Municipal Corporation for Greater Bombay

Vs

Lala Pancham of Bombay & Others

Civil Appeal No. 134 of 1964

(P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, Raghubar Dayal, J. R. Mudholkar JJ)

01.10.1964

JUDGMENT

MUDHOLKAR J.

The question which falls for decision in this appeal from the judgment of the High Court of Bombay is whether the suit instituted by the plaintiffs in the City Civil Court, Bombay, was maintainable. The plaintiffs are some of the tenants occupying different rooms in a group of buildings known as Dhobi Chawls (and also known as the Colaba Land Mill Chawls) situate on Lala Nigam Road, Colaba, Bombay. There are a large number of other tenants also who reside or carry on business in these Chawls and the plaintiffs instituted a suit in a representative capacity on behalf of all the tenants. The first defendant to the suit is the Municipal Corporation of Greater Bombay and the remaining defendants 2 to 4 are landlords of the plaintiffs.

The buildings and the land on which they stand belong to the Colaba Land Mill Co., Ltd., Bombay. Under an agreement dated May 16, 1956 called the Demolition Agreement defendants 2 to 4 undertook for a certain consideration to demolish the buildings which are admittedly in a dilapidated condition after taking the permission of the Rent Controller, Bombay. Under cl. 7 of that agreement defendants 2 to 4 were to be put in possession of the buildings and land on which they stand, with leave and licence of the Company and were liable to pay Rs. 20,221-8-0 p.a. to the Company till the demolition of the buildings and thereafter they were to hold the land as tenants at will of the Company. Until the demolition of the buildings, defendants 2 to 4 were entitled to the rents payable by the tenants occupying the buildings and were liable to pay monthly taxes, insurance premia and other dues payable in respect of the buildings. After the demolition of the buildings defendants 2 to 4 were entitled to all the materials and debris but had to pay Rs. 40,000 as the price thereof to the Company. Out of this amount these defendants had to pay and had actually paid Rs. 10,000 at the time of the agreement.

The plaintiffs' contention is that the buildings were in a dilapidated condition for a number of years and that between August 1951 and May 1956 as many as 138 notices were served on the Company for effecting repairs to the buildings but they took no action whatsoever in this regard. The plaintiffs further say that between November 1956 and January 29, 1960, eleven notices were served on defendants 2 to 4 for the same purpose but no action was taken by them either on those notices. Further the Company and defendants 2 to 4 were prosecuted 71 times for not complying with the notices but even these prosecutions proved ineffective. Their contention is that the Company as also defendants 2 to 4 deliberately refrained from carrying out the repairs because they wanted to demolish the buildings and in order to facilitate the attainment of this object they invited various notices issued by the Corporation and the prosecutions launched by it.

The plaintiffs admit that the Corporation, in exercise of the powers conferred by s. 354R of the Bombay Municipal Corporation Act, 1888 (hereafter referred to as the Act) have declared the area in which the buildings stand as a clearance area and under s. 354RA of that Act made a clearance order which has been duly confirmed by the State Government. According to them, however, these provisions are ultra vires of Arts. 19(1)(f) and (g) of the Constitution. Further, according to them the first defendant has abused the provisions of the Act and that the action taken by it is mala fide. No particulars of mala fides have, however, been set out in the plaint.

The defendants denied that the aforesaid provisions are ultra vires and also denied that the Order was made mala fide. They further contended that the present suit was barred by virtue of the provisions of cl. (2) of Schedule GG to the Act and was also barred by time.

The trial court dismissed the suit mainly upon the ground that it was not tenable. An appeal was taken by the plaintiffs to the High Court which was dismissed summarily by Datar J., on August 25, 1961. On the same day the plaintiffs preferred an appeal under the letters patent which went up before a Division Bench consisting of Patel and Palekar JJ. The learned Judges permitted the plaintiffs to amend the plaint overruling the objections of the defendants. In their judgment the learned Judges held that the suit was not barred. Then they proceeded to consider the question of mala fides. According to them the plaintiffs had pleaded mala fides but that they had omitted to give particulars. They also observed that it was true that no evidence was led by the plaintiffs before the trial court and ordinarily they would not have been entitled to lead fresh evidence at that stage, much less so at the stage of the appeal under letters patent. According to them, however, it is not possible to dispose of the case on the material on record, that there are certain documents on record which, if unexplained, "support in a large measure the contention of the plaintiffs that defendants 2, 3 and 4 obtained an order by fraud and also that the order was mala fide." After referring to some of these documents they observed : "Though therefore no evidence is led on the question of mala fides or fraud committed upon them, it prima facie leads to such an inference, and it would not be proper to decide the question without requiring further evidence." This observation was followed by another which, we think, is a very unusual one. It is this : "We particularly want the Commissioner and the City Engineer and the defendants to be examined on this question." Eventually, the learned Judges remitted the case to the City Civil Court for recording additional evidence and directed that Court to certify the evidence and its findings by the end of November, 1962. After the grant of special leave to the appellants the proceedings before the City Civil Court have been stayed.

