

M/S Velji Lakhamsi and Co. and Others

Vs

M/S Benett Coleman and Co. and Others

Civil Appeals Nos. 915 and 916 of 1972

(R. S. Sarkaria, Jaswant Singh JJ)

14.04.1977

JUDGMENT

JASWANT SINGH, J. –

1. These two appeal by special leave granted by this Court which are directed against the judgment and order dated March 20, 1972 of the High Court of Bombay at Special Civil Applications 1686 and 1687 of 1969 shall be disposed of by this judgment.
2. The subject-matter of dispute which has wanded its way to this Court is a godown, being godown 2 built on Plot 37 bearing C. S. No. 130, Elphinstone Estate at Masjid Siding Road, Kurla Street, Bombay-9 which belongs to Port Trust, Bombay. Respondent 1 in both the above mentioned appeals viz. M/s Benett Coleman and Co. got the aforesaid plot 37 as also plot 36 on lease from the Port Trust, Bombay, on August 1, 1933 on a yearly rent of Rs. 416. 89. On plot 37, the said respondent erected some godowns which alongwith certain other buildings that had grown up in a haphazard manner and could be described as slums were destroyed as a result of terrific explosions which occurred on April 14, 1944 in the Bombay Docks. Being of the view that it was extremely desirable that rebuilding in the devastated are a should be carried out on modern principles of town planning, the Bombay Municipal Corporation by its resolution 763 dated November 23, 1944, declared its intention to formulate a town planning scheme under the provisions of the Bombay Town Planning Act of 1915. The Government of Bombay sanctioned the making of the Scheme by their resolution 5355/33 dated July 9, 1945 published in Official Gazette dated July 12, 1945. As the preparation of the scheme was likely to take time and it was necessary to restrain owners of buildings in the devastated area from reconstructing them in a haphazard manner which would conflict with the proposed scheme, the Governor of Bombay in exercise of the powers vested in him by virtue of the proclamation dated November 4, 1939, issued by him under Section 93 of the Government of India Act, 1935 assuming to himself inter alia all the powers vested by or under the Government of India Act, 1935 in either chamber of the Provincial Legislature made an Act called the City of Bombay (Building Works Restriction) Act, 1944 (Bombay Act XVIII of 1944) (hereinafter referred to as 'the Bombay Act, 1944'). Section 2 of this Act ordained that unless there is anything repugnant in the subject or context, words and expressions used in the Act shall have the same meaning as in the Principal Act viz. the City of Bombay Municipal Act, 1818 (Bombay III of 1888). Section 3 of this Act prohibited every person during the period of one year from the date of the commencement of the Act to do any work of erecting, re-erecting, constructing, reconstructing, adding to or altering or repairing an building, wall or other structure or any part thereof, situate in the area bounded on the South by the northern edge of Carnac Road and Carnac bridge, on the East by the western edge of the Frere Road, on the North by the southern edge of Elphinstone Road and Sandhurst Road and on the West by the eastern edge of Mohamadally Road, or laying out any private street in the said area,

except under the authority of a written permission granted by the Commissioner and in accordance with such conditions, if any, as the Commissioner might think fit to specify in the permission. The proviso to the section authorised the Provincial Government to extend the aforesaid period of one year by means of notification published in the Official Gazette. In exercise of the power conferred by the proviso, the Government of Bombay extended the period referred to in Section 3 of the Act in respect of the restriction on building works without permission upto and inclusive of December 31, 1946. Section 8 of the Act provided that the benefit of any written permission granted under Section 3 shall be annexed to and shall go with the ownership of the building, wall or other structure or private street, as the case may be, in respect of which it was granted and may be enforced by every person in whom that ownership is for the time being vested. By means of notification dated April 3, 1946, the Governor of Bombay in exercise of the powers conferred on him by sub-section (2) of Section 93 of the Government of India Act, 1935 made a proclamation with the concurrence of the then Governor General revoking the aforesaid proclamation dated November 4, 1939 as subsequently varied by the proclamations dated February 15, 1943 and November 20, 1945. Section 93 of the Government of India Act, 1935 under which the proclamations dated November 4, 1939, February 15, 1943, November 20, 1945 and April 3, 1946 were made provided as follows :

93. Provisions in case of failure of constitutional machinery. - (1) If at any time the Governor of a Province is satisfied that a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of this Act, he may by proclamation :

(a) declare that his functions shall to such extent as may be specified in the Proclamation be exercised by him in his discretion;

(b) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority; and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority :

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend either in whole or in part, the operation of any provision of this Act relating to High Court.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) A Proclamation under this section :

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months :

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this sub-section it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.

(4) If the Governor, by a Proclamation under this section assumes to himself any power of the Provincial Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Provincial Acts, Provincial laws, or Acts or laws of a Provincial Legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor General in his discretion.

3. On September 23, 1947, the Municipal Commissioner, Bombay granted written permission (Exh. 'A') to respondent 1 under Section 3 of the Bombay Act, 1944, to raise temporary structure in the form of godowns on the aforesaid plot 37 at C. S. No. 130, Masjid Siding Road, Bombay subject inter alia to the following express conditions :

(a) The provisions of the Municipal Act and bye-laws made thereunder in force from time to time shall be complied with;

(b) The Commissioner may at any time direct the owner of the said premises to pull down or remove the work hereby permitted or any portion thereof forthwith or within such time as he may prescribe. No compensation shall be claimable by or payable to the owner. Further if any such direction is not complied with by the owner, the same may be enforced or carried out in the manner provided by Section 489(1) (of the Municipal Act).

(c) No compensation whatsoever, whether for damages, loss or injury, shall be claimable by or payable to the owner or any other person in respect of any work carried out pursuant to this permit, if the building wall comes within (i) the regular line of any street, (ii) any improvement scheme that may be made under the provisions of the Municipal Act, (iii) any town planning scheme that may be made under Bombay Building Town Planning Act, 1915.

(d) The conditions of this permit shall bind not only the owner of the said premises but also his heirs, executors, administrators.

4. Below the permission so granted, it was endorsed on behalf of respondent 1 that the above conditions were acceptable to it.

5. Pursuant to the aforesaid permission, the respondent erected some godowns, one of which (godown 2) was leased out by it to M/s Velji Lakhamsi and Co., the appellant in Appeal 915 of 1972 on December 21, 1953 for a period of eleven months with effect from February 1, 1954. The period of the lease in favour of the said appellant was extended from time to time on the original terms and conditions with the result that it continued to remain in occupation of the premises. On September 4, 1957, the Government of Bombay sanctioned what came to be called the Town Planning Bombay City 1 (Mandvi and Elphinstone Estates) Scheme under Section 51 of the Bombay Town Planning Act, 1954 (Act XXVII of 1955) which had come into force on August 1, 1957 and fixed December 1, 1957 as the date on which the Scheme would come into operation. A notification was published

in the Official Gazette on September 12, 1957 declaring that the land on which the suit premises stood was affected by the said Scheme. It may be mentioned that under the aforesaid final scheme which became a part and parcel of the Bombay Town Planning Act, 1954, by virtue of Section 51(3) of the Act, certain special regulations were also made by the arbitrator to control development of the area included in the Scheme. On September 10, 1957, respondent 1 issued a notice to the said appellant calling upon it to quit, vacate and deliver quiet, vacant and peaceful possession to it of the said godown. This notice was issued by the respondent on the grounds that the godown was required by it for its bona fide use and occupation and the appellant had sublet and/or transferred interest in the godown to someone else without the permission of the respondent and infringed the terms and conditions of the lease dated December 21, 1953, the period of which had also expired on August 31, 1957. On September 19, 1958, the Municipal Commissioner, Greater Bombay, issued the following notice (Exh. 'B') to respondent 1 :

The Bombay Municipal Corporation Bombay Town Planning Act, 1954 Town Planning Scheme
Bombay City No. 1 Notice No. FE/221

#To The Times of India Owner : Original Plot No. 37 Elphinstone Estate Section.##

WHEREAS the Government of Bombay has been pleased to sanction the above scheme under Section 51 of the Bombay Town Planning Act, 1954 (XXVII of 1955) on September 4, 1957 and to fix December 1, 1957 as the date on which the scheme shall come into operation AND WHEREAS the Notification relating to such sanction has been published under No. TPB-1054-M. Local Self Government and Public Health Department at page 2611 of Part I of the Bombay Government Gazette dated September 12, 1957 and since under Section 53 of the said Act all rights and liabilities created by the said Scheme shall come into force from December 1, 1957 the date notified by Government in their above notification AND WHEREAS you are aware that the land delineated in the Scheme Plans (which may be inspected, if necessary at the office of the City Engineer, Town Planning Scheme No. 1 Bombay Municipal Corporation) upon which your temporary structure stands, is affected by the said Scheme AND WHEREAS all the rights of the local Authority under the Bombay Town Planning Act, 1954 and the Bombay Town Planning Rules, 1955 are hereby expressly reserved AND WHEREAS you are permitted under the City of Bombay (Building Works Restriction Act, 1944, to erect a temporary structure on the terms and conditions mentioned in the said permit AND WHEREAS you agreed to pull down or remove the building or work whenever required by me to do so, you are hereby called upon to pull down and remove the entire building or work in respect of which permission was granted under Permit No. 52/1520/TP dated December 23, 1947 on or before October 30, 1958 failing which I shall cause the building or work to be pulled down or removed under Section 489 of the Bombay Municipal Corporation Act and shall seek to recover the costs thereof as provided by that Municipal Act.

Please note that this notice is being served strictly without prejudice to the rights of the local authority under the Bombay Town Planning Act, 1954 and the Bombay Town Planning Rules, 1955 which rights are hereby expressly reserved.

Dated this 19th day of September, 1958.

Sd/- Municipal Commissioner For Greater Bombay.##

6. On February 22, 1960, respondent 1 issued another notice to M/s Velji Lakhamsi and Co. calling upon it to quit, vacate and deliver peaceful and vacant possession of the godown in its occupation

within 24 hours from the date of the receipt of the notice. This notice of ejection was issued by the respondent to M/s. Velji Lakhamsi and Co. on four grounds viz. (a) that it was in arrears of rent from November 1, 1959 at the rate of Rs. 2500 p.m., (b) that the premises were required by the respondent for the immediate purpose of demolition ordered by the Municipal Commissioner for Greater Bombay, (c) that the appellant had sublet the premises to M/s Jamnadas Bhimji and Co., the appellant in Appeal 916 of 1972 against the provisions of Bombay Act LVII of 1947, and (d) that it was profiteering from such subletting.

7. On M/s Velji Lakhamsi and Co.'s failure to comply with the respondent 1's aforesaid notices calling upon it to vacate the premises, the latter brought a suit in the Court of Small Causes, Bombay on April 18, 1960 for eviction of the former on the ground that the premises were required under Section 13(1) (hhh) of the Bombay Rents (Hotel and Lodging Houses Rates) Control Act, 1947 (hereinafter referred to as 'the Bombay Rents Control Act, 1947') for the immediate purpose of demolition ordered by the Local Authority, i.e. the Town Planning Authorities and the Bombay Municipal Corporation or other competent authority. Although it was also averred by respondent 1 in the plaint that it required the premises reasonably and bona fide for its own use and occupation, it abandoned this plea later on. The said respondent also sought a decree against M/s Velji Lakhamsi and Co. for Rs. 2500 on account of arrears of rent for the month of March, 1960 as also for future mesne profits and costs. M/s Jamnadas Bhimji and Co. being in possession through M/s Velji Lakhamsi and Co. of a part of the premises as a sub-tenant, it was also impleaded by respondent 1 as a defendant to the suit.

8. The suit was contested by the appellants inter alia on the grounds that respondent 1's aforesaid notices to quit were not valid; that they were not bound by any undertaking given by respondent 1 to the Municipal Corporation; that the aforesaid notice (Exh. 'B') given by the Municipal Corporation to respondent 1 did not subsist in view of the fact that the aforesaid scheme having been kept in abeyance, the Corporation did not propose to take immediate action in pursuance of the notice; that nothing was outstanding against M/s Velji Lakhamsi and Co. by way of arrears of rent and that Rs. 2500 p.m. claimed by respondent 1 was far in excess of the standard rent. On the pleadings of the parties, the trial Court framed the following issues :

1. Is the tenancy of defendant 1 not properly terminated ?
2. Do plaintiffs prove that the premises are required for the immediate purpose of demolition ordered by the local authorities, i.e. the Town Planning Authorities and the Municipality or other competent authorities ?
3. To what degree, if any, are the plaintiffs entitled ?

9. On a consideration of the evidence adduced in the case, the trial Court by its judgment dated September 12, 1963 negated the contentions raised by the appellants and decreed the suit and ordered the appellants to deliver possession of the suit premises to respondent 1 by September 11, 1964, holding that the tenancy of M/s Velji Lakhamsi and Co. had been validly terminated; that respondent 1 having been served with a notice of demolition by the local authority, it had fulfilled the requisite of the requirement of the premises for the immediate purpose of demolition as contemplated by Section 13(1) (hhh) of the Bombay Rents Control Act, 1947; that while clause (hh) of Section 13(1) of the Act relates to landlord's intention to demolish the building of his own volition and to erect a new building, its succeeding clause (hhh) relates to forcible demolition ordered by the local authority or by a competent authority whose powers are not hampered in any

way by the provisions of the Rent Act; that if the local authority issued a notice that the premises are required for the purpose of demolition, it would not then be open either to the landlord or the tenant, whosoever may be in possession, to question the authority by trying to seek protection under the provisions of the Rent Act, and whenever such a notice was issued, the purpose would have to be taken to be immediate in spite of the fact that the actual implementation of the Scheme may take some time. The Court further held that as the Scheme had been sanctioned, the Commissioner who gave the notice (Exh. 'B') should be deemed to have given it as a competent authority under the Municipal Act.

10. Aggrieved by this decision, the appellants in both the appeals preferred separate appeals to the Appellate Bench of the Court of Small Causes at Bombay which were allowed by a common judgment dated December 10, 1968, with the observations that the conditions which the Commissioner laid down in the written permission (Ex 'A') granted under Section 3 of the Bombay Act, 1944 (made by the Governor under the proclamation dated November 4, 1939) were not analogous to statutory rules and regulations or bye-laws; that the said Act which was of temporary character having lapsed on April 3, 1948, the Commissioner ceased to have statutory authority to call upon respondent 1 to demolish the suit premises and thus to enforce the conditions mentioned in Exhibit 'A' which also lapsed on the expiry of the Act and as the notice (Ex 'B') by the Municipal Commissioner to respondent 1 was not under the contract between him and respondent 1, it could not be called an order within the meaning of Section 13(1) (hhh) of the Bombay Rents Control Act, 1947 and form the basis of a suit for eviction of the appellants from the suit premises. The appellate Bench, however, held that there was no substance in the argument advanced on behalf of the appellants that the final scheme having been kept in abeyance the requirement of respondent 1 could not be called an immediate purpose of demolition as ordered by the local authority. The appellate Bench further remarked that if the notice (Ex 'B') could be construed as an order under Section 13(1) (hhh) of the Bombay Rents Control Act, 1947, the purpose for which respondent 1 called upon M/s. Velji Lakhamsi and Co. to vacate the premises would be for the immediate purpose of demolition as ordered by the local authority. Respondent 1 thereupon took the matter to the High Court of Judicature at Bombay by means of the aforesaid petitions 1686 and 1687 of 1969 under Article 227 of the Constitution. By its judgment dated March 20, 1972, the High Court granted the petitions and set aside the judgment and decree passed by the appellate Bench of the Court of Small Causes and restored those of the Trial Court holding that the notice (Ex. 'B') given by the Municipal Commissioner on September 19, 1958, was clearly an order of demolition by the competent authority; that if the Commissioner granted any permission to build some work subject to certain conditions which he could have imposed during the period in which the restrictions imposed by Section 3 of the Bombay Act, 1944 were in force, it could not be legitimately contended that the person who contravened the conditions by which he was bound could not be dealt with under Section 5 and 6 of the Act; that the mere fact that the respondent 1 had agreed to the conditions specified in Exhibit 'A' did not in any way effect the legal consequences of the permission or the legal nature of the power exercised by the Commissioner under Section 3 of the Act and that as long as the structures built under that permission stood, the Commissioner could have called upon respondent 1 to remove the same; that the Commissioner was within his powers to issue the notice (Ex 'B') dated September 19, 1958, and that the trial Court was right in its view that the said notice was an order within the meaning of Section 13(1) (hhh) of the Bombay Rents Control Act, 1947. With regard to the appellants' plea that the notice (Ex 'B') had lost its efficacy as the town planning scheme had been held in abeyance, the High Court observed :

It may be that the town planning scheme is in abeyance for the very fact that persons like Mr. Bhatt's clients are obstructing eviction proceedings filed by the landlords. It

may be that there are very many other reasons for its abeyance. The question that the Court must consider under Section 13(1) (hhh) is as to whether the landlord is entitled to recover possession as the premises are required for the immediate purpose of demolition. It may be that some landlords would like to postpone the removal of the structure. But where a landlord bound by the notice, wants to comply with the notice issued to him by the Municipal Commissioner without delaying further in the matter and perhaps is eager to co-operate with the authorities in enforcing the town planning scheme, it cannot be said that he does not require the premises for the purpose of demolition.

11. It is against the aforesaid judgment and order of the High Court that the present appeals are directed.

12. Appearing in support of the appeals, Mr. Patel and Mr. Bhatt, learned Counsel for appellants in C. A. 915 of 1972 and C. A. No. 916 of 1972 respectively have reiterated almost all the contentions raised on behalf of their clients before the courts below regarding the validity and efficacy of the notice (Ex 'B'). They have strenuously urged that the ground specified in clause (hhh) of sub-section (1) of Section 13 of the Bombay Rents Control Act, 1947, on which the suit out of which the present appeals have arisen was based could not be called in aid by respondent 1 as the elements of that clause were not at all satisfied. Elaborating their contention, the learned Counsel have canvassed the following points :

(1) That the Bombay Act, 1944, being a temporary statute, not governed by the rule enunciated in Section 7 of the Bombay General Clauses Act, having automatically disappeared or lapsed on the expiry of two years commencing from April 3, 1946 on which the aforesaid proclamation dated November 4, 1939 made under Section 93(1) of the Government of India Act, 1935 ceased to have effect, the Commissioner was not competent to issue the notice (Exh. 'B') or take any step to enforce the conditions imposed by him under Section 3 of the Act while granting written permission (Exh. 'A') to construct the premises in question. They have, in support of their submission, invited our attention to the decisions of this Court in *S. Krishnan v. State of Madras* (1951 SCR 621 : AIR 1951 SC 301 : 1951 SCJ 453 : 52 Cri LJ 1103); *State of Uttar Pradesh v. Seth Jagamander Das* (AIR 1954 SC 683 : 1954 Cri LJ 1736 : 1955 SCA 539) and *Gopi Chand v. The Delhi Administration* (1959 Supp 2 SCR 87 : AIR 1959 SC 609 : 1959 SCJ 831 : 1959 Cri LJ 782).

(2) That the Municipal Commissioner Bombay, having ceased to have a statutory existence on the Bombay Act, 1944, the notice (Exh. 'B') was a nullity.

(3) That assuming without admitting, that the Municipal Commissioner did not become honest on the lapse of the Bombay Act, 1944 even then the notice is invalid and ineffective as Section 489 of the Bombay Municipal Corporation Act, 1888 under which it purports to have been issued envisages the issue of a notice only for giving effect to the requisition or order made under the sections, sub-sections and clauses of the Act specified therein.

(4) That no statutory rule or bye-law having been made under the Bombay Act, 1944 and the notice (Exh. 'B') which was based upon the agreement contained in Exhibit 'A' between the Municipal Commissioner, Bombay, and respondent 1 and not on any

statutory power exercisable by the Commissioner, did not constitute an order as contemplated by clause (hhh) of sub-section (1) of Section 13 of the Bombay Rents Control Act, 1947.

(5) That assuming without admitting that the notice (Exh. 'B') amounted to an order, still clause (hhh) of sub-section (1) of Section 13 of the Bombay Rents Control Act, 1947 requires the Court to be satisfied before passing a decree for eviction of a tenant that the premises are required for the immediate purpose of demolition ordered by any local authority or other competent authority. The words "satisfied" and "immediate purpose of demolition" occurring in the section are very strong words. They denote that the urgency should be such as to leave no room for doubt that it can brook no delay. The learned Counsel have emphasized that in the instant case, the statement of PW Chitaman Krishnaji Limaya, the Sub-Engineer, Bombay Municipal Corporation, to the effect that the general policy of the Corporation is not to expedite the demolition unless some alternative accommodation is made for the inmates of the plots where the constructions are to be demolished unequivocally shows that the premises in question are not really required for the immediate purpose of demolition.

(6) That the final scheme having been suspended and varied, there was no subsisting order and the requirement of the premises by respondent 1 could not be said to be for the immediate purpose of demolition ordered by the local authority so as to permit the invocation of clause (hhh) of sub-section (1) of Section 13 of the Bombay Rents Control Act, 1947.

(7) That the notice (Ex. 'B') is ineffective as under the Town Planning Act of 1915 or of 1956 or of 1966, it is local authority and not the landlord who has the power to evict the tenant.

13. Mr. Nariman, learned Counsel for respondent 1 has stoutly combated and countered all the points raised on behalf of the appellants. He has referred us to various provisions of the City of Bombay Municipal Act, 1888, the Bombay Act, 1944, the Bombay Town Planning Acts, 1915, 1954 and 1966, the Bombay Rents Control Act, 1947 and a number of authoritative pronouncements which would be adverted to at appropriate places to show that the Bombay Act, 1944 is supplemental to the Bombay Municipal Act, 1888; that the rights acquired and liabilities incurred by virtue of Exhibit 'A' granted under the Bombay Act, 1944 were of abiding nature and did not lapse with the expiry of the said Act; that the Municipal Commissioner survived the lapse of the Bombay Act, 1944 and had plenary powers to enforce the conditions subject to which permission (Ex. 'A') was granted and that the notice (Ex 'B') which had its genesis in the statutory provisions is perfectly valid and effective and constitutes an order within the meaning of clause (hhh) of sub-section (1) of Section 13 of the Bombay Rents Control Act, 1947.

14. We shall deal with the points raised on behalf of the appellants in the order in which they have been raised.

15. Re : Point 1 : This pivotal point canvassed by the learned Counsel for the appellants though it looks attractive at first sight cannot stand a close scrutiny. It is true that the offences committed against a temporary statute have, as a general rule, to be prosecuted and punished before the statute expires and in the absence of a special provision to the contrary, the criminal proceedings which are being taken against a person under the temporary statute will ipso facto terminate as soon as the

statute expires. But the analogy of criminal proceedings or physical constraint cannot, in our opinion, be extended to rights and liabilities of the kind with which we are concerned here for it is equally well settled that transactions which are concluded and completed under the temporary statute while the same was in force often endure and continue in being despite the expiry of the statute and so do the rights or obligations acquired or incurred thereunder depending upon the provisions of the statute and nature and character of the rights and liabilities. The following observations at pages 409-410 in Craies on Statute Law (Seventh Edition) are worth quoting in this connection :

The difference between the effect of the expiration of a temporary Act and the repeal of a perpetual Act is pointed out by Parke, J. in *Steavenson v. Oliver* (1841) 8 M & W 234, 241). There is difference between temporary statutes and statutes which are repealed; the latter (except so far as they relate to transactions already completed under them) become as if they had never existed; but with respect to the former the extent of the restrictions imposed, and the duration of the provisions, are matters of construction.

16. It will also be advantageous in this connection to refer to Para 720 at page 475, Volume 36 of Halsbury's Laws of England (Third Edition) :

720. Effect of expiry a matter of construction. - The effect of the expiry of a temporary statute is in each case a matter of construction. There is no presumption that a statute is to be treated on expiry as dead for all purposes.

17. We are also fortified in our view by the decision of this Court in *State of Orissa v. Bhupendra Kumar Bose* (1962 Supp 2 SCR 380 : AIR 1962 SC 945) where while dealing with the question whether the rights created by Orissa Ordinance 1 of 1959 promulgated by the Governor validating the election to the Cuttack Municipality (which had earlier been declared to be invalid by the High Court) - and during the invalidity of the electoral rolls in respect of other Municipalities were of lasting character and endured after the expiry of the Ordinance, Gajendragadkar, J. (as he then was) speaking for the Court observed :

In our opinion, it would not be reasonable to hold that the general rule about the effect of the expiration of a temporary Act of which Mr. Chetty relies is inflexible and admits of no exception. It is true for instance that offences committed against temporary Acts must be prosecuted and punished before the Act expires. If a prosecution has not ended before that day, as a result of the termination of the Act, it will ipso facto terminate. But is that an inflexible and universal rule ? In our opinion, what the effect of the expiration of a temporary Act would be must depend upon the nature of the right and obligation resulting from the provisions of the temporary Act and upon their character whether the said right and liability are enduring or not. . . . In considering the effect of the expiration of a temporary statute, it would be unsafe to lay down any inflexible rule. If the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. If a penalty had been incurred under the statute and had been imposed upon a person, the imposition of the penalty would survive the expiration the statute. That appears to be the true legal position in the matter. . . . In our opinion, having regard to the object of the Ordinance and to the rights created by the validating provisions it would be difficult to accept the contention that as soon as the Ordinance expired the validity of the elections came to an end and their invalidity was revived. The rights created by this Ordinance are, in our opinion, very similar to the rights with which the Court was dealing in the case of *Steavenson* and they must be held to endure and last even after the expiry of the Ordinance. The Ordinance has in terms provided that the Order of Court declaring the elections to the Cuttack Municipality to be

invalid shall be deemed to be and always to have been of no legal effect whatever and that the said elections are thereby validated. That being so, the said elections must be deemed to have been validly held under the Act and the life of the newly elected Municipality would be governed by the relevant provisions of the Act and would not come to an end as soon as the Ordinance expires.

18. In arriving at his conclusion the learned Judge relied on *Steavenson v. Oliver* (151 ER 1024, 1026-1027) and *Warren v. Windle* (1803) 3 East 205, 211-212 : 102 ER (KB) 578). *Steavenson v. Oliver* related to 6th Geo. 4 c. 133, Section 4 whereof provided that every person who held a commission or warrant as surgeon or assistant surgeon in His Majesty's Navy or Army, should be entitled to practice as an apothecary without having passed the usual examination. The statute was temporary and it expired on August 1, 1826. It was urged in that case that a person who was entitled to practice as an apothecary under the Act would lose his right after August 1, 1826, because there was no saving provision in the statute and its expiration would bring to an end all the rights and liabilities created by it. The Court rejected this contention and held that the person who had acquired a right to practice as an apothecary, without having passed the usual examination, by virtue of the provision of the temporary Act, would not be deprived of his right after its expiration. In dealing with the question about the effect of the expiration of the temporary statute, the learned Judges composing the Bench observed :

Lord Abinger, C. B. - We are of opinion that the replication is good, and there must therefore be judgment for the plaintiff. It is by no means a consequence of an act of Parliament's expiring, that rights acquired under it should likewise expire. Take the case of a penalty imposed by an act of Parliament, would not a person who had been guilty of the offence upon which the legislature had imposed the penalty while the act was in force, be liable to pay it after its expiration ? The case of a right acquired under the act is stronger. The 6 Geo. 4, c. 133, provides, that parties who hold such warrants shall be entitled to practice as apothecaries; and we cannot engraