

(2012) 11 BOM CK 0074

In the Bombay High Court

Case No : Writ Petition No. 5764 of 2012 with Writ Petition No's. 5783, 5784, 5786 to 5789, 5792 to 5794, 5798 and 5801 of 2012

Ramchandra Jivatram Chetwani through power of attorney holder Mrs. Poonam Deepak Amar APPELLANT

Vs

Pune Municipal Corporation and Others RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 10(1)(h), 12(1), 121, 122, 125

Citation : (2013) 1 ABR 302 : (2013) 1 ALLMR 649 : (2013) 3 BomCR 297 : (2013) 1 MhLj 245

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : S.B. Deshmukh in W.P. 5764 of 2012, Mr. Mandar Goswami in W.P. 5783, 5784, 5786, 5787, 5788, 5798 of 2012 and Mr. P.S. Dani in W.P. 5789, 5792, 5793 and 5794 of 2012, for the Appellant; Abhijit Kulkarni for Respondent Nos. 1 to 3 in all petitions, for the Respondent

Judgement

S.C. Dharmadhikari, J.—In each of these matters the petitioners have been evicted by orders of eviction passed under Chapter VIII A of the Bombay Provincial Municipal Corporation's Act, 1949 (BPMC Act for short). The orders of eviction passed have been confirmed by the appellate authority and that is how these petitions. The learned Counsel appearing for the petitioners in each of these petitions have urged that the orders of eviction are bad in law. These orders are not passed by the Commissioner of Pune Municipal Commissioner but by an authority or officer other than him which has not been delegated with the powers of eviction. The powers under Chapter VIII A and particularly section 81B are quasi judicial in nature. The general power of delegation contemplated by section 69 of the BPMC Act would not take within its import the powers to evict unauthorised occupants from Municipal Premises. That power being quasi judicial in nature has to be specifically delegated. In the absence of such specific delegation, the order passed is bad in law. They are equally bad in law because

they have been made ignoring the requests of the petitioners that they are ready and willing to comply with 2008 Rules and have offered to pay the rent or arrears in respect of municipal premises, which offer was made prior to the impugned order being passed. Thirdly and in any event, the Rules of 2008 are the source of power based on which the order of eviction has been passed and, therefore, it is not an order in terms of Chapter VIII-A. These rules of 2008 are subject matter of challenge in distinct legal proceedings and, therefore, no reliance should have been placed thereon.

2. Each of these contentions have been found to be without merit by both the authorities. The sections which are material for my purpose are Section 81A and 81B of the BPMC Act. They read thus:-

81A. Definitions:- In this Chapter;-

(a) "Commissioner" in the event of any Corporation having established or acquired, or establishing or acquiring, a Transport Undertaking, in relation to the premises of the corporation which vest in or are held by it for the purpose of the Transport Undertaking, means the Transport Manager;

(b) "Corporation premises" means any premises belonging to, or vesting in, or taken on lease, by the Corporation;

(c) "regulations" means regulations made by the Commissioner u/s 81I,

(d) "unauthorised occupation" in relation to any Corporation premises, means the occupation by any person of Corporation premises without authority for such occupation; and includes the continuance in occupation by any person of the premises after the authority under which he was allowed to occupy the premises has expired or has been duly determined.

"81B. Power to evict persons from Corporation premises:- (1) Where the Commissioner is satisfied:-

(a) That the person authorised to occupy any Corporation premises has, whether before or after the commencement of the Bombay Provincial Municipal Corporations (Second Amendment) Act, 1969 (Mah. VIII of 1970);-

(i) not paid for a period of more than two months, the rent or taxes lawfully due from him in respect of such premises; or

(ii) sub-let, contrary to the terms and conditions of his occupation, the whole or any part of such premises; or

(iii) committed, or is committing, such acts of waste as are likely to diminish materially the value or impair substantially the utility, of the premises; or

(iv) otherwise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises

(b) that any person is in unauthorised occupation of any Corporation premises;

(c) that any Corporation premises in the occupation of any person are required by the Corporation in public interest,

the Commissioner may, by notice served by post, or by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be provided for by regulations, order that person, as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice.

