

(1955) 12 BOM CK 0019

In the Bombay High Court

Case No : Special Civil Application No's. 2482 and 2483 of 1955

Ramchandra Vitthal

APPELLANT

Vs

Borough Municipality Bhusawal and Others

RESPONDENT

Date of Decision : 23-12-1955

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 174A, 17A, 218, 218(1), 218(2)
Constitution of India, 1950 — Article 227

Citation : AIR 1956 Bom 408

Hon'ble Judges : Chagla, C.J.;Dixit, J

Bench : Division Bench

Advocate : R.B. Kotwal, for the Appellant; G.A. Desai and Govt. Pleader, for the Respondent

Judgement

Chagla, C.J.—The petitioner, who at present is the President of the Borough Municipality, Bhusawal, obtained from the Municipality in 1938 a plot of land; on which a temporary structure was constructed by the Municipality. A lease was executed in favour of the petitioner by the Municipality for four years. This lease was renewed in 1942 for a further period of five years and in 1947 there was a further lease for seven, years, the rent being increased by 30 per cent.

The petitioner wanted on the expiry of the lease in 1954, to apply for a further renewal of the lease, and the Municipality had to consider the application of the petitioner and the applications of four other applicants who also wanted to lease this particular plot of land.

Two of these applicants subsequently withdrew their applications, but the applications of the other two applicants remained, and it appears from the record that these two applicants were prepared to pay much higher rent than the petitioner was prepared to pay. On 29-4-1954 the Municipality passed a resolution agreeing to renew the lease of the petitioner for a further period of seven years on the same rent, and on 7-8-1954 a registered lease was executed in favour of the petitioner.

On 24-4-1955 the Director of Local Authorities passed an order suspending the execution of this resolution. The view taken by the Director was that the grounds put forth by the Municipality in their resolution for rejecting the claims of the other two applicants, who were prepared to pay much higher rent, were most unreasonable. He also points out that the petitioner being the President of the Municipality he should have scrupulously avoided any step that might raise a suspicion that the lease was continued in his name on grounds of favouritism. He further pointed out that the procedure adopted" by the Municipality in leasing out this plot was illegal.

According to the Director the plot was in the market area, that the market by-laws applied, and that the Municipality was bound to hold under bylaw 2 an auction sale of every stall in the Municipal market every year. He took the view that the Municipality had disregarded this provision and leased out this shop to the petitioner without holding an auction sale as required by the by-law.

On 18-6-1955 the Municipality gave notice to the petitioner to vacate. On 7-10-1955 the Director of Local Authorities addressed a letter to the President and. in this letter he pointed out that the Municipality did not seem to be anxious to get vacant possession of the plot from the petitioner, and therefore he informed the petitioner that the Government in exercise of the powers conferred u/s 218(1) had asked him to fix a period of one month within which the Municipality should get the sites vacated, and he further informed the Municipality that the. Government had directed him that on failure of the Municipality to do so, action u/s 218(2), Bombay Municipal Boroughs Act would be taken by him.

On 25-10-1955 the Municipality filed a suit against the petitioner for eviction and that suit is still pending. On 31-10-1955 the Director of Local Authorities addressed another letter to the President pointing out that he learnt that the Municipality had filed a suit. This action according to him meant that the Municipality tried to delay the matter on one excuse or another, and he intimated to the President that if the Municipality did not get the site in question vacated by 10-11-1955 at the latest he will have to take action u/s 218(2), Bombay Municipal Boroughs Act.

On 4-11-1955 the Municipality gave a notice to the petitioner calling upon him to vacate the premises and hand over possession on 10-11-1955. On this the petitioner has come before us contending that his right to property has been threatened and that the Municipality has no right to take possession of these premises without due process of law and therefore their intended action would be contrary to law.

2. On the facts that we have stated it seems to us clear that the action on the part of the petitioner in coming before us is premature and there is nothing on the record which discloses any material which would justify the petitioner in having reasonable apprehension that any action is likely to foe taken contrary to

law which would threaten his right to property.

The order which is challenged is the order of Government u/s 218(2). That follows upon Section 218(1). u/s 218(1) the Director of Local Authorities may compel the Municipality to perform its "duty within a fixed period, and in this case the Municipality was asked to perform its duty by 10-11-1955 in getting the premises vacated. Then follows Sub-section (2).

"If that duty is not performed within the period so fixed, the Commissioner may appoint some person to perform it, and may direct that the expense of performing it, with a reasonable remuneration to the person appointed to perform it, shall be forthwith paid by the Municipality".

What Mr. Kotwal urges is that if he does not" vacate the premises by 10-11-1955, Government would act under Sub-section (2) of Section 218 and summarily evict the petitioner, in our opinion, in putting forward that contention Mr. Kotwal totally ignores the limitations upon the power of Government under Sub-section (2).

No power has been conferred upon the Government under that sub-section which power is not possessed by the Municipality itself. All that Sub-section (2) provides is that a duty which can be performed by the Municipality in law and has not been performed would be performed by the Government under the circumstances mentioned in Sub-section (2).

But the very basis of the exercise of the power by Government under Sub-section (2) is that the Municipality itself must have that power. It is not disputed that the only power that the Municipality has of summary eviction is the power that is conferred u/s 174A and it is equally common ground that the notice given by the Municipality to the petitioner on 4-11-1955 is not a notice in the exercise of the power u/s 174A.

As a matter of fact, the notice does not even state what the consequences would be if the petitioner fails to vacate the premises on or before 10-11-1955. So as the notice stands it is nothing more than a "brutum fulmen". The petitioner would have had possibly good cause to come before us if a notice had been issued under section, 174A, and the case of the petitioner was that Section 174A had no application and the Municipality or the Government were improperly or illegally acting u/s 174A.

But that is not the case here. As a matter of fact, it is both the case of the Government and the Municipality that the case does fall u/s 174A, but for reasons best known to the Municipality till today the Municipality has not taken any action u/s 174A. Therefore, till the situation arises where action is taken u/s 174A and a notice has been served u/s 174A, it is difficult to understand how this petition can be maintained.

A mere threat with no legal consequences cannot justify the presentation of a petition under Article 227 of the Constitution and we do not look upon the notice

given by the Municipality on 4-11-1955 as anything more than a threat which can have no legal effect or legal consequences.

3. The result is that the petition fails and must be dismissed with costs.

4. Same order in Special Civil Application No. 2483 of 1955.

5. Petition dismissed.