
(2015) 02 BOM CK 0155

Bombay High Court

Case No: Writ Petition Nos. 11606, 11609, 11610 and 11611 of 2014

Gajanan Shivram Lele
and Others

APPELLANT

Vs

Dena Bank and Others

RESPONDENT

Date of Decision: Feb. 23, 2015

Acts Referred:

- State Financial Corporations Act, 1951 - Section 3, 32G, 4(1)

Citation: (2015) 2 ABR 724 : (2015) 5 ALLMR 54 : (2015) 3 MhLj 735

Hon'ble Judges: M.S. Sonak, J.

Bench: Single Bench

Advocate: V.Y. Sanglikar, for the Appellant; Rajesh Shethia, Advocates for the Respondent

Judgement

M.S. Sonak, J.

Rule in each of these petitions. With the consent of and at the request of the learned counsels for the parties, Rule is being disposed of finally.

2. In each of these cases, proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("said Act") are pending before Mr. E. Rajshekhar, Estate Officer, the respondent no.2 herein. The petitioners have however invoked the extra ordinary jurisdiction of this Court, mainly urging the following:-

a) That the petitioners being pre-nationalisation tenants / occupants of the suit premises, cannot be proceeded against under the provisions of the said Act in view of the law laid down by the Apex Court in the case of [Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. and its Estate Officer](#), ;

b) That Mr. E. Rajshekhar, the Estate Manager had himself recommended the action of eviction against the petitioners and even proposed a line of action to secure the same. Therefore, there is a reasonable apprehension that Mr. E. Rajshekhar is biased.

3. In each of these petitions, the petitioners filed an application before the Estate Officer urging want of jurisdiction in view of the decision of the Supreme Court in the case of Dr. Suhas Pophale (supra). The Estate Officer, by order dated 7 August 2014 has, in terms has held that the documents upon which the petitioners relied to prove their claim of being pre-nationalisation tenants / occupants are required to be proved, in accordance with law and accordingly, it would be appropriate that all the contentions of the petitioners are kept open to be decided finally along with the main application seeking eviction of the petitioners.

4. In so far as the challenge to the orders dated 7 August 2014 are concerned, Mr. Sanglikar, the learned counsel for the petitioners in each of these petitions submitted that the issue raised, being one of jurisdiction, the Estate Officer was obliged to decide the same at the outset and not to defer consideration thereof along with the main application seeking eviction of the petitioners. In this regard, analogy was attempted to be drawn from the provisions contained in Section 9A of the Civil Procedure Code (CPC) (as applicable in the State of Maharashtra) and the decisions of this Court in the case of [Mukund Ltd. Vs. Mumbai International Airport and Others](#), Mr. Nusli Neville Wadia vs. The New India Assurance Co. Ltd. and Anr. Writ Petition No. 490 of 2008 decided on 28.02.2008.

5. The provisions contained in Section 9A of the CPC per se do not apply to proceedings before the Estate Officer under the provisions of the said Act. Section 9A provides that where at the hearing of application relating to interim relief in a suit, objection to jurisdiction is taken, such issue is to be decided by the Court as a preliminary issue. The decision in the case of Mukund Ltd. (supra) basically concerns the interpretation of the provisions of Section 9A of CPC, as applicable in the State of Maharashtra. There is no similar provision under the said Act.

6. Mr. Sanglikar however contended that the principles of Section 9A of CPC ought to apply to proceedings before the Estate Officer. In the case of Nusli Wadia (supra), this Court did direct the Estate Officer to decide the issue of jurisdiction, because if the Estate Officer were to agree with the petitioner that he had no jurisdiction, the matter would terminate then and there. Such direction, came to be issued in the facts of the said case. The decision in the case of Nusli Wadia (supra) is not an authority for the proposition that this is the only course to be adopted by an Estate Officer, irrespective of the facts and circumstances of the case.