We must first address ourselves to the question as to whether the High Court was justified in permitting the amendment to the plaint. By that amendment the plaintiffs have added paragraph 8A to the plaint. There they have purported to summarise the correspondence which took place between the plaintiffs and the officers of the Corporation and between the landlords and the Corporation. Then they have stated as follows :

> "In the premises the plaintiffs say that the defendants 2, 3 and 4 have fraudulently and wrongfully induced the 1st defendant to make the side order. In the alternative and in any event the plaintiffs say that as defendants 2, 3 and 4 have derised (sic) their responsibility to provide accommodation to all the tenants in the new buildings intended to be constructed on the site, the plaintiffs will submit that the approval of the Improvement Committee to the said order and the subsequent confirmation thereof by the Municipal Corporation and Government was given under a mistake of fact and under circumstances not warranted by the provisions of section 354R and of the law. In the circumstances the plaintiffs submit that the said orders passed by the

> 1st defendant under section 354R have been passed in utter disregard and in violation of the strict provisions of the said section. The plaintiffs submit that the 1st defendant failed and neglected before making the said order to take any measures whether by arrangement of the programme or otherwise to ensure that as little hardship as possible was inflicted on the tenants. The plaintiffs accordingly submit that the said orders are illegal, invalid and void."

In the plaint as originally filed, in paragraph 9 they have said the following on the question of mala fides :

> "The plaintiffs submit that the action sought to be taken is a clear abuse of the provisions of the Bombay Municipal Corporation Act and as such ultra vires the powers conferred upon the defendant No. 1 by the said Act. The plaintiffs, therefore submit that the action of the defendant No. 1 is mala fide."

In the earlier paragraphs the plaintiffs have challenged the validity of ss. 354R and 354RA on the grounds that they confer untrammelled and uncontrolled executive discretion upon the Corporation and its officers and also upon the ground that they are violative of the plaintiffs' rights under Art. 19(1)(f) and (g) of the Constitution. They have not indicated why the making of the clearance order by the Corporation was an abuse of the provisions of the Act. No doubt, later in paragraph 9 they say that the Corporation failed to give a hearing to the plaintiffs and that had they been given an opportunity they would have satisfied the Corporation that the premises in question did not require to be pulled down. While therefore, it is true that the plaintiffs have characterised the action of the Corporation as mala fide the grounds upon which the action is characterised as mala fide appear to be (a) the unconstitutionality of the provisions of s. 354R and 354RA and (b) failure of the Corporation to give an opportunity to the plaintiffs to satisfy its officers that the premises did not require to be demolished. By the amendment made by them in pursuance of the order of the High Court they have shifted their ground by saying that the landlords have fraudulently and wrongfully induced the Corporation to make the order and plead alternatively that as the landlords have denied their responsibility to provide accommodation to all the tenants in the new building intended to be constructed on the site, a clearance order could not properly be made by the Corporation.

It was urged before us by Mr. Setalvad that an entirely new case has been made out in the amendment and that the plaintiffs did so at the suggestion of the Court. In support of his contention he also referred to the objection of Mr. S. V. Gupte before the High Court to the effect that the plaintiffs had not made an application for the amendment of the plaint. He further, relying upon a reference in the judgment, said that the amendment proposed by the plaintiffs was not found by the Court to be adequate and that it was at the instance of the Court that the plaintiffs proposed the amendment which now actually finds place as para 8A of the plaint. There appears to be good foundation for what Mr. Setalvad says but merely because an amendment was sought by the plaintiffs at the suggestion of the court it would not be proper for us to disallow it unless there are grounds for holding that it was forced upon an unwilling party. That is, however, not the suggestion. For, the court wanting to do justice may invite the attention of the parties to defects in pleadings so that they could be remedied and the real issue between the parties tried. There is, however, another ground and a stronger one which impels us to hold that the amendment should never have been allowed. That ground is that the plaintiffs are now making out a case of fraud for which there is not be slightest basis in the plaint as it originally stood. The mere use of the word mala fide in the plaint cannot afford any basis for permitting an amendment. The context in which the word mala fide is used in the plaint clearly shows that what the plaintiffs meant was that the order of the Corporation