(2) Before an order under sub-section (1) is made against any person, the Commissioner shall issue, in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

The notice shall;

(a) specify the grounds on which the order of eviction is proposed to be made, and

(b) require all persons concerned, that is to say, all persons who are or may be in occupation or, of claim interest in, the Corporation premises, to show cause against the proposed order, on or before such date as is specified in the notice.

If such person makes an application to the Commissioner for the extension of the period specified in the notice, the Commissioner may grant the same on such terms as to payment and recovery of the amount claimed in the notice, as he deems fit.

Any written statement put in by any person and documents produced, in pursuance of the notice, shall be filed with the record of the case, and such person shall be entitled to appear before the Commissioner by Advocate, attorney or other legal practitioner.

The notice to be served under this sub-section shall be served in the manner provided for the service of a notice under sub-section (1); and thereupon, the notice shall be deemed to have been duly given to all persons concerned;

(3) If any person refuses or fails to comply with an order made under sub-section (1), the Commissioner may evict that person and any other person who obstructs him and take possession of the premises; and may for that purpose use such force as may be necessary.

(4) The Commissioner may, after giving fourteen clear days' notice to the person from whom possession, of the Corporation premises has been taken under sub-section (3) and after publishing such notice in the Official Gazette and in at least one newspaper circulating in the locality, remove or cause to be removed, or dispose of by public auction any property remaining on such premises. Such notice shall be served in the manner provided for the service of a notice under sub-section (1).

(5) Where the property is sold under sub-section (4), the sale proceeds shall, after deducting the expenses of sale, be paid to such person or persons as may appear to the Commissioner to be entitled to the same;

Provided that, where the Commissioner is unable to decide as to the person or persons to whom the balance of the amount is payable or as to the apportionment of the same, he shall refer such dispute to a civil court of competent jurisdiction, and the decision of the court thereon shall be final.

(6) If a person, who has been ordered to vacate any premises under sub-clause (I) to (iv) of clause (a) of sub-section (1), within one month of the date of service of the notice, or such longer time as the Commissioner may allow, pays to the Commissioner the rent and taxes in arrears or as the case may be, carries out or otherwise complies with the terms contravened by him to the satisfaction of the Commissioner, the Commissioner shall on such terms, if any (including the payment of any sum by way of damages or compensation for the contravention aforesaid), in lieu of evicting such person under sub-section (3) cancel his order made under sub-section (1); and thereupon such person shall continue to hold the premises on the same terms on which he held them immediately before such notice was served on him.

3. A bare perusal of Section 81A would indicate that the term Commissioner that is defined therein is in the event of any Corporation having established or acquired or establishing or acquiring transport undertaking, in relation to the premises of the Corporation which vest in or are held by it for the purpose of transport undertaking, means the Transport Manager. Now this definition is only to facilitate that person to exercise the powers under Chapter VIII-A and because of any technical objections with regard to his authority that he should not be held to be possessing no such power that the Legislature clarifies that if the Corporation has established or acquired or establishing or acquiring a transport undertaking, then, in relation to the premises of the Corporation, which vest in or held by it for the purpose of transport undertaking, the Transport Manager would be termed as the Commissioner. Thus, to enable eviction from the premises of the Corporation which are made over for the purpose of such transport undertaking, that this definition is provided and equally to designate the transport Manager as an authority to exercise power under Chapter VIII-A that his name appears in the definition.