7. In the present cases, the question as to whether or not the petitioners are pre-nationalisation tenants / occupants is a disputed question of fact. If therefore, the Estate officer has deferred the decision upon such issue together with the main application, it cannot be said that the Estate Officer has either acted without jurisdiction or exceeded the jurisdiction vested in him. With regard to matters of procedure, it is not possible to lay down any straight jacket formulae. The procedure to be adopted shall essentially depend upon the fact situation of the matter. In a given case, if there is no

dispute with regard to the factual aspects, the Estate Officer can be directed to address the issue of jurisdiction at the very outset. In the present case, however the issue as to whether or not the petitioners are pre-nationalisation tenants / occupants of the said premises, as a question which would require evidence and proof. Rather than permit evidence on this aspect alone, the Estate Officer by the impugned orders, has directed that such issue of jurisdiction shall be considered along with the main applications seeking eviction of the petitioners. There is no arbitrariness in such an approach. These are not the cases where the petitioners plea that the Estate Officer lacks jurisdiction in the matters has been rejected or turned down. Accordingly, there is no case made out to interfere with the impugned orders made on 7 August 2014 in the facts and circumstances of the present cases.

8. In so far as the second contention is concerned, Mr. Sanglikar made reference to note dated 22 February 2013, by which, the Estate Officer along with two other officials of the bank recommended action to evict the petitioners from the suit premises. On basis thereof, Mr. Sanglikar contended that these are the cases where the respondent no. 2 has personal interest in the matters or in any case has himself already done some act or taken some decision in the matters concerned and therefore ought to be precluded from acting as an Estate Officer in the matters. Mr. Sanglikar, in this regard submitted that pro-active role played by the Estate Officer in the matters, clearly raises reasonable apprehensions of bias in the mind of the petitioners. Permitting the respondent no. 2 to continue as an Estate Officer in the matters, would result in serious violation of principles of natural justice and fair play. Mr. Sanglikar in support of this contention placed reliance upon the following decisions:

- i. [Delhi Fin. Corpn. and Another Vs. Rajiv Anand and Others,](#)
- ii. M/s. Crawford Bayley and Co. and Ors. vs. Union of India and Ors. 2006 (7) SCJ 7
- iii. [J. Mohapatra and Co. and Another Vs. State of Orissa and Another,](#)
- iv. [A.K. Kraipak and Others Vs. Union of India \(UOI\) and Others,](#)
- v. [Manak Lal Vs. Dr. Prem Chand,](#)
- vi. [S. Parthasarathi Vs. State of Andhra Pradesh,](#)
- vii. [State of West Bengal and Others Vs. Shivananda Pathak and Others,](#)
- viii. [Mohd. Yunus Khan Vs. State of U.P. and Others,](#)

9. Mr. Rajesh Shethia, who appears for the respondents submitted that the respondent no. 2 came to be appointed as an Estate Officer for the bank vide Gazette Notification dated 27 September 2011, which is much prior to the commencement of eviction proceedings in the present cases. The Board of Directors of the bank, in its meeting

dated 16 June 2011 had already approved the action of initiating eviction proceedings against unauthorised occupants of the banks residential premises in the City of Mumbai. At this stage, the respondent no. 2 was in no way concerned with the matters. At a subsequent stage, although the same was unnecessary, the Chief Manager, the General Manager and the respondent no. 2 moved a note dated 22 February 2013 seeking permission from the Board to initiate eviction proceedings against unauthorised occupants of residential premises in the City of Mumbai. The Board approved the note in its meeting held on 9 March 2013. Thus, the decision to initiate eviction proceedings was taken at the level of the Board of Directors and the circumstance that the respondent no. 2 was one of the signatories to the note dated 22 February 2013 would give rise to no reasonable apprehension of any bias on his part. Mr. Shethia, placed reliance upon the decision of the Apex Court in the case of [Tata Cellular Vs. Union of India](#), to contend that where the officer in discharge of the statutory duties made some recommendation, there arises no question of bias when such officer was not a decision maker at all but was one of the recommending authorities. Mr. Shethia, also relied upon the following decisions in support of his case:

I. [M.L. Joshi Vs. Director of Estates, Government of India, New Delhi and Another](#),

II. [Blaze and Central \(P.\) Ltd Vs. Union of India and Others](#),

10. There is no material placed on record by the respondents in support of their contention that the board in its meeting held on 16 June 2011 had already approved the action plan for initiation of eviction proceedings against the occupants of Denawadi property at Thakurdwar, Mumbai in which the suit premises are located. The note dated 22 February 2013 makes reference to the meeting of the Board held on 16 June 2011, in which it was suggested that the time bound action plan for initiating eviction proceedings to be prepared. The note proceeds to state that the General Manager (Legal) may discuss with the Estate Officer and work out an action plan which may be put up to the Board. Accordingly, compliance report came to be submitted to the Board in its meeting held on 29 September 2011 and the contents thereof were only "noted" by the Board.