having been made in exercise of arbitrary powers and having the result of adversely affecting the plaintiffs rights under Art. 19(1)(f) and (g) of the Constitution amounted to an abuse of the provisions of the Act and was thus made mala fide.

The High Court was quite alive to the requirement of law that a party should not be allowed to make out a new case by way of an amendment to the pleading. Dealing with this matter the High Court has observed :

> "This brings us to the course which we must adopt in the present case and amendment application. In the plaint, the plaintiff alleged that the order was mala fide and that it was obtained for collateral purposes."

The learned Judges were not correct in observing that it was the plaintiffs' case in the plaint that the landlords had obtained the clearance order or that the Corporation had made that order for a collateral purpose. This impression of the High Court seems to be the basis of the rather curious procedure which it chose to follow in this case. Then the High Court referred to the fact that no evidence whatsoever had been led by the plaintiffs before the City Civil Court to the effect that the order was passed fraudulently or for a collateral purpose. It was alive to the fact that in such a case a party should not be allowed to adduce fresh evidence at the appellate stage and much less so at the stage of letters patent appeal. Then it observed :

> "If the case had rested thus the matter would have been very simple apart from the amendment application. It seems to us however that it is not possible to dispose of this case satisfactorily on the material on record. There are some documents on record which if unexplained support in a large measure the contention of the plaintiffs that defendants 2, 3 and 4 obtained the order by fraud and also that the order was mala fide."

If the High Court, in making these observations, was referring to the provisions of O. XLI, r. 27, Code of Civil Procedure it ought not to have overlooked the mandatory provisions of cl. (b) of sub-r. (1) of r. 27. No doubt, under r. 27 the High Court has the power to allow a document to be produced and a witness to be examined. But the requirement of the High Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the High Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence. The High Court does not say that there is any such lacuna in this case. On the other hand what it says is that certain documentary evidence on record supports "in a large measure" the plaintiffs' contention about fraud and mala fides. We shall deal with these documents presently but before that we must point out that the power under cl. (b) of sub-r (1) of r. 27 cannot be exercised for adding to the evidence already on record except upon one of the grounds specified in the provision. If the documents on record are relevant on the issue of fraud the court could well proceed to consider them and decide the issue. The observations of the High Court that certain documents would support the plaintiffs' contention of fraud only if they were not explained would show that according to it they furnish a prima facie evidence of fraud. There is nothing to show that the defendants or any of them wanted to be afforded an opportunity of explaining the documents. It would further appear that it was not merely for the limited purpose of affording the defendants an opportunity to explain the documents that the High Court remitted the case to the City

Civil Court. For, in the concluding portion of its judgment the High Court has directed as follows :

> "In the result, we remit the case to the City Civil Court for receiving additional evidence as directed by us in the judgment and also to allow evidence on the amendment. We direct that the defendants do file their written statement within three weeks from today, or at such earlier time as they can in answer to the amendment permitted to be made. Discovery and inspection forthwith within a week thereafter. And after this formality is over, the case to be on the board for final hearing for taking evidence on the issue of mala fide and the issues that arise on the amended pleadings between the parties ....."

This clearly shows that what the High Court has in substance done is to order a fresh trial. Such a course is not permissible under O. XLI, r. 27, Code of Civil Procedure. The High Court has quite clearly not proceeded under O. XLI, r. 25 because it has not come to the conclusion that the City Civil Court had omitted to frame or try an issue or to determine the question of fact which was essential to the right decision of a suit. For, the High Court has not indicated which issue was not tried by the trial court. If the High Court meant that the necessary issue had not been raised by the trial court though such issue was called for in the light of the pleadings, the High Court is required under this rule to frame the additional issue and then remit it for trial to the City Civil Court. Finally, this is not a case which was decided by the trial court on any preliminary point and, therefore, a general remand such as is permissible under r. 23 could not be ordered.