4. Beyond that what the Act provides by Section 69 is as under:-

69. Municipal Officers may be empowered to exercise certain of the powers, etc. of the Commissioner or the Transport Manager:- (1) Subject to the provisions of sub-sections (2) and (3), any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner or the Transport Manager by or under any of the provisions of this Act may be exercised, performed or discharged under the Control of the Commissioner or the Transport Manager, as the case may be, and subject to his revision and to such conditions and

limitations, if any, as may be prescribed by rules, or as he shall think fit to prescribe in a manner not inconsistent with the provisions of this Act or Rules, by any municipal officer whom the Commissioner or the Transport Manager generally or specially empowers by order in writing in this behalf; and to the extent to which any Municipal Officer is so empowered the word "Commissioner" and the words "Transport Manager" occurring in any provision in this Act, shall be deemed to include such officer.

(2) The Commissioner shall not, except with the prior approval of the Standing Committee, make an order under sub-section (1) affecting his powers, duties or functions under any of the following sections, sub-sections and clauses, namely:-

10(1)(h), 12(1), 18(1), 26(2), 43(2), 43(4), 43(5), 51(2), 67(3)(b), 67(3)(c), 67(3)(d), 71(2), 73, 77, 78(1), 85, 86, 87, 90, 92(2), 94, 95, 121, 122, 125, 126, 130(1), 131(1), 134, 137, 144, 152, 154, 160, 174, 176, 177, 188, 195, 196, 197, 201, 205, 207, 208, 209, 210, 212, 213, 214, 216, 220, 224, 232, 243, 268, 269, 270, 272(2), 273, 274, 275, 275(1), 277, 278, 281, 298, 300, 301, 303, 304, 305, 310, 317, 319, 321, 322, 323, 324, 325, 328, 329, 330, 331, 332, 363, 364, 371(2), 373, 386(2), 439(3), 439(4), 441, 442, 445, 466, 481 except clause (a) of sub-section (1);

(3) The Transport Manager shall not except with the prior approval of the Transport Committee, make an order under sub-section (1) affecting his powers, duties or functions under any of the following provisions, namely:-

43(5), 67(4)(b), 67(4)(c), 71(2), 73, 97, 344, 346, 348, 354, 355, 356, 358, 362, 481 except clause (a) of sub-section (1).

5. Section 69 follows section 68. Section 68 states that the Commissioner to exercise powers and perform duties of Corporation under other laws. Then comes section 69, which states that Municipal Officers may be empowered to exercise certain powers etc. of the Commissioner or Transport Manager. Therefore, subject to the provisions of sub-sections 2 and 3, any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner or Transport Manager by or under any of the provisions of this Act may be exercised, performed or discharged under the Control of the Commissioner or Transport Manager as the case may be, by any Municipal Officer whom the Commissioner or Transport Manager generally or specifically empower by or any writing in this behalf.

6. It is not the contention of Mr. Deshmukh or Mr. Dani that there is no general delegation in favour of the authority or officer passing impugned orders. In this case, the orders have been passed by the Deputy Commissioner, Land Acquisition and Estate Management, of Pune Municipal Corporation. The argument is not that there is no delegation in his favour at the given or relevant time. The argument is that such delegation would not enable him to exercise powers under Chapter VIII-A of the Act as such powers are quasi judicial in nature and they have to be specifically delegated. That provision finding no place

u/s 81(1), that the power to evict could not have been exercised by him.

7. It is not possible to accept this argument. In fact what the Supreme Court holds in the case of *Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary*, would squarely apply in this case. In that decision, the Supreme Court was considering a challenge to the order of eviction from the Bombay Municipal Corporation premises. The proceedings were initiated by one of the officers to whom the powers of Commissioner were delegated in terms of general delegation flowing from section 68 which is more or less similarly worded as sub-section 1 of section 69 of the BPMC Act. The argument was that the orders have not been passed by the Commissioner. The judicial function of the Commissioner had been delegated under the Commissioner's control and subject to his revision. The City Civil Court (Appellate Authority) in that case, held that the officer who has passed the order was not properly invested with the jurisdiction and, therefore, his order was a nullity. The same contention as was raised by Mr. Deshmukh and supported by others was raised before the Supreme Court.

