
(1968) 10 BOM CK 0012

In the Bombay High Court

Case No : Spl. Civil Application No's. 2038 and 2039 of 1968

Ramraj Sinh Thakur

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 04-10-1968

Acts Referred:

Constitution of India, 1950 — Article 14, 245, 245(2)
Transfer of Property Act, 1882 — Section 111

Citation : AIR 1969 Bom 333 : (1969) 71 BOMLR 168 : (1969) ILR (Bom) 837 : (1969) MhLj 383

Hon'ble Judges : Wagle, J;Patel, J

Bench : Division Bench

Advocate : D.R. Joshi, for the Appellant;

Judgement

Patel, J.—The petitioners in these two petitions are tenants of the Housing Board. The competent officer in each case after issuing a show cause notice indicating the breaches of the terms of allotment of tenancies, and hearing the petitioners passed eviction orders. Petitioners filed appeals to the State Government. These appeals were heard by the Deputy Minister and the appeals were then dismissed by the State Government. The petitioners challenge the vires of the provisions of Chapter VA of the Bombay Housing Board Act, 1948, which permit eviction after a summary enquiry by a competent officer.

2. Section 53-A of the said Act authorises the State Government to appoint as competent authority an officer who holds or has held an office no lower in rank than that of a Deputy Collector or an Executive Engineer. Section 53-A enables a competent authority, if satisfied, to evict (a) an authorised occupier if he has (I) not paid rent lawfully due from him in respect of the premises for a period of more than two months or (ii) sublet the whole or any part of the premises, or (iia) committed or is committing any act contrary to the provisions of Clause (o) of Section 108 of the Transfer of Property Act, or (iiib) made or is making material additions or alterations in such premises without the previous written

permission of the Board, or (iii) otherwise acted in contravention of any of the terms under which he is authorised to occupy such premises and (b) any person who is in unauthorised occupation of any Board premises, notwithstanding anything contained in any law for the time being in force by serving a notice in the manner stated therein and ordering him as well as any other person who may be in occupation to vacate the same. Sub-section (1-A) prescribes the procedure and reads as below:-

"Before an order under sub-section (1) is made against any person the competent authority shall inform the person by notice in writing of the grounds for which the proposed order is to be made and give him a reasonable opportunity of tendering an explanation and producing evidence, if any, and to show cause why such order should not be made, within a period to be specified in such notice. If, such person makes an application to the competent authority for extension of the period specified in the notice, the competent authority 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 such person and documents produced in pursuance of such notice shall be filed with the record of the case and such person shall be entitled to appear before the officer proceeding in this connection by advocate, attorney or pleader. Such notice in writing shall be served in the manner provided for service of notice under sub-section(1)."

Sub-section (2) enables the competent authority to take possession of the premises even by using necessary force if the person directed to vacate refused to vacate. Sub-section (3) enables the competent authority to cancel an order made under Clause (a) (i) or (iii) of sub-section (1) against an authorised occupier if within the month of notice or extended time he pays the arrears and or otherwise complies with the terms contravened by him. Section 53 (1) and (2) enables the competent authority subject to any rules that may be made by the State Government to direct the authorised occupant to pay arrears of rent and an unauthorised occupant damages by notice to be served in the manner there stated. If the amounts are not paid they are made recoverable as arrears of land revenue. Sub-section (3) prescribes that a show cause notice has to be issued to the occupant and he is to be heard and any evidence that he may produce has to be considered. Section 53-C (1) provides for an appeal to the State Government. Section 53-C (2) enables the State Government to call for a report from the competent authority to make such further inquiry as may be necessary and make an order. Section 52-D makes the order final and prevents any Court from issuing an injunction in respect of any action taken or to be taken under the Chapter.

3. It is said that these provisions are very drastic in nature and provide a summary procedure quite different from that in regular courts. The contention that the distinction made between the premises of the Housing Board and those belonging to private citizens is unreasonable and the discrimination between the

Housing Board on the one hand and the citizen, on the other, is in violation of Article 14 of the constitution is not available to the petitioners since this is answered by the Supreme Court in Baburao Shantaram More Vs. The Bombay Housing Board and Another, . The contention was made in connection with Section 3-A of this Act which exempts the premises belonging to the Housing Board from the application of the Bombay Rent Act, 1948 holding that there is intelligible differentia between the two classes of premises and the classification is reasonable. This was also assumed in Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, .

4. The argument, however, has taken another form. It is argued that though this drastic procedure has been prescribed by Chapter VA of the Act of 1948, the right of the Board to file a suit in regular Court is not taken away. The Board will, therefore, have uncanalised discretion either to proceed in the summary manner or by a regular suit against its tenants. There is not guidance furnished in the Act for adopting the procedure under the Act against others. It thus enables the Board to pick and choose and thus discriminate between occupiers and therefore, violates Article 14 of the Constitution. Mr. Joshi for the petitioners, relies upon Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, . In that case, the question arose by reason of an order passed under the Punjab Public Premises and Land (Eviction apparently supports him. The provisions of that Act regarding eviction and those of the present Act are almost similar with this difference that an appeal under that Act lay to the Commissioner while under this Act it is to the State Government and under the Rules of Business is heard by a Deputy Minister. The Court by a majority of three to two accepted the contention that the State could discriminate between tenants while exercising its discretion either by filing a suit or by proceeding under the Act. The Act, therefore, be violative of Article 14 of the Constitution. If the present Act were exactly on a par with the Act under the consideration of their Lordships, then undoubtedly we would be bound by the decision and would have to hold that the provisions of Chapter VA of the Act are violative of Art, 14 and, therefore, invalid.