11. The case of the petitioners is mainly based upon the note dated 22 February 2013, to which the respondent no. 2 is admittedly a signatory. The note, to begin with, gives a background of certain pending proceedings. Thereafter there is reference to details of previous board notes, action plan to take back premises from unauthorised occupants of residential premises and finally the recommendations. The action plan makes specific reference to Denawadi property at Thakurdwar, Mumbai. The recommendations read thus:

D. Deptt's recommendations:

Now Bank intends to initiate

Eviction proceedings against the unauthorised occupants of above residential tenanted properties because Bank is not in a position to provide staff quarters to its employees. At present Bank can accommodate and give quarters to its officers of scale IV and above and many of Bank's officers of scale III and below could not be provided with staff quarters although as per Bank's Service Regulation, Bank has to provide quarters to them.

Therefore there is acute need of premises to accommodate the Bank's employees working in Mumbai and future Bank employees who will be transferred to as well as newly recruited in Mumbai. In view of above, Bank intends to initiate Eviction proceedings against the unauthorised occupants of residential tenanted premises spread in the City of Mumbai's prime locations. Earlier the Board directed the Bank to identify tenants for commercial premises and to initiate eviction proceedings against them. Vide Resolution No. 21013/1/2000 Pol.1 dated 30/05/2002, in the Gazette of India, Part I, Section I dated 8/6/2002, Govt. of India, New Delhi published the guidelines and the gist of which is reproduced here below:

Guidelines to prevent arbitrary use of powers to evict genuine tenants from public premises under the control of Public Sector Undertakings / Financial Institutions.

The relevant part of the guidelines as applicable are reproduced here below:

It is necessary to give no room for allegations that evictions were selectively resorted to for the purpose of securing an unwarranted increase in rent, or that a change in tenancy was permitted in order to benefit particular individuals or institutions. In order to avoid such imputations or abuse of discretionary powers, the release of premises or change of tenancy should be decided at the level of board of Directors of Public Sector Undertakings.

In view of the above, we seek approval of the Board to initiate Eviction proceedings against all the tenants of residential premises spread in the City of Mumbai as stated above. With the above action as proposed, all the commercial as well as residential tenanted premises will be covered under PP(E) Act, 1971 as on date.

We recommend.

Sd/-

Chief Manager (GAD)

Sd/-

Asst Gen Manager (GAD)

Sd/-

12. In the case of Delhi Financial Corpn. (supra), the Supreme Court has held that the doctrine that "no man can be a judge in his own cause" can be applied only to cases where the person concerned has a personal interest or has himself already done some act or taken a decision in the matter concerned. Merely because an officer of a Corporation is named to be the authority, does not by itself bring into operation the doctrine. For the doctrine to come into play, it must be shown that the officer concerned has a personal bias or connection or personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or other which he may be interested in supporting. This position, was in the context of Section 32G of the State Financial Corporations Act, 1951, under which the Managing Director of the State Financial Corporation was appointed by the State Government as the authority to recover amounts due to the financial corporation as arrears of land revenue.

13. In the case of M/s. Crawford Bayley and Co. (supra), the Apex Court was concerned with appointment of Estate officers under Section 3 of the said Act. The validity of Section 3 of the said Act, to the extent it permitted the appointment of officer of the statutory authority as an Estate officer was challenged along with the very appointment of the Estate Officer in the fact situation of the said case. The larger challenge to Section 3 of the said Act was rejected by the Apex Court. In so far as challenge to the appointment of Estate Officer is concerned, by relying upon the decision in the case of Delhi Financial Corporation (supra), it was held that for the doctrine of bias to be attracted, it shall have to be demonstrated that the Estate Officer had some personal interest in the matter or was a person who has acted in the matter concerned and has already taken decision which he may be interested in supporting. The Apex Court observed that this is a matter of factual inquiry. The Apex Court also recorded the statement of the Additional Solicitor General of India that new Officer shall be appointed as an Estate Officer and the one alleged to have been associated as an officer dealing with eviction matters will not preside over as an Estate Officer. In view of such statement, the matter was not prosecuted further.

