
(2013) 09 BOM CK 0032

In the Bombay High Court

Case No : Appeal From Order (ST.) No. 24265 of 2013

Seema Santosh Jadhav

APPELLANT

Vs

Maharashtra Housing Area Development Authority

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Maharashtra Housing And Area Development Act, 1976 — Section 66, 95(A)(3), 95A, 95A(3)

Citation : (2013) 6 ABR 453 : (2013) 6 ALLMR 225 : (2013) 6 BomCR 121 : (2014) 1 MhLj 284

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : Mihir Desai assisted with Ms. Ushajee Peri in AOST. Nos. 24265-2013, 24453-2013, 2449-2013, 24445-2013, 24461-2013, 24442-2013, 24458-2013, 24537-2013, 24530-2013, 24522-2013, 24513-2013, 24502-2013, 24560-2013, 24570-2013, 24578-2013, 24585-2013, 24591-2013, 24598-2013, 24590-2013, 24596-2013 and 24584-2013, Mr. Indraprakash Tripathi, Mr. Narendra Dubey instructed by and Mr. C.K. Tripathi, in AOST. Nos. 21462-2013, 21426-2013, 21417-2013, 21391-2013, 21445-2013, 21475-2013, 21431-2013, 21437-2013, 21472-2013, 21448-2013, 21456-2013, 21616-2013, 21466-2013, 21441-2013, 21480-2013, 22882-2013, 23884-2013, 22403, 2013, 22445-2013, 21426-2013 and 21441-2013, for the Appellant; S.U. Deshmukh, for the Respondent

Final Decision : Allowed

Judgement

Anoop V. Mohta, J.—Rule made returnable forthwith. Heard finally, by consent of the learned Counsel appearing for the parties. The common issues, facts and the law are interlinked, therefore, this common Judgment.

The common factual background

All these Appeals from Order are arising out of common and similar action initiated by the Defendant-Respondent-Maharashtra Housing And Area Development Authority (MHADA), invoking Section 95A(3) of Maharashtra

Housing And Area Development Act 1976 (for short "MHADA Act") and directed individual occupants/Plaintiffs in all these matters to file reply and then the Executive Engineer C-3 of MHADA unilateral orders dated 1 to 8 June 2013 passed the eviction, thereby directed all the occupants/Plaintiffs to vacate the premises, which they are in their occupation (since year 1979-1986) for more than 25 years. The Plaintiffs are also paying the monthly rent (compensatory costs) to the MHADA since long.

2. The Plaintiffs therefore filed separate Suits in the City Civil Court, Dindoshi and sought declaration that the action so initiated by the purported individual notices in respect of the respective suit premises at Old Siddharth Nagar Transit Camp, Goregaon (W)-be declared illegal, malafide and without jurisdiction. The prayer is also made for a permanent alternate accommodation as per the master list available with the Defendant. They also prayed for a permanent injunction against the Defendant restraining them, their servants, agents, officers from evicting/dispossessing and/or taking any coercive steps based upon it. An interim injunction also sought by filing a separate Notice of Motion. The statement is made by the learned Counsel appearing for the Plaintiffs that till the decision of Notice of Motion, an ad-interim order has been in force till 31.8.2013. In the result, all the Plaintiffs/Appellants are in possession of the respective property/premises till this date.

