(2001) 12 SC CK 0010

Supreme Court of India

Case No: C.A. No.-007677-007677 / 1994

State of Maharashtra		APPELLANT
	Vs	
Marwanjee P. Desai and Others		RESPONDENT

Date of Decision: Dec. 14, 2001

Acts Referred:

- Bombay Government Premises (Eviction) Act, 1955 - Section 3, 4, 4(1), 4(2), 4(6)
- Constitution of India, 1950 - Article 226
- Land Acquisition Act, 1894 - Section 18, 50(2)

Citation: AIR 2002 SC 456 : (2001) AIRSCW 5076 : (2002) 1 ALLMR 912 : (2002) 2 BomCR 33 : (2001) 10 JT 379 : (2001) 8 SCALE 509 : (2002) 2 SCC 318 : (2001) 8 Supreme 698 : (2002) 1 UJ 169

Hon'ble Judges: U. C. Banerjee, J; D. P. Mohapatra, J

Bench: Division Bench

Advocate: S. K. Dholakia and S. Ganesh, S.V. Deshpande and P.S. Sudheer, for K.J. John, Amit Dhingra and D.P. Mohanty, S.A. Poonawala, for P.H. Parekh, for the Appellant;

Final Decision: Dismissed

Judgement

Banerjee, J.
The issue presently before this court pertains to the scope and ambit of Section 7 of the Bombay Government Premises (Eviction) Act, 1955 and its applicability therefore viz.-a-viz an order of "dropping of proceedings" in terms of a notice issued u/s 4 of the Act of 1955 and resultant dismissal of the proceeding initiated for dispossession from the government premises. The High Court however, answered it in the negative and in favour of the occupants. Hence the appeals before this Court upon the grant of special leave.

2. Adverting to the factual score broadly it appears that various plots of land belonging to the State Government in Byculla Division, Bombay was leased out to several occupants and were in their occupation since 1968. Since the Government wanted the plot for a

public purpose, the Competent Authority issued a show-cause notice to the occupants under Sub-section (2) of Section 4 of the Act, on 26th November, 1979 and the former however, dropped the proceedings by an order dated December 16, 1980. The State Government being dissatisfied therewith preferred an appeal u/s 7 of the Act to the Principal Judge of the City Civil Court, Bombay, wherein a preliminary objection was raised by the occupants as to the maintainability of the appeal. The objection, however, was overruled by the learned Judge and thereupon the respondents herein moved the High Court under Article 226 of the Constitution: the High Court in its turn allowed the writ petition upon recording inter alia the following: "neither u/s 7 of the Act nor under any other provisions of the enactment, a right to prefer an appeal against any of the decisions of the competent authority has been conferred on the State Government."

3. Incidentally, it be noted, that the introduction of the legislation (Bombay Public Premises Act) on to Statute Book was effected solely with the purpose of empowering the Government to evict the unauthorised occupants from its property without taking recourse to any lengthy legal process by way of civil suits in the civil courts. The machinery provided for in terms of the statute, cannot but be termed to be a quasi legal/judicial authority as we will shortly notice, but before so doing, let us have a look at the view as expressed by the High Court pertaining thereto:

["...These provisions therefore, show that the powers to initiate the action for eviction or recovery of rent or damages to decide the dispute as well as to implement it are all vested in one and the same authority. It is therefore, no more than an extended arm or department of the government and for all purposes is the government itself ban this is so. For the State government to claim a right of appeal against the decision of the Competent Authority is to claim the said right against its own decision which claim is possibly untenable."

(Emphasis supplied)

4. It is at this juncture however, relevant extracts of the provisions as contained in Sections 4, 5,6 and 7 together with the Statements of Objects and Reasons of the enactment ought to be noticed for its proper appreciation.

