
(1983) 03 BOM CK 0035

In the Bombay High Court

Case No : A.A.O. No's. 38, 40 and 41 and A.F.O. No. 76 of 1983 (in S.C. Suit No's. 7152 and 7188 of 1982

Rajan Prabhakar Borde

APPELLANT

Vs

Maharashtra Housing and Area Development Authority and
Another

RESPONDENT

Date of Decision : 11-03-1983

Acts Referred:

Maharashtra Housing and Area Development Act, 1976 — Section 177

Citation : AIR 1983 Bom 493 : (1983) MhLj 790

Hon'ble Judges : Tulpule, J

Bench : Single Bench

Advocate : A.P. Gupte, for the Appellant;

Judgement

1. This group of appeals have come to this Court on very peculiar facts.
2. In all these cases, the plaintiffs came to the City Civil Court with an averment that they were occupants of a portion of the building which was proposed to be taken over for demolition by the Maharashtra Housing and Area Development Authority, (hereinafter referred as the Authority). Being occupants, their claim is that they are entitled to a notice under S. 77(b) "before vacated". The scheme of the Act, it appears, provides that such persons who have received notices u/s 77(b) are provided alternate accommodation and after the proposed work is completed, they are given accommodation in the reconstructed or rebuilt building.
3. The averment of the plaintiffs in all these cases is that they are occupants and occupants in their own right and, therefore, entitled to notice under S. 77(b). They approached the Authority and its concerned officers as they are about to be vacated without any alternate accommodation being provided to which they have a right.
4. It is on this averment that the suits were filed praying therein for a declaration that the plaintiff is an occupier of the premises and entitled to allotment of

alternate accommodation and for an injunction along with other reliefs. The permanent injunction prayed for is to restrain the Authority from dispossessing the said occupant-plaintiff from the premises in question.

5. The learned Judge has passed a short order in which he has expressed his helplessness in doing anything because of prohibition under the Act upon the Civil Courts to issue injunction. I am informed that no sooner such a matter comes before the learned Judge, he proceeds to pass an order and that it is difficult to persuade the learned Judge to take a different view or to consider the matter before passing this common order which he does in all such cases.

6. The learned Judge has referred to Section 177, Maharashtra Housing and Area Development Act, and the latter part of that section which is the cause of his helplessness. Section 177, Maharashtra Housing Area Development Act, 1976 (hereinafter referred to as the said Act), is as follows :--

"S. 177 : Save a otherwise expressly provided, in this Act, no Civil Court shall have jurisdiction in respect of any matter which the Authority or the Tribunal is empowered by or under this Act, to determine; and no injunction or stay shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred or duty imposed by or under this Act."

7. It will be seen from the aforesaid section that the latter part of S. 177, upon which the learned Judge has placed reliance is not an independent section or entire part of section, but is connected to first part. An injunction cannot be granted or stay by a Civil Court, where the action taken or to be taken is "in pursuance of any power conferred or duly imposed by or under the Act." That power or duty obviously spoken of in Section 177 is the power of the Authority or the Tribunal as well as the duty imposed upon the Authority and no other.

8. This takes us back to the first part of S. 177. Section 177, first part lays down "that a Civil Court shall have no jurisdiction in respect of any matter which the Authority or the Tribunal is empowered by or under the Act to determine". It is therefore clear that before the learned Judge can proceed to throw out the notice of motion on the ground that an injunction cannot be issued u/s 177, in the latter part he must find that the matter which is before him is a matter which the Act has empowered the Tribunal or the Authority to determine. If the question involved or the matter raised is not a question in respect of which any power is conferred upon the Authority to determine, Section 177 clearly has no application. I fail to see how, therefore, the learned Judge can proceed to reject or dismiss a notice of motion without first coming to the conclusion that the matter is one in respect of which power is conferred upon the Authority or the Tribunal under the Act to determine that question. Unless it is such a matter, it would be out of pale of S. 177 and it cannot then be said that no injunction can be granted. Similar is the position in regard to the duty imposed which has also to be found out from the provisions of the Act.

9. Since the matter has not been argued or dealt with by the learned Judge and

since there is no finding as to what is the subject matter and whether it falls within the powers of the Authority to determine as laid down by the Act, or in its duties, it is not possible to dispose of this matter finally without hearing even the other side, viz., the Authority. I am informed that such orders are passed without the respondent filing any affidavit. The functions, duties and powers of the Authority are to be found in Chapter III in Section 28 of the Act; it will have to be found, therefore, under which of the various sub-sections and clauses, the action complained of falls or is capable of being covered, before it can be said that it is in respect of a matter which the Act empowers the Authority to determine.

10. The orders passed, therefore, by the learned Judge are set aside and matters are remitted back to him for purposes of determining the questions involved and in the light of the fact and averments of the parties. The learned Judge will proceed to dispose of these motions within a period of four weeks from the receipt of the Writ. Record to be sent forthwith. the learned Asstt. Govt. Pleader says that no action would be taken by the Authority or the Board until the Motion is disposed of by the learned Judge. No order as to costs.

11. Order accordingly.