3. Admittedly, separate show cause notice dated 4.2.2013 issued to all the Plaintiffs/Appellants directing them to file their reply. In all these matters, they filed separate reply (on 4.2.2013 to 11.2.2013) and provided supporting documents, including receipts issued by the Bombay Housing And Area Development Board, possession order, and the rent receipts. Similar and identical documents were submitted by other occupants. Allotment letter is (28.12.1983) issued by the Competent Authority-Bombay Housing and Area Development Authority referring the form 33(2) and Section 77 of Mumbai Building Repair And Reconstruction Board Act, 1969 (for short "MBRRB Act") also filed. The statement is made that similar allotment letters have been issued to all the Appellants/Plaintiffs. The possession letters so annexed are ranging from 11.8.1978 to 28.12.1983. A document showing occupation of the original premises of 11.8.1978 is also annexed with the reply, as the Board had decided to reconstruct the area under the provisions of the MBRRB Act. Similar notices were also issued to others also. A receipt is also placed on record dated 1.11.1983 to show that they deposited the amount towards security deposit for transit camp. Some old receipts of the earlier premises from the landlord of the year 1978 to show that they were in occupation as monthly tenant. Some receipts also placed on record to show the payment which they have made with regard to the shifting charges for changing one transit camp to another transit camp. The respective details are part of the records also.

Unilateral-unreasoned decision by the Executive Engineer.

4. The Executive Engineer on 8.6.2012 to 5.3.2013, referring to earlier notices

from 2005 to 2011 and show cause notice in question comes to the conclusion by holding that the Plaintiffs were absent though called for with papers. No reason given upon the reply and the documents annexed with it as referred in earlier paras. The learned Judge, while rejecting the Notice of Motion by referring to various provisions added more reasons which were definitely missing in impugned orders of eviction dated 8.6.2012 to 2.3.2013 by the Executive Engineer.

The limited and restricted power and jurisdiction u/s 95A of MHADA Act.

5. The submission is that Section 95A of MHADA Act nowhere contemplates and/or empowers the Executive Engineer and/or such other officer to give personal hearing and/or pass any reasoned order as it is meant only for passing an order of summary eviction based upon the material available with them. They have accordingly exercised their jurisdiction/power as contemplated under the MHADA Act. There is nothing wrong in such approach in view of specific provisions, as referred above. Section 95A is reproduced below:

95A Summary eviction of occupiers in certain cases.-

(1) Where the owner of a building or the members of the proposed co-operative housing society of the occupiers of the said building, submits a proposal to the Board for reconstruction of the building, after obtaining the written consent of not less than 70 per cent of the total occupiers of the building and a No Objection Certificate for such reconstruction of the building is issued by the Board to the owner or to the proposed co-operative housing society of the occupier, as the case may be, then it shall be binding on all the occupiers to vacate the premises:

Provided that, it shall be incumbent upon the holder of such No objection Certificate to make available to all the occupants of such building alternate temporary accommodation.

(2) On refusal by any of the occupants to vacate the premises as provided in sub-section (1), on being approached by the holder of such No Objection Certificate for eviction of such occupiers, it would be competent for the Board, notwithstanding anything contained in Chapters VI and VII of this Act to effect summary eviction of such occupiers.

(3) Any person occupying any premises, land, building or structure of the Board unauthorisedly or without specific written permission of the Board in this behalf shall, notwithstanding anything contained in Chapters VI and VII of this Act, be liable for summary eviction.

(4) Any person who refuses to vacate such premises or obstructs such eviction shall, on eviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both.

The term "unauthorised occupant" though not specifically defined in the Act, except the explanation (1) to Section 66 which reads as under:

For the purpose of this Chapter, the expression "unauthorised occupation" in relation to any person authorised to occupy any Authority premises includes the continuance of occupation by him or by any person claiming through or under him of the premises after the authority under which he was allowed to occupy the premises has expired or has been duly determined.

6. The learned Counsel appearing for the Respondent has also relied upon the scheme u/s 95A of MHADA Act so elaborated by a Division Bench of this Court in a case of Mrs. Radhika George & Ors. Vs. Maharashtra Housing And Area Development Board & Ors., reported in 2012(5) AIR Bom R 353. The relevant paras 23 and 24 of the said judgment are reproduced below:

23. Action u/s 95A does not result in determining rights of the parties per se. The authority u/s 95-A does not finally determine or terminate any ownership rights of the members of such societies. The provision is not intended to provide a forum to adjudicate the dispute inter se between the Society, members and the developers. Those disputes will have to be adjudicated in competent Courts of law. The proceedings u/s 95-A of the Act, cannot be converted into a full fledged judicial proceedings as if the authority is trying a civil suit. It also needs to be noted that the authority i.e. executive engineer which passes the order u/s 95-A is not a judicial officer equipped to decide complicated question of law relating to dispute as to title etc.