8. The Supreme Court reproduced section 68 and other sections and then held that sub-sections 1 and 2 of section 68 would refer to several provisions which include section 105B to E. Therefore, they cover delegation of judicial power. In para 3 of this decision, the Supreme Court held thus:-

3. No question has been raised that any of the amendments is ultra vires so the words of section 68 must be reasonably construed. It goes without saying that judicial power cannot ordinarily be delegated unless the law expressly or by clear implication permits it. In the present case the amendment of section 68 by inclusion of delegation of the functions of the Commissioner under sections 105B to 105E does indicate the intention that the judicial or quasi judicial powers contained in Chapter 6-a were expressly intended to be delegated. The delegation as such there can be no objection. What is objected to is the provision, both in the section as well as in the order of delegation, that the exercise of the function is to be under "the Commissioner's control" and "subject to his revision". These words are really appropriate to a delegation of administrative functions where the control may be deeper than in judicial matters. In respect of judicial or quasi judicial functions these words cannot of course bear the meaning which they bear in the delegation of administrative functions. When the Commissioner stated that his functions were delegated subject to his control and revision it did not mean that he reserved to himself the right to intervene to impose his own decision upon his delegate. What those words meant was that the Commissioner could control the exercise administratively as to the kinds of cases in which the delegate could take action or the period or time during which the power might be exercised and so on and so forth. In other words, the administrative side of the delegate's duties were to be the subject of control and revision but not the essential power to decide whether to take action or not in a particular case. This is also the intention of section 68 as interpreted in the context of the several delegated powers. This is

apparent from the fact that the order of the delegate amounts to an order by the Commissioner and is appealable as such. If it were not so the appeal to the Bombay City Civil Court would be incompetent and the order could not be assailed. The order of the delegate was the order of the Commissioner and the control envisaged both in section 68 and the order of delegation was not control over the decision as such but over the administrative aspects of cases and their disposal. No allegation has been made that the Commissioner intervened in the decision of the case or improperly influenced it. In these circumstances the order impugned in the appeal cannot be sustained.

9. To my mind, it is not as if the Supreme Court has held that there has to be reference to the provisions, enabling the eviction from Municipal Premises, in the Authority to delegate or empowerment to exercise the powers of the Commissioner and general wording of sub-section 1 of section 69 in this case would be of no assistance. The Supreme Court has relied upon general power and the general or special empowerment by order in writing is the requirement and based on which any of the powers, duties or functions conferred or imposed or vested in the Commissioner may be exercised, performed or discharged under his control and subject to such conditions and limitations, if any, as may be prescribed by rules by any Municipal Officer, whom the Commissioner may specifically or generally empower by an order in Writing in this behalf. Therefore, far from assisting, the observations of the Supreme Court in para 3 of this decision, would militate against the submission that there has been no delegation in favour of Deputy Municipal Commissioner. He cannot be said to be usurper or a stranger to the Act or the authority envisaged thereby. He is no stranger to the Corporation but is very much an officer of the Corporation. If there is a general delegation by an order in writing empowering him to exercise the powers and that is not disputed, then, to my mind, the order passed by the Deputy Municipal Commissioner in this case cannot be faulted.

10. The Dist. Judge committed no error in relying upon the wording of the provision in question and the judgment of the Supreme Court. The learned Judge has held that the Commissioner's powers can be delegated to other officers. If the Commissioner's powers have been delegated and which powers include a power to order eviction from the Municipal Premises, then, to my mind, the reasoning in the Dist. Court's order cannot be faulted. The first contention, therefore, must fail.

11. Equally, there is no merit in the contention that the petitioners cannot be evicted once they were ready and willing to pay the amounts of rent or compensation charged by the Municipal Corporation in relation to the Municipal Premises. The argument is that the Corporation in fact performs a social duty in allotting shop premises to needy persons like the petitioners and, therefore, even if the initial period comes to an end as long as the petitioners are ready and willing to pay the amount and have offered the same for continuation in the premises, then, that would not mean that they are unauthorised occupants.

