

Emperor Vs Aziz Gaffoor Kazi

Court: Bombay High Court

Date of Decision: Aug. 23, 1927

Acts Referred: City of Bombay Municipal Council Act, 1988 " Section 248(1)(c)

Citation: (1928) 30 BOMLR 1439

Hon'ble Judges: Patkar, J; Baker, J

Bench: Division Bench

Judgement

Baker, J.

This is an application for revision of the conviction by the Fourth Presidency Magistrate of the applicant on a charge u/s 248(1)

(c) of the City of Bombay Municipal Act, III of 1888.

2. Section 248 of the Act lays down that where any premises are without a water-closet, or privy, or urinal, or bathing or washing place, or if the

Commissioner is of opinion that the existing water-closet, or privy, or urinal, or bathing or washing place accommodation available for the persons

occupying or employed in any premises is insufficient, inefficient, or on any sanitary grounds objectionable, the Commissioner may, with the

previous approval of the Standing Committee, by written notice, require the owner of such premises to provide additional accommodation, or to

make structural or other alterations or to substitute water-closet accommodation for privy accommodation

3. The facts in this case are that the applicant Aziz Gaffoor Kazi entered into an agreement with Mrs. Hamabai J.K. Mehta who was the owner of

the premises in dispute for a period of three years. By this agreement the owner granted to the applicant the right to recover rents of the premises

in question on payment by him to her on a monthly sum of rupees 1250 for a period of three years, and amongst the clauses of this agreement, by

Clause 6 the rent contractor, that is the applicant, agreed to carry out all repairs to the properties except heavy repairs and to do all acts and things

required by the Municipality or any other public authority to be done by the owner or by the tenant, and it was provided that the rent contractor

should be liable at his own costs to carry out all such requisitions as may be necessary either on account of the nature of the user of the said

premises or of any part or parts thereof or for any other reason.

4. It so happened that the Municipality held that the sanitary accommodation in this place was insufficient and required water-closets to be

provided in place of the existing privies. The applicant was required to carry out this work which he did not do and he was consequently

prosecuted by the Municipality for disobeying the order made u/s 248(1)(c) of the City of Bombay Municipal Act and was convicted by the

Fourth Presidency Magistrate and fined rupees 25. Against this order he Aziz has presented the application for revision.

5. The case has been argued by the learned pleader on behalf of the applicant at some length and he has quoted certain observations from rulings

by the English Courts, but I do not think it is necessary to refer to them as they deal with the definition of the word "owner" occurring in certain

English Acts. The present case turns entirely upon the definition of "owner" in the City of Bombay Municipal Act of 1888, and we must be guided

entirely by that definition in disposing of the present case. In that Act the word "owner" is defined in Section 3, Clause (m), which says : "owner"

when used in reference to any premises, means the person who receives the rent of the said premises, or who would be entitled to receive the rent

thereof if the premises were let, and includes (i) an agent or trustee who receives such rent on account of the owner;..." The remaining sections

of the definition are not relevant to the present case.

6. Now, it is quite clear that the present applicant falls under the definition of "owner" in this section. He is the person who under his agreement

with the owner receives the rent of the said premises. It has been argued by the learned pleader on his behalf that he hands the rent over to the

owner. If that is correct, which in my judgment it is not, he still would be an agent or trustee who receives such rent on account of the owner, and,

therefore, comes within the definition in the section. But, as a matter of fact, under the agreement he does not pay the rent to the owner. He makes

a fixed payment of rupees 1250 a month to the owner irrespective of whether any rent was actually received by him or not. It is quite clear that he

is a person who receives the rents of the said premises, and therefore he falls within the definition of "owner" in Section 3, Clause (m), of the Act

and as such he is the person who u/s 248 of the Act is liable to comply with the requisition of the Commissioner to provide improved sanitary

arrangements or to substitute water-closets for the existing privies.

7. We have nothing to do with the question of the hardship which may be caused to the applicant by the requisition which according to him

involves an expenditure of about Rs. 5,000. Under the agreement, as has been already pointed out, the owner undertook to do heavy repairs but

the applicant undertook to comply with the requisitions of the Municipality requiring the owner or the tenant to do any act or thing, and he is liable

under his own agreement carry out all such requisitions as may be necessary at his own expence. It may be that when he entered into the

agreement he did not foresee that during the continuance of it a requisition involving such a heavy expenditure as this might be made by the

Municipality. However, that is a question into which we cannot go. I am clearly of opinion that the applicant falls within the definition of "owner" as

given in Section 3, Clause (m), of the Act, which is the definition by which we must be guided in disposing of the present case.

8. I, therefore, think that the conviction is correct and the rule should be discharged.

Patkar, J.

9. I agree. The accused in this case admittedly receives the rent of the premises. He, therefore, receives the rent either on his own account or on

account of the owner. If he receives the rent of the said premises on his own account by virtue of the lease, he falls within the principal definition in

Clause (m) of Section 3. If, on the other hand, he receives the rent as agent on account of the owner, he falls within the inclusive definition in

Clause (m).