24. The proceedings u/s 95-A cannot be converted into a civil trial as is sought to be done by the petitioners. If the members of the society obtain any judicial orders restraining the Society or the developer from acting in furtherance of their intention to redevelop, then obviously the authority u/s 95-A will be bound by such judicial orders. In the present case, even though the appellants approached the Civil Courts as well as the Co-operative Court in the year 2006 challenging the decisions of the Society to redevelop the property, they did not secure any interim orders for last six years. The Executive Engineer u/s 95-A thus is not expected to arrogate himself the jurisdiction vested in Civil Court and Co-operative Court and decide the issue raised by the appellants in those proceedings. Once the jurisdictional facts before the Executive Engineer were satisfied and that there was no restraint order, the authority u/s 95-A had no other option, rather was under obligation to direct the appellants to move to transit accommodation to facilitate the redevelopment.

7. Admittedly, there is no provision of appeal against the order u/s 95A. Above observations and the findings so given by the Division Bench need to be read in the background of the facts and circumstances of the case. Clause 95A(3) cannot be read in isolation by overlooking the clause 95A(1) and 95A(2), even clause 95A(4). In my view, all these clauses are interconnected and interlinked.

The summary eviction cannot be against the authorised occupants.

8. There cannot be any dispute with regard to the power so elaborated u/s 95A of MHADA Act as brought in by amendment 16 of 1998 with effect from

15.5.1998. Admittedly, the cases involved herein and the longstanding possession of the occupants of the property based upon the allotment letters prior to 15.5.1998 and ranging from years 1978-1986. Earlier Section 66 though permits/empowers the Board to take action against the unauthorised occupants, but that also, in my view, always on a foundation that there is "unauthorised occupation" and therefore the power is provided to evict such persons from the Authorities' premises. There cannot be any doubt about the provision so provided, if case is made out, the Defendant and/or its officer need to act within the framework of law. This itself means, that it is necessary for the Authorities/Board to come to a basic conclusion that the "occupier" is in possession of the premises "unauthorisedly". It also contemplates u/s 95A in clauses (1) and (2). The clause (3) therefore in such a situation required to be invoked to evict such persons whose rights have been determined and still not vacated and/or continue to retain the possession of their premises unauthorisedly.

9. Assume for a moment as contended by the learned Counsel for the Defendant that clause (3) of Section 95A can be dissected from clause (1) and (2) so also clause (4) to take summarily eviction action in certain other cases. But still in my view it is necessary for the authority/Defendant and/or its officer to take decision by giving opportunity to the parties concerned. They must first determine that the occupation is unauthorised of the premises or land or structure of the Board. Here there are material on record to show that the Plaintiff/Appellants, and similarly other Appellants are in possession of the premises based upon the allotment letter and/or written permission/document for more than 25 years. It is difficult to accept the case/and or submission, and as observed even by the Executive Engineer and even by the Court and as sought to be contended that the Plaintiffs/Appellants have no valid written permission of the Board and/or of the authorities. The documents so referred above shows that all these occupants are in possession and based upon "specific written permission of the Board".

The "unauthorised occupants"- must be determined first.

10. There is nothing on record to show and/or neither there is reference made by giving opportunity to the parties that their long standing occupation of the premises as recorded more than 25 years, at least prior to 15.5.1998 were unauthorised, illegal and was without permission. The unilateral decision is that as noted and found that their occupation and/or their possession is unauthorised based upon the forged and illegal documents, without giving opportunity and without giving justification to the documents so placed on record.