14. There is no necessity to refer to several other decisions, upon which reliance was placed by Mr. Sanglikar. The aforesaid two decisions of the Apex Court provide that in order to establish bias, it shall have to be demonstrated that the Estate Officer concerned had some personal interest in the matter or that he has acted in the matter concerned or has already taken a decision which he may be interested in supporting. Undoubtedly, this is a matter of factual enquiry.

15. In the present cases, there is no doubt that the respondent no. 2 has himself already done some act or taken decision in the matter concerned. The apprehension expressed by the petitioners that the respondent no. 2 may be interested in supporting his act or decision in the matter concerned, cannot in the facts and circumstances of the present cases, be described as some unreasonable apprehension. If the note dated 22 February 2013 is perused, then it is clear that the respondent no. 2 was one of the officers, who

was instrumental in providing the Board with an action plan for securing the eviction of the occupants of Denawadi property at Thakurdwar, Mumbai. This is despite the fact that the respondent no. 2 by notification dated 27 September 2011 had already been appointed as an Estate Officer and therefore was aware that ultimately the proceedings for eviction of the occupants would be filed before him or that he shall be the statutory authority for the purposes of the eviction proceedings against the occupants. The recommendations made by the respondent no. 2, though in his capacity as Assistant General Manager (GAD) make reference to the scarcity of accommodation for the employees of the bank and the acute need of premises to accommodate the bank's employees working in Mumbai as also employees who in future will be recruited or transferred in Mumbai. The note seeks approval of the Board to initiate eviction proceedings against all the tenants of the residential premises spread in the City of Mumbai and further recommends such action, so that the premises are available for allotment to the bank's present and future employees as and by way of staff quarters. In the wake of the contents of the aforesaid note dated 22 February 2013 it cannot be said that the apprehensions expressed by the petitioners with regard to the bias of the respondent no. 2 are unreasonable.

16. The test in such matter is not of "actual bias", but rather the test is that of "reasonable apprehension of bias". The real question is not whether the respondent no. 2 is actually biased but whether there is reasonable ground for believing that he is likely to be biased or whether there is substantial possibility of bias. In deciding the question of bias, human probabilities and the ordinary course of human conduct have to be taken into consideration. In such matters, it may not be necessary to prove actual prejudice, what is necessary is to see whether a reasonable impression was created in the minds of the petitioners whose rights are being adjudicated, that there may be a likelihood of bias. What is objectionable in such cases is not that the decision is actually tainted with bias but that the circumstances are such as to create reasonable apprehension in the minds of others that there is a likelihood of bias affect the decision.

17. In the case of [Prem Bus Service \(Private\) Ltd. Vs. Regional Transport Authority, Patiala and Another](#), . where a member of the Tribunal had recommended a particular applicant for a permit, it was held that such member will be disqualified from sitting as a member of the Tribunal to decide the matter. In the case of *M/s. J. Mohapatra and Co.* (supra), the Supreme Court held the committee which recommends selection of books to the Government must not comprise any person who may have himself written the book or published the same or have any other interest in the selection of the same.

18. Accordingly, there is no merit in the contention that the respondent no. 2 was only the recommending authority or that the respondent no. 2, in making the recommendation had acted in his capacity as the Assistant General Manager (GAD). There is no material placed on record that the respondent no. 2, in his capacity as an Assistant General Manager (GAD) had to essentially associate himself with the process for securing the approval of the Board, to initiate eviction proceedings against the tenants / occupants. There is no material on record that "action plan" for eviction of unauthorised tenants /

occupants had to be prepared in consultation with the respondent no. 2, despite full knowledge that the adjudication with regard to the unauthorized occupation of the tenants / occupants would ultimately lie before such Estate Officer 15 AIR 1968 Punjab and Haryana 344 i.e. the respondent no. 2. In such circumstances, it is clear that the respondent no. 2 has himself already done some act or taken a decision in the matter concerned. Accordingly, it may not be proper for the respondent no. 2 to continue as an Estate Officer in the present proceedings.

