.

11. As a result the petition succeeds. The order of detention is quashed and set aside. Detinue be released forthwith, if not otherwise required. Rule made absolute.