The due procedure of law required to be followed.

11. I am inclined to observe that the rights of the parties, basically when they are in possession of the premises so many years, just cannot be revoked merely because the Respondent is empower to use and utilized and or entitled to invoke Section 95(A)(3) of the MHADA Act. There is nothing on record to show that the rights so claimed based upon the documents have been decided and/or

determined by anyone including the Executive Engineer in question at earlier point of time. The unilateral decision even so taken as referred in the notices in no way show the application of mind to the existing provision of law which have created rights in favour of the Applicants. Even if it is alleged to be unauthorised and/or without any sanction needs to be adjudicated by giving a full opportunity to the concerned parties. The issue and/or decision of forgery and/or misrepresentation and/or unauthorised letters of allotment and/or their occupation though they are paying occupation charges regularly, just cannot be given in such fashion. It is totally impermissible, apart from principles of natural justice and fair play and equity. Even unauthorised occupant and/or trespasser, someone wants to evict, the due procedure of law required to be followed. The due procedure of law in such a situation cannot be meant just completing the formalities of issuing show cause notice and without giving opportunity to the parties to take unilateral decision even declaring that the Board issued documents are illegal/unauthorised therefore summary eviction.

The power of summary eviction cannot be equated with the power of Civil Court/Tribunal.

12. It is relevant to note that the Division Bench of this Court as referred above, made clear the power and purpose of Section 95A. It is not permissible even for the authorities u/s 95A to finally determined or terminate any ownership rights of such occupants and/or not competent to adjudicate their statutory rights, if any, which are created based upon the earlier documents. The proceeding cannot be converted into full fledged judicial proceedings as if the authority trying a civil suit, then there is no justification that before passing such a summary eviction order and before taking such decision unilaterally, the authority ought not to have at least given sufficient reason to justify their actions. The unilaterally decision without giving any opportunity to the parties is liable to be tested in Court of law, specially when the authority is not competent or empower to take such decisions on complicated issues/facts and the law.

The principle of natural justice and due opportunity need to be followed by the authority at all stages.

13. I am inclined to observe that the summary power so invoked in the present facts and circumstances of the case by the Defendant-MHADA, even assume for granted is permissible, but unless they give full opportunity to the applicants and pass reasoned order after considering the rival submissions, the eviction order so passed so also action so initiated by invoking Section 95A of the MHADA Act is impermissible. The Court is not there to give reason for the first time in support of the such action initiated by the authority. The Executive Engineer if is empowered and takes action by invoking this provision, the basic reason after giving opportunity to all the parties, is a must and just cannot be overlooked. In my view, no summary power can be invoked unless the rights and the conclusion is arrived at accordingly. The basic reason to justify their action to evict the person who are in occupation for long 25 years is a must.

14. The concept of prima facie observations in such a situation will lead to a total injustice and hardship against whom the action so initiated, specially when such summary eviction always results in displacement of their occupation/premises permanently. There is no such thing that the displacement or action is temporary and based upon prima facie observations by giving prima facie finding. Taking permanent action of eviction itself shows misuse of power, which is never permissible under the provision of law and specifically Section 95A so sought to be invoked and utilized to evict such occupant/person. The learned Counsel appearing for the Respondent contended that the learned Judge, based upon the material as well as the reply filed by the Defendant and also the averments so made by the Plaintiffs/Appellants, comes to the conclusion and gave reasons, is unacceptable in the above background of facts and the law.

15. I am inclined to observe that the authority who has passed such order must apply its mind and must give reason by giving opportunity to the parties. The Court need to consider where a situation and/or a case is made out by the Appellant and/or any party one wants to challenge the action/notice of such authority. Some justification and/or more interpretation of particular clause and/or document is another way. But no reason for the first time can be added by the Court, should not be the case when the authority themselves failed to apply their mind and took unilateral decision on facts and try to evict the person in such fashion.