12. This argument is only stated to be rejected because in all cases what has been found as a fact by the authorities is that the Municipal Premises were allotted for a specific period to all the allottees like the petitioners. That period has come to an end. There is no renewal of the term. In such circumstances, each of the premises being located in prime locality and having tremendous market value are sought to be disposed of by the Corporation by inviting bids from the public. There is no question of the petitioners, then continuing and once their authority to occupy and use the same having come to an end. None of the petitioners could produce any documents which would enable them to urge that their offer or payment made is stated to be in terms of the lease or the initial authority to occupy and, therefore, the premises are continued in their possession and occupation as an allottee or lessee, claiming through the Corporation. In fact in the case of Ramchandra Chetwani, the allegation is that the lease period has expired. The authority has come to an end. The person is in occupation without any authority from 1st April 1994 and such prolonged occupation was termed as unauthorised and illegal and sought to be put an end to. To my mind, once the allotments have been made for a specific period and the period has come to an end, then, even if some sporadic payments have been made and accepted is no ground to hold that the occupation is authorised and not unauthorised as claimed by the Corporation. The table or chart which has been set out in para 14 of the order of the learned Judge would indicate as to how each of the occupant was inducted way back in the premises but their authority to occupy the same has come to an end either in 1994 or 2004. There is no question of renewal in their favour. In these circumstances, it is no good contending that the premises are lawfully occupied and possessed by the petitioners.

13. Lastly, a faint attempt is made by urging that the order is passed not in terms of sections 81B but in terms of the Rules which are framed in 2008 and which are under challenge in this Court. The order read completely and properly would indicate that it is in terms of the powers to evict persons from Corporation premises u/s 81B, that it has been passed. The reference to rules has been made only with a view to show that even after the period has come to an end and has expired by efflux of time, none of the persons in occupation have in terms of the 2008 rules sought lease in their favour and such lease has not been granted in terms of the rules. It is only to buttress and support the conclusion that the premises are in unauthorised use and occupation that the reference is made to the Rules. Beyond that it cannot be said that Rules are the source of power and not section 81B.

14. I find that all the three contentions, which were the only pleas raised before me are without any merit. Then, there is no alternative but to hold that the impugned order is not vitiated as urged and the writ petitions be dismissed. They are accordingly dismissed.

15. However, it is directed that in the event the Corporation desires to auction or

allot the premises by inviting public bids, then, the petitioners are at liberty to forward their bids and offers and together with other offers the Corporation may also consider the bids of the petitioners and shall not omit them from consideration only on the ground that an order of eviction has been passed against the petitioners and the appeal preferred as also the petition are dismissed. Without being influenced by the eviction proceedings, their bids may be considered and in the event petitioners' bids match the price that is determined by the Corporation or the Highest Bid, the Corporation may consider allotting the premises to the petitioners on such terms and conditions as are permissible in law. At this stage a request is made to continue the ad-interim order for a period of eight weeks or atleast for a period of four weeks. This request is opposed by Mr. Kulkarni appearing for respondents on the ground that the petitioners have lost through out and secondly they have not paid anything. The Corporation premises are public premises and cannot be occupied free of rent or compensation. Having regard to the fact that Diwali festival is around the corner, interest of justice would be served if the orders of eviction are stayed for four weeks but on each of the petitioners filing an undertaking in this court on or before 19th November 2012 to the effect that

(I) the premises are in their occupation and possession;

(II) that they will not create any third party interest in the same nor they will part with the possession, alienate or dispose of the same in any manner;

(III) They will pay the necessary monthly rent/compensation to the corporation.

If no undertaking is filed as stipulated above the petitioners can be evicted immediately without any reference to this Court.