5. In Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, the question whether the Commissions of Inquiry Act was violative of Art 14 of the Constitution arose before a Bench of five Judges. Das C.J. made six propositions after referring to the cases decided by the said Court prior to that date. Proposition (e) in paragraph (10) at page 548 is as follows:-

"That in order to sustain the presumption of constitutionality the Court may take in to consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation."

He further said that even though apparently unguided discretion is given to the executive authority so as to enable it to discriminate between persons or things similarly situated, the Court, will not strike it down out of hand. The Court will

examine and ascertain if the statute itself lays down the principle or policy for guiding the exercise of discretion. This case had been subsequently followed in *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, ; *P.J. Irani Vs. The State of Madras*, and by this Court in *Govindji Vithaldas v. Municipal Corporation*. 59 BLR 129 and by the Supreme Court in *K.L. Gupta and Others Vs. The Bombay Municipal Corporation and Others*, and also by this Court in a recent case. The effect of the decisions is that the limitations subject to which the discretion can be exercised can be ascertained by the Court from the preamble, the surrounding circumstances, disclosed by well-known and notorious facts or those disclosed by affidavits. The *Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another*, does not decide anything to the contrary. On the application of the principles mentioned the Court held that the Act was invalid.

6. We will, therefore, examine the provisions of this chapter in this light. The circumstances under which the Housing Board was constituted are stated in the Objects and Reasons for the passing of the Act. As during the war and thereafter there was acute shortage of housing accommodation, a Board was set up as a Department of Government for formulating a long range programme. During that period a large scale post-war scheme of housing for industrial workers and low income groups was formulated and some works had also been undertaken. The programme involved considerable acquisition of property and development of land in accordance with the Town planning by local authorities was extremely slow. Hence the Housing Board was constituted as a corporation as the work could not be carried out departmentally. By 1952 quite a good progress was made, But difficulties were found in the actual management of houses and tenements, as there were large scale arrears, the tenants introduced strangers in the property and did everything that they did in the tenements belonging to private owners. The objects and reasons for introducing the new Chapter and making provision for effective recovery of arrears and eviction are given under the heading "Statement of Objects and Reasons" published in the Bombay Government Gazette, in the Part V. dated July 8, 1952, at page 104.

7. In fact, the powers were asked for by the Board as its progress for providing residential accommodation would be held up if the ordinary process of the Courts was to be adopted. It is known to the despair of every litigant that it takes years for him to obtain a mere decree for possession and many more years for making even a partial recovery thereunder. With this knowledge of the past, these powers were acquired by the Board. It is true that technically there would be an option on the part of the Board to file a suit for getting any of the reliefs provided for in Sections 53-A and 53-B (1) of the Act of 1948. However, it is well-nigh impossible that any suit would ever be filed having regard to the circumstances under which the powers were obtained. In our opinion, as there is no chance of a suit being filed, there could be no chance of discrimination between occupants by the Board and hence the provisions cannot be regarded as invalid.

8. A somewhat similar set of provisions under the Bombay Municipal Corporation Act came before our learned brothers, Mody and Chandrachud, JJ. (Spl. Civil Appns. Nos. 1116 and 1138 of 1966 with O. S. Misc. Petn. No. 478 of 1966, D/-23-8-1967 (Bom)). The Court held that the provisions are valid. These provisions are similar to those under consideration except for the fact that under the Municipal Corporation Act an appeal lies to the Principal Judge of the City Civil Court, while under the Act of 1948 it lies to the Government. The appeal under the Rules of Business is heard by a Deputy Minister, the chosen representative of the people. He would, therefore, approach the question with greater sympathy than an executive officer, which was the case under the Punjab Act. The party is entitled to appear by an Advocate, Attorney or Pleader. There was no such provision under the Punjab Act. It is clear, therefore, as held in that case that the inquiry has to be judicial though of course quicker and summary. In our opinion, therefore, the N. L. Caterers' case decided by the Supreme Court does not apply to his case.

9. It was suggested that the eviction notice and the subsequent order of eviction are illegal as there was no proper termination of tenancy. There is no substance in this contention for two reasons. One reason is that in Section 53-A the provision for giving notice to vacate is "notwithstanding any other law." It is clear, therefore, that it was clearly intended to abrogate the provisions of the Transfer of Property Act has received the assent of the President, and therefore, valid. The second answer is to be found in the terms of allotment. Under the Act of 1948, the Board framed Regulations. It provides that on allotment of the premises, the occupant has to execute the lease in Form II provided. Clause (13) enables the Board to re-enter the premises on the occupants being in arrears for the stated period and/or if there is any breach of any of the terms of letting and goes on to provide "and thereupon the tenancy hereby created shall absolutely cease and determine." There being a contract to the contrary, the term prevails.

10. There is, therefore, no merit in either of these applications.

11. Petitions Dsmissed.