The effect of knowledge of alleged fraud, misrepresentation and wrong but no action for long.

16. The intended ejection from the premises by invoking the summary eviction provisions without deciding the issue of fraud or misrepresentation and wrong in the background of 25 years long possession is a matter of great concern to all. The Respondents if do not take action for such a long period, cannot be permitted to invoke such summary proceedings by taking unilateral decision even on the complicated issue of alleged fraud and misrepresentation and a wrong. In spite of knowledge of alleged wrong deed/wrong if authority and/or its officers, for known or unknown reasons do not take any action for long, such action without giving an opportunity to the occupants/occupiers is impermissible.

17. The Apex Court recently in case of Ankush Shivaji Gaikwad Vs. State of Maharashtra, has reiterated the requirement of giving reasons by the Court below as well as Tribunal and/or authority. The relevant paras are reproduced below:

61. In Maya Devi (dead) through Lrs. Vs. Smt. Raj Kumari Batra (dead) through Lrs. and Others, this Court held that the disclosure of application of mind is best demonstrated by recording reasons in support of the order or conclusion. The Court observed: (SCC p.495, paras 29-30)-

29. What then are the safeguard against an arbitrary exercise of power? The first and the most effective check against any such exercise is the well-recognised

legal principle that orders can be made only after due and proper application of mind. Application of mind brings reasonableness not only to the exercise of power but to the ultimate conclusion also. Application of mind in turn is best demonstrated by disclosure of the mind. And disclosure is best demonstrated by recording reasons in support of the order or conclusion.

30. Recording of reasons in cases where the order is subject to further appeal is very important from yet another angle. An appellate court or the authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Conversely, absence of reasons in an appealable order deprives the appellate court or the authority of that advantage and casts an onerous responsibility upon it to examine and determine the question on its own.

(emphasis supplied)

63. In *M/s. Hindustan Times Limited Vs. Union of India and Others*, this Court stated that the absence of reasons in an order would burden the appellate court with the responsibility of going through the evidence or law for the first time. The Court observed: (SCC p.248, para 8)

8..... In our view, the satisfaction which a reasoned judgment gives to the losing party or his lawyer is the test of a good judgment. Disposal of cases is no doubt important but quality of the judgment is equally, if not more, important. There is no point in shifting the burden to the higher court either to support the judgment by reasons or to consider the evidence or law for the first time to see if the judgment needs a reversal.

Urgent attention is required.

18. These observations are for simple reason that the Respondent and its officer are invoking this power without applying its mind to the situation like this in most of the summary eviction matters. Therefore, to curtail such situation, it is desirable to pass and give above reason to avoid complications, so also to avoid further similar litigations. The concerned authority is under obligation to perform and utilize their power in accordance with law, following basic principle of natural justice in every such matter. In view of above observations, there is no point in keeping the matters pending or remand for rehearing of all the motions. To curtail further delay and for proper adjudication, liberty is granted to the Respondent/Defendant to withdraw the impugned notice/order of eviction and pass fresh reasoned order, after hearing the parties in accordance with law.

Resultantly, the common order:-

ORDER

a) Impugned orders dated 21.6.2013 as passed in all matters by the Trial Court are set aside.

b) Notice of Motion in terms of prayer clause (a) in all matters are allowed.

- c) The Defendant and/or their agents/officers are restrained from evicting or dispossessing or taking any coercive steps in pursuance to the notices dated 25.5.2012/4.2.2013/and related consequential eviction orders and all action u/s 95A(3) of MHADA Act, pending decision of the suits.
- d) The suits are expedited.
- e) The parties are granted liberty to apply for appropriate orders.
- f) The Respondent/Defendant are at liberty to withdraw the order/Notice of summary eviction and pass a fresh reasoned order after hearing the parties, in accordance with law.
- g) All above Appeals are allowed of accordingly.
- h) The Civil Applications for stay are also disposed of accordingly.
- i) No costs.