The only documents to which the High Court has referred in its judgment as supporting the plaintiffs' allegations of fraud and mala fides are the letter, dated September 3, 1959 which the City Engineer wrote to the Tenants' Association and the letter, dated September 11, 1959 which the Commissioner wrote to the Improvements Committee, In the first of these letters the City Engineer had stated that the landlords had agreed to construct a building consisting of single room tenements for the purpose of letting out at standard rents and that the landlords were taking the responsibility for providing either alternative accommodation to bona fide residents by shifting them temporarily to other premises or by arranging a phased programme of demolition and construction as may be found convenient. How this letter can afford any evidence of fraud or mala fides it is difficult to appreciate. It is not disputed before us that the landlords had constructed some chawls at Kurla and that they had offered to house the tenants of the Dhobi Chawls in the Kurla Chawls temporarily. It was also not disputed that the landlords had agreed to construct, after the demolition work was over, new buildings in which the present tenants would be afforded accommodation at standard rents. Paragraph 3 of the letter of September 11, 1959 quoted by the High Court in its judgment mentions that a representation was received from the tenants to the effect that the landlord should construct a new structure near about the clearance area instead of asking the tenants to go to the Kurla Chawls. But their demand cannot be regarded as reasonable. The landlords are not shown to own any land in the neighbourhood. The correspondence through which we were taken by Mr. Setalvad abundantly shows that land values are very high in Colaba and range between Rs. 250 and Rs. 275 per sq. ft., and the landlords could not be reasonably expected to buy land for the purpose. Moreover, there is nothing to show that any vacant building site was available in the neighbourhood of Dhobi Chawls at the relevant time.

The High Court observed in its judgment that it was only after the scheme was finally approved by the Corporation, confirmed by the State Government and the final orders made by the City Civil Court became operative that the City Engineer wrote to the Tenants' Association stating that no undertaking was given by the landlord. The High Court had apparently in mind the letter dated

April 1, 1960 sent by the City Engineer to the Tenants' Association which is described in the paper book as item No. 38. That letter reads thus :

"Gentlemen,

Reference : Your letter No. Nil, dated 19th February, 1960. The landlord of the above mentioned property has undertaken the responsibility of providing alternative accommodation to bona fide residential tenants at standard rent by constructing a building on one of the plots viz., plot No. 7 at the same site. The question of making the site available for the construction of the said building, either by the tenants shifting temporarily to other place or by the landlord arranging a phased programme of demolition and construction, it is a matter which should be mutually arranged by the landlord and the tenants. The Municipality would facilitate towards arriving at any such arrangement between the two parties as indicated by you, no undertaking has been obtained by the Municipality from the landlord for any phased programme of demolition of the chawls. The landlord will be required to demolish the chawls in compliance with the Clearance Order after the same becomes operative.

As there is no sufficient open space available at the above property, it does not seem feasible to provide temporary accommodation for the tenants at the same site. If the tenants are not in a position to make their own arrangement to shift from the place, they should temporarily shift to tenants (sic) at Kurla offered to them by the landlord with a view to facilitate speedy construction of the proposed building.

Yours faithfully, Sd/-".##

This letter, far from showing that either the Corporation or the landlords had gone back on the assurance of providing the tenants alternative accommodation, reaffirms it. No doubt it says that no undertaking was obtained by the municipality from the landlords to the effect that a phased programme of demolition of the chawls would be followed. This, the City Engineer pointed out, was a matter of negotiation between the landlords on the one hand and the tenants on the other. Having made alternative arrangements for housing the tenants temporarily there was no further responsibility either on the Corporation or on the landlords to do anything more. The High Court, however, thought otherwise and observed : "Though therefore no evidence is led on the question of mala fides or fraud it prima facie leads to such an inference and it is not proper to decide the question without further evidence." It will be repeating ourselves to say that in these circumstances the High Court had no powers to admit additional evidence or to direct additional evidence being taken.

Mr. Shroff who appears for the plaintiffs has referred us to two reports of architects in which the architects have stated that repairs to the building would cost Rs. 2 lacs whereas new buildings would cost Rs. 3 lacs and that, therefore, the best thing for the landlords to do was to approach the Corporation for making a clearance order so that they could eventually construct new buildings on the site. According to learned counsel this circumstance, taken with the fact that there was deliberate avoidance by the landlords and the owners of the Colaba Land Mill Co., Ltd., to comply with the notice of the Corporation to undertake repairs, goes to show collusion between the landlords and the Corporation and that, therefore, it cannot be said that there was no material on record in support of the plea of fraud set out in paragraph 8A. Apart from the fact that the High Court has not referred to this material it is sufficient to observe that though the landlords may have deliberately allowed the buildings to become unfit for human occupation or a danger to the safety of the tenants occupying

them, these matters do not indicate any collusion between the landlords and the Corporation.

We are, therefore, of the view that the High Court was in error in allowing the amendment to the plaint and in remitting the suit to the trial court for a virtual retrial. The High Court, however, did not rest content with this order but further directed "we particularly want the Commissioner and the City Engineer and the defendants to be examined on this question" - the question being the breach of an assurance given to the tenants. In making this direction the High Court may have been actuated by a laudable motive but we think it ought to have borne in mind the limits which the law places upon the powers of the Court in dealing with a case before it. Just as it is not open to a court to compel a party to make a particular kind of pleading or to amend his pleading so also it is beyond its competence to virtually oblige a party to examine any particular witness. No doubt, what the High Court has said is not in terms a peremptory order but the parties could possibly not take the risk of treating it otherwise. While therefore, it is the duty of a court of law not only to do justice but to ensure that justice is done it should bear in mind that it must act according to law, not otherwise. The question then is whether we should send back the matter to the High Court for deciding the question of the vires of ss. 354R and 354RA. It will be remembered that the High Court has not given a finding on this point. We would ordinarily have sent back the case to the High Court for deciding the point. But bearing in mind the fact that the clearance order was made by the Corporation as long ago as May 7, 1959 and confirmed by the State Government on January 23, 1960 and also the possibility of the appeal not being dealt with within a reasonable time by the High Court on account of the congestion of work there, we thought it appropriate to hear the parties on this point as well and to decide it ourselves.

The contention of Mr. Shroff is briefly this. The plaintiffs and those who are occupying the buildings have an interest in them by reason of the fact that they are tenants. As a result of the clearance order they are liable to be evicted from their respective tenements. Therefore, he contends, the Corporation could not make such an order without giving them an opportunity of showing cause against it. According to him, the provisions of ss. 354R and 354RA do not contemplate an opportunity to be given to the tenants before a clearance order is passed and, therefore, the provisions are ultra vires. Further according to him, their suit is not barred by virtue of the provisions of cl. (2) of Schedule GG, because they cannot be said to be "persons aggrieved" by the clearance order. They therefore, did not have a right to prefer an appeal before a Judge of the City Civil Court, Bombay from that order. He also points out that the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 has placed restrictions on the right of a landlord of a house situated in an area like the City of Bombay to which the Act extends, to evict a tenant therefrom by enacting in s. 12 that a tenant shall not ordinarily be evicted as long as he pays the standard rent and permitted increases, whatever may have been the duration of his tenancy, under the original agreement. A right conferred by this provision on the tenant exists independently of the landlord's right to own and possess property and this right could not be interfered with or derogated from by the Corporation by making a clearance order behind the back of the tenant. He admits that under cl. (hh) of sub-s. (1) of s. 13 a landlord will be entitled to recover possession of the premises from the tenant on the ground that they are required by a local authority or other competent authority. But, he argues, this provision furnishes another reason for the tenant being afforded an opportunity by the Act to show cause against a proposed clearance scheme which affects or is likely to affect him inasmuch as he will be bound by the clearance order in a proceeding undertaken by the landlord under s. 13(1) of the Act for recovery of possession of the demised premises on the strength of that order.

We have no doubt that a tenant has both under the Transfer of Property Act and under S. 12 of the

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 an interest in the demised premises which squarely falls within the expressions property occurring in sub-cl. (f) of cl. (1) of Art. 19 of the Constitution. The right which a tenant enjoys under this sub-clause is, however, subject to the provisions of cl. (5) of Art. 19 which, among other things, provides that the right recognised by the sub-clause does not affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses in the interests of the general public. The Bombay Municipal Corporation Act was admittedly an existing law at the date of the commencement of the Constitution but ss. 354R to 354RA were substituted for the earlier provisos by s. 18 of Bombay Act 34 of 1954. So what we have to ascertain is whether the law as it stands imposes a reasonable restriction on the tenant's right to hold the demised premises. For this purpose we will have to examine the provisions of the Act which empower the Corporation to make a clearance order.