"The Statements of Objects and Reasons read as below:

"Government has allotted accommodation to Government Servants and others in Government Premises like Bombay Development Department Chawls, Bombay. These premises have been in occupation for a long time and it has been noticed that the collection of rent is not entirely satisfactory. Similarly, there are cases of unauthorised occupation and sub-tenancies. It becomes difficult for government to recover vacant possession of premises when there are heavy arrears of rent or in case of unauthorised occupation or when there is a breach of conditions of allotment. The filing of suits against unauthorised occupants and for the recovery of rent arrears involves a lengthy process as

a result of which there is loss of revenue. In order, therefore, to enable government to control and regulate the occupation of premises allotted for the use and occupation of government servants and others and for certain other matter connected therewith, it is considered necessary to arm government with effective powers to deal with cases of unauthorised occupation, subletting and arrears of rent. The proposed legislation is intended to provide remedy for all these matters."

Section 4: Power to evict- (1) If the competent authority is satisfied,-

(a) that the person authorised to occupy any Government premises, has whether before or after the commencement of this Act-

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

(ii) sub-let the whole or any part of such premises, without the permission of the State Government, or the competent authority, or the officer who has or in whose name the premises are taken on behalf of the State Government or any other officer designated by the State government in this behalf, or

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

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

(b) that any person is in unauthorised occupation of any government premises, or

(c) that any Government premises named are required for any other government purposes, the competent authority may by notice served (i) by post, or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed order that, 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 91) is made against any person the competent authority 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 ground 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 of or claim interest in, government premises, to show cause, if any, against the proposed order, on or before such date as is specified in the 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 amount claimed in the notice, as it 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 proceeding in this connection by advocate, attorney or pleader.

The notice to be served under this sub-section shall be served by having it affixed on the outer door or on some conspicuous part of the premises, and in such manner as may be prescribed; 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 competent authority may evict that person from, and take possession of, the premises and may for that purpose use such force as may be necessary.

(4) The competent authority may, after giving fourteen clear day notice to the person whom possession of the Government premises has been taken under Sub-section (3) and after publishing such notice in the Official Gazette and in at least one newspaper having circulation 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 service of notice under Sub-section (1).

...

...

(2) Where any person is in unauthorised occupation of any Government premises, the competent authority may, in the manner and having regard to the principles of assessment of damages, prescribed, assess such damages on account of the use and occupation of the premises as it may deem fit, and may by notice served (I) by post or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, order that person to pay the damages within such time as may be specified in the notice. If such person refuses or fails to pay the damages within the time specified in the notice, the damages may be recovered from him as arrears of land revenue.

(3) No order shall be made under Sub-section (2) until after the issue of a notice in writing to the person calling on him to show cause, within a reasonable period to be specified in such notice, why such order should not be made, and until his objections, if any, and any evidence he may produce in support of the same, have been considered by the competent authority.

Section 6: Rent to be recovered by deduction from salary or wages of employee. -- (1) Without prejudice to the provisions of Section 4, where any person to whom Government premises have been allotted, is,-

(a) an employee of the State Government, or

(b) an employee of a local authority, who has executed an agreement as provided in Sub-section (2)

and is in arrears of rent payable in respect of such Government premises, the amount of rent due in respect of such premises shall on a requisition in writing made in that behalf by the competent authority be liable to be deducted from the salary or wages payable to such person. On receipt of such requisition, the head of the Government department or office under whom such person is employed, or as the case may be, the local authority shall deduct from the salary or wages payable to such person the amount specified in the requisition, and pay the amount so deducted to the competent authority in satisfaction of the amount due as aforesaid.

(2) An employee of a local authority who is allotted Government premises may execute an agreement in favour of the State Government providing that the local authority by or under whom he is employed shall be competent to deduct from time to time from the salary or wages payable to him, such amount as is specified in the agreement, and to pay the amount so deducted to the competent authority in satisfaction of any amount due by him in respect of any Government premises allotted to him.

Section 6-A: Power of competent authorities. - A competent authority shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely,-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents.