19. In the case of Tata Cellular (supra), the Hon"ble Apex Court was concerned with the issue of acceptance of tender. In that context, it was held that Mr. B.R. Nair, against whom bias was alleged, was not a decision maker but only one of the recommending authorities. Further, the association of Mr. B.R. Nair in the process was indispensable. It is under these circumstances that the Hon"ble Apex Court approved the action of the High Court in applying the doctrine of necessity. In the present case, there is no material to indicate that the association of the respondent no. 2 with the process was indispensable, so as to apply the doctrine of necessity. This was not even the case urged by the respondents. Therefore, the decision of the Apex Court in the case of Tata Cellular (supra) is not attracted to the fact siltation of the present case.

20. In the case of M.L. Joshi (supra), the learned Single Judge of the Delhi High Court has held that merely because the Estate Officer may have issued notice under Section 4(1) of the said Act, such Estate Officer is not precluded from conducting further proceedings and the doctrine that no person can be a judge in his own cause, is not attracted. The decision of the Delhi High Court is not at all attracted to the facts and circumstances of the present case, because, it is not even the contention of the petitioners that the Estate Officer is barred from proceeding with the matter merely because he may have issued the notices under Section 4(1) of the said Act.

21. In the case of M/s. Blaze and Central (P) Ltd., (supra), the Estate Officer as adjudicating authority decided that he wanted the premises in question for his own use. In these circumstances, the learned Single Judge of the Karnataka High Court held that the Estate Officer was vitally interested in the cause. From the very start of the proceedings, the impression gained that the dice were loaded against the parties whose eviction was sought. No amount of evidence could remove that impression or establish affirmatively that end result of the Estate Officer was a product of detachment and impartiality. The likelihood of bias animating the mind of the Estate Officer was inevitable and his exercise was very much conscious and not unconscious. This decision is not an authority for the proposition that bias can arise only where it is conclusively established that the Estate Officer concerned is personally interested in the subject matter or subject premises. In fact the decision of the Karnataka High Court, to a certain extent assists the case of the petitioners, when it quotes with an approval Lord Denning M. R. in Metropolitan Properties Co. (F.C.G.) Ltd. v. Lannon, (1969) 1 QB 577ENDLAWFINDER to say that the Court does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The court looks at the impression which

would be given to other people. The court will not enquire whether the judge did in fact, favour one side unfairly. Suffice that reasonable people might think that the judge did. The reason is plain enough. Justice must be rooted in confidence and confidence is destroyed when right minded people go away thinking "the Judge was biased".

22. In the case of Maneklal (supra), the Supreme Court has held that it is of the essence of judicial decisions and judicial administration that judges should be able to act impartially, objectively and without any bias. In such cases, the test is not whether in fact a bias has affected the judgment, the test always is and must be whether a litigant would reasonably apprehend that the bias attributable to a member of the Tribunal might have operated against him in the final decision of the Tribunal. It is in this sense when it is often said that justice must not only be done but also must appear to be done.

23. Mr. Shethia, then contended that the petitioners ought to have raised objection with regard to bias at the earliest opportunity and since they have not done so, the same is deemed to have been waived by them. In the peculiar facts and circumstances of the present cases, it cannot be said that such is the position. The petitioners have raised objection with regard to bias within a reasonable period from the knowledge with regard to the note dated 22 February 2013. The note indicates the involvement of the respondent no. 2 in the process of initiation of eviction proceedings against the petitioners. Accordingly, it cannot be said that the petitioners have waived their rights to raise the issue of bias.

24. Upon careful consideration of the facts and circumstances, which include inter alia the note dated 22 February 2013, to which the respondent no. 2 is a party signatory, as well as the law on the subject, the respondent no. 2 is liable to be restrained from acting as an Estate Officer in the matters of the eviction against the petitioners. The respondent no. 1 bank shall however be at liberty to approach the appropriate government for securing the appointment of any other officer to act as Estate Officer in the matters, as long as such officer is not personally interested in the subject matter of eviction or has not already done some act or taken a decision in the matters concerned. Such Estate Officer can then, proceed with the matters from their present stage. The respondent no. 2 has not, as yet proceeded substantially in the matter.

25. Rule is accordingly made absolute in terms of prayer clauses (b) in each of the petitions, along with liberty as aforesaid.

26. In the facts and circumstances of the present cases, there shall be no order as to costs.