> Sub-section (1) of s. 354R provides that if it shall appear to the Commissioner, among other things, (a) that residential buildings in any area are by reason of disrepair unfit for human habitation or for like reason dangerous or injurious to the health of the inhabitants of the area and (b) that the conditions in the area can be effectually remedied by the demolition of all the buildings in the area without making an improvement scheme, the Commissioner can define the area and submit a draft clearance scheme for the approval of the Corporation. The Corporation can then pass resolution declaring that the area as defined and approved by it to be clearance area. Sub-section (2) provides, among other things, that the Corporation should ascertain the number of persons who are likely to be dishoused in such area and thereafter take such measures as are practicable to ensure that as little hard-ship as possible is inflicted on those dishoused. The resolution is then required to be forwarded to the State Government.
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> Sub-section (4) provides as follows :
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> "As soon as may be after the Corporation have declared any area to be a clearance area, the Commissioner shall, in accordance with the appropriate provisions hereafter contained in this Act, proceed to secure the clearance of the area in one or other of the following ways, or partly in one of those ways, and partly in the other of them, that is to say -
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> (a) by ordering the demolition of the buildings in the area; or
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> (b) by acquiring on behalf of the Corporation land comprised in the area and undertaking or otherwise securing, the demolition of the buildings thereon."
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> Sub-section (1) of s. 354RA requires the Corporation to submit the clearance order to the State Government for confirmation. Sub-section (4) reads thus :
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> "Before submitting the order to the State Government, the Commissioner shall -
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> (a) publish simultaneously in the Official Gazette and in three or more newspapers circulating within Greater Bombay, a notice stating the fact of such a clearance order having been made and describing the area comprised therein and naming a place where a copy of the order and of the plan referred to therein may be seen at all

reasonable hours; and

(b) serve on every person whose name appears in the Commissioner's assessment book as primarily liable for payment of property tax leviable under this Act, on any building included in the area to which the clearance order relates and, so far as it is reasonably practicable to ascertain such persons, on every mortgagee thereof, notice stating the effect of the clearance order and that it is about to be submitted to the State Government for confirmation, and specifying the time within and the manner in which objections thereto can be made to the Commissioner."

Under sub-s. (5) objections, if any received by the Commissioner are to be submitted to the Improvements Committee and that Committee is entitled under sub-s. (6) to make such modifications in respect of the order as it may think fit. The matter is then to go to the Corporation and thereafter to the State Government. Sub-section (7) provides that the provisions of Schedule GG to the Act shall have effect with respect to the validity and data of operation of a operation of a clearance order. We are not concerned with the rest of the provisions of s. 354RA. Clause (1) of Schedule GG provides that as soon as the clearance order is confirmed by the State Government the Commissioner has to publish, in the same manner as a notice under sub-s. (4) of s. 354RA, a notice stating that the order has been confirmed. Clause (2) is important and we would reproduce it. It runs thus :

"Any person aggrieved by such an order as aforesaid, or by the State Government's approval of a redevelopment plan or of a new plan may, within six weeks after the publication of notice of confirmation of the order, or of the approval of the plan, prefer an appeal to a Judge of the City Civil Court, Bombay, whose decision shall be final."

It is contended on behalf of the Corporation by Mr. Setalvad and also on behalf of the landlords by the Solicitor-General that a tenant is entitled to raise an objection to the marking of a clearance order not only under cl. (b) of sub-s. (4) of s. 354RA but also in his appeal under cl. (2) of Schedule GG. It is no doubt true that there is no express mention of tenants in either of these provisions but from the fact that cl. (a) of sub-s. (4) of s. 354RA requires the publication of the clearance order it would be reasonable to infer that the object of doing so it to invite objections at the instance of persons who would be affected by the order. Since tenants would be affected by it, they fall in this class. It is true that cl. (b) of that provision contemplates actual service of notice only on the persons primarily liable to pay property tax and on the mortgagees of the property but not on others and also says that the time within and the manner in which objections to the order could be made to the Commissioner should also be specified but it does not say anything regarding the tenants. But if because of this we were to hold that it would not be open to a tenant or any other person who be affected by the order, to lodge an objection to the proposed order it would be marking the publication of notice practically meaningless. Undoubtedly tenants are persons who would be affected by the Order. Sub-section (2) of s. 354R casts certain duties upon the Corporation with respect to the persons who are likely to be dishoused in consequence of the clearance order. It would, therefore, be legitimate to infer that a corresponding right was conferred upon the tenants to secure the performance of its duties towards them by the Corporation. This right would be in addition to their interest in the property itself. They must, therefore, be held to be persons who are entitled to lodge an objection to the proposed order. Mr. Shroff, however, contends that cl. (b) of sub-s. (4) of s. 354RA confines the right to lodge an objection only to the persons specified in that clause and that there is nothing in the language of cl. (a) from which a similar right can be deduced

in favour of other persons. It seems to us that in order to give full effect to the provision of both cls. (a) and (b) of sub-s. (4) the words "and specifying the time within and manner in which objections thereto can be made to the Commissioner" occurring at the end of cl. (b) should be read as governing not only the rest of cl. (b) but also cl. (a). We would not be re-writing the section if we did so because if the object of the legislature was to give a right to lodge objections only to the persons specified in cl. (4)(b), sub-s. (5) would not have said that the Commissioner shall submit to the Improvements Committee the objections received under sub-s. (4), but would have said instead "objections received under cl. (b) of sub-s. (4)".

That a right has been conferred upon a tenant to lodge an objection is made further clear by the provisions of cl. (2) of Schedule GG which we have earlier reproduced. The expression "any person aggrieved" is sufficiently wide to include not only a tenant but also an occupant of a building who is likely to be dishoused as a result of the action taken under a clearance order. The expression "person aggrieved" has not been defined in the Act and, therefore, we are entitled to give it its natural meaning. The natural meaning would certainly include a person whose interest is in any manner affected by the order. We are supported in this by the observations of James L.J., pointed out in Ex parte Sidebotham. ((1880) 14 Ch.D. 458 at p. 465) In re Sidebotham. A similar expression occurring in s. 24(1) of the Administration of Evacuee Property Act, 1950 was the subject of construction in Sharifuddin v. R. P. Singh. ((1956) I.L.R. 35 Pat. 920) The learned Judges there held that these words are of the widest amplitude and are wide enough to include an Assistant Custodian of Evacuee Properties.

Since the right conferred by cl. (2) of Schedule GG upon an aggrieved person is a right to prefer an appeal against a clearance order, as confirmed by the Government, before a Judge of the City Civil Court, Mr. Shroff contends that the words "aggrieved person" therein must necessarily mean a person who was a party to the order. It is true that ordinarily a right of appeal is conferred on a person who is a party to the proceeding but that would be so only where the proceeding is between certain parties. A proceeding of the nature contemplated by s. 354R is not, strictly speaking, a proceedings between the parties ranged on opposite sides. What is contemplated is the exercise of certain powers by the Corporation which will after the interests of a variety of persons or a class or classes of persons and cl. (2) of Schedule GG gives a right to any of them to prefer an appeal if his legal right or interest is affected by any action of the Corporation taken in pursuance of its powers.

Upon a reasonable construction of s. 354RA and Schedule GG it must, therefore, be held that they afford opportunities to tenants to object to the clearance order. It follows from this that the restrictions on the tenants' right to hold property enacted by ss. 354RA and 354RA are not unreasonable and that the provisions are valid. Mr. Shroff agrees that if the restrictions are reasonable his contentions that these provisions are unconstitutional must fail.

Upon the view then that these provisions are valid it must further follow that it was open to the plaintiffs to prefer an appeal before a Judge of the Civil Court. Finality is given to a clearance order after its confirmation by the Government and its confirmation by the Government and its publication in the manner prescribed in cl. (2) of Schedule GG subject only to the result of an appeal preferred under cl. (2) of Schedule GG by a person aggrieved. If no such appeal is preferred or it such appeal is filed and dismissed no remedy by suit is available to person like a tenant who contends that he is aggrieved. Agreeing with the learned City Civil Court Judge we hold that the plaintiffs" suit was not maintainable.

Accordingly we set aside the judgment of the High Court and allow this appeal. We, however, make

no order as to costs.

Appeal allowed.

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