(c) any other matter which may be prescribed

Section 7: Appeals - (1) An appeal shall lie from every order of the competent authority, made in respect of any Government premises, u/s 4 or Section 5 to an appellate officer who shall be the District Judge of the district in which the Government premises are situate, or such other judicial officer in that district, being a judicial officer of not less than ten years, standing, as the District Judge may designate in this behalf.

(2) An appeal under Sub-section (1) shall be preferred.-

(a) in the case of an appeal from an order u/s 4, within thirty days from the date of the service of the notice relating to the order under Sub-section (1) of the section and

(b) in case of an appeal from an order u/s 5, within thirty days from the date of the service of the notice relating to the order under Sub-section (1) or (2) of that section, as the case may be:

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) Where an appeal is preferred from an order of the competent authority, the appellate officer may stay the enforcement of that order for such period, and on such conditions as he deems fit.

(4) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(5) For the purposes of this section, Greater Bombay shall be deemed to be a district and the principal Judge of the City Civil Court, Bombay shall be deemed to be the District Judge of the district.

5. This longish narration of statutory provisions stand out to be otherwise unavoidable for effective appreciation of the matter, specially in the contextual facts.

6. Mr. Dholakia, the learned senior Advocate and eloquent as he always is, was rather emphatic that on a true reading of Section 7. one cannot possibly lend any credence to the observations of the High Court that the Competent Authority within the meaning of the Act of 1955 is an extended arm or a department of the Government and for all practical purposes ought to be termed as the Government itself and the High Court was in clear error in its finding that State Government has no right of appeal against the decision of the Competent Authority. If we may recapitulate very briefly the facts presently it appears that the proceeding initiated against the respondent was dropped by the Competent Authority by the Order dated November 5, 1980 and it is on this score Mr. Ganesh contended that the Competent Authority being a creature of the Statute is appointed for the purposes of carrying out the objectives of the Act and contended that it is not as if proceedings are initiated by the Government and the matter is thereafter decided by the Competent Authority as an independent quasi judicial Authority. The Competent Authority is an instrumentality of the Government for implementation of the Act and as a matter of fact the decision of the Competent Authority cannot but be equated with that of the Government and once the Government has taken a decision question of there being any appeal within the meaning of Section 7 of the Act would not arise. Mr. Ganesh draws inspiration from the observations of Section 18 of the Land Acquisition Act, which provides: "any person interested, who has not accepted the award may by written application to the Collector, require that the matter be referred by the Collector for

determination of the Court" and strong reliance was placed on the decision of this Court in 285570 . We are, however, unable to record our concurrence therewith. The Constitution Bench was basically concerned with the rights of the Local Authority at the cost of whom land is acquired and the Bench interpreted Section 50(2) of the Land Acquisition Act. The challenge to an Order of the Collector as regards the quantum of compensation in terms of Section 18 of the Act obviously is restrictive to the person who stands aggrieved - the Collector determines the monetary compensation for the land acquired and in the event the land holder is not satisfied with the quantum so determined, the Statute provides in terms of Section 18 an avenue to ventilate the grievance,namely, a petition before the Court: it is a right of appeal as such but the Legislature thought it fit and expedient to incorporate such a provision in the Statue itself offering an opportunity to a land holder specifically. There is no scope to read in the Section a right of appeal to the Collector and if we may say so no judicial precedents are required therefore. The Constitution Bench Judgment has as a matter of fact upon proper reading of the provisions of the Act come to a conclusion that the Local Authority for which the land has been acquired has the right to appear and contest before the Court and even adduce evidence in support of its contention and has the right to prefer an appeal from the Order passed in terms of Section 18 by the Court in the event the concerned local authority stands aggrieved by the quantum so fixed before the Collector, which cannot be termed to be a judicial proceeding or even a quasi judicial proceeding but with filing of the petition u/s 18 before the Court the proceeding takes the shape of a judicial proceeding and all formalities attached thereto shall have to be complied with. There is no scope to read into Section 18 a right of appeal on the State since the State itself fixed the quantum and the Statute expressly confer a right restrictive to the land holder. We are thus not in agreement with Mr. Ganesh that the decision of the Constitution Bench squarely covers the issued before this Court. Reliance on the decision is totally misplaced and as a matter of fact it has no relevance whatsoever in the contextual facts presently. Similar is the situation in regard to the decision of this Court in 298933 . The observations of this Court that an appeal is creature of the Stature and thus the right of appeal can be exercised only by the person permitted by the Statute cannot but be stated to be the correct exposition of law and we do respectfully record out concurrence therewith. But the Judgment in Northern Plastic Ltd (supra), as noticed abvoe, has no relevance whatsoever in the contextual facts. Mr. Ganesh contended though rather feebly, that dropping of proceedings cannot be termed to be an Order within the meaning of Section 4 of the Act and in support thereof it was contended that the condition precedent to pass an Order u/s 4 is that the Competent Authority must be satisfied with the circumstances or conditions mentioned in clause (a) or (b) or (c) in Section 4(1) exists. Incidentally, the opening words of Section 4 are "If the Competent Authority is Satisfied". Mr. Ganesh contended that only effect o consequence of the said satisfaction being found to exist, that an Order of eviction could be passed and if on the other hand no such satisfaction is reached no Order u/s 4 can be passed at all and since presently, the conditions do nt stand satisfied, the Competent Authority dropped the eviction proceeding and as such the same cannot be an Order which stands appealable under the provisions of Section 7 of the Act. Emphasis has been laid on to the

particular language of Sections 4(1), 4(2), 4(6) etc. but what has been missed out by Mr. Ganesh as also by the High Court is the clear and categorical language of Section 7 of the Act of 1955. Use of the words "every Order" indicate that it comprehensively covers all decisions reached by the Competent Authority u/s 4 or Section 5 - that is what Mr. Dholakia contended and we find some force therein. Dropping of proceedings cannot possibly be termed to be "not an Order": the Competent Authority issued the notices and upon offering an opportunity of hearing to the parties, terminated the proceeding by recording "proceedings dropped" - if it does not denote the same an immediate inquiry would be - then what it is ? There is, however, no answer thereto. The proceedings initiated u/s 4 of the Act against respondent herein stands determined by an adjudication by the Competent Authority and the High Court thus clearly fell into error in not appreciating the factum of determination of the proceeding by the Order of the Compete Authority and it is on this score Mr. Dholakia contended that the attempt to distinguish between the Order and dropping of proceeding is wholly artificial and perhaps illogical since the Competent Authority did not accept the contention of the State Government and in fact refused to direct eviction which is also an Order passed under the said Section. We record out concurrence therewith. Incidentally dropping of proceedings however has not statutory sanction.

7. While it is true, that the High court placed reliance on the factum of the Competent Authority being an arm or wing of the Government and as such the latter cannot be permitted to lodge a protest against its own Order - this, however, in out view is a total misreading of the Statute and even in the event the same stands accepted, it will lead to a dangerous proposition having far reaching consequences. We, however, hasten to add that in the event the Statute desired it to be so then and in that event, consequences irrespective, we could have lent out concurrence to the view expressed by the High Court - unfortunately, however, Statue does not affirm such an interpretation, rather negates it. The language used as noticed above in Section 7 containing the provision of appeal has to be interpreted in this proper perspective and not in a manner restrictive. If the reasoning provided by the High Court is to be accepted then in that event the Statute shall have to be given a go-bye and to be rendered a complete otiose. The word "every", appearing in Section 7 immediately before the word "Order", stands out t be extremely significant so as to offer an opportunity of appeal in the event of there being an Order against the Government.

8. Incidentally, the records depict and a s the fact always is, that the proceedings, under the Statue presently under consideration or in all other Statutes of like nature, stand initiated by the Competent Authority upon a requisition by the Collector or some such Authority as prescribed. The factual matrix of the matter under consideration depicts that in fact there was a letter of request from the Collector and during the course of hearing before the Competent Authority the Collector was also represented by an officer along with the notice in terms of the provision of the Statue and it is by reason therefore the proceeding cannot but be termed to be a quasi judicial proceeding.

9. Significantly Section 6(a) categorically provides that for the purpose of holding an inquiry under the Act, the Competent Authority shall have the same powers as vested in a Civil Court under the CPC when trying a suit : while it is true that this vesting is restricted t summoning of witnesses and enforcing the attendance of any person and examining him on oath or requiring discovery and production of documents but that does not take away the quasi judicial nature of the proceeding as a matter of fact it lends credence to such a conclusion. Summoning of witnesses by the Compete Authority or enforcing their presence can only be had by an Order of Court and not otherwise - it is this specific power, which stands conferred on to the Competent Authority so as to allow the Competent Authority to proceed in accordance with law upon consideration of the relevant material : - "Proceedings dropped" cannot but be equated with an Order of dismissal of the proceeding and the strenuous submission of Mr. Ganesh to the contrary as noticed above, we are afraid, cannot be sustained. The analogy drawn form the provision of the Land Acquisition Act or the income tax Act is wholly unwarranted and misplaced and thus cannot be sustained on this score as well. The High Court" finding would render the Statute ineffective, which by no means can be permitted. The validity of the Act has not been challenged in this proceeding and as such we are not going into the same and in accordance with the golden rule of interpretation and construction of Statutes, a Statute has to be treated as a valid piece of legislation unless declared invalid by appropriate forum. The law pertaining in that direction is so well settled that we need not dilate nor inclined to detain ourselves therefore.

10. The interpretation to Section 3, as noticed herein before, offered by the High Court cannot possibly be adopted neither the Statute can be read in the manner and fashion as has been so done by the High Court. Appointment of the Competent Authority in terms of Section 3 for carrying out purposes of the Act is said to indicate that the Authority is administrative and neither judicial nor quasi judicial cannot but ascribed to be totally erroneous. The Statute shall have to be considered in this entirety and picking up of one word from one particular provision and thereby analysing it in a manner contrary to the statement of objects and reasons is neither permissible nor warranted. There are certain fixed canons of construction and interpretation of statutes and the High Court"s finding as regards the office of Competent Authority being administrative is not only an infraction of the Statute but contrary to all norms and cannons of construction. A Statute cannot be read in the manner as it has been by the High Court. True intent of the Legislature shall have to be gathered and deciphered in its proper spirit having due regard to the language used therein. Statement of objects and reasons is undoubtedly an aid to construction but that by itself cannot be termed to be and by itself cannot be interpreted. It is an useful guide but the interpretations and the intent shall have to be gathered from the entirety of the Statue and when the language of the Section providing an appeal to a forum is clear and categorical no external aid is permissible in interpretation of the same. The Legislature has deliberately used "every Order" and if the restrictive meaning is attributed, as has been so done by the High Court, then the word "every" in any event becomes totally redundant but since the Legislature avoids redundancy and every word used in the

particular provision shall have to be attributed a meaning and attribution of any meaning to the word ''every'' by itself would negate the interpretation as found favour with the High Court. The word ''every'' has been totally ignored, which is neither permissible nor warranted.

11. In that view of the matter the Order and Judgment under appeals cannot be sustained since the same is opposed to all norms of construction and interpretation of the Statute.

12. The appeals are thus allowed and Judgment and Order impugned in the appeals stand set aside. Since appeals before the High Court were dismissed on a preliminary point and by reason of the consequence noticed herein before, we direct that the appeals be heard with utmost expedition by the concerned District Judge in terms of the requirement of the Statute within a period of four months from the date of communication of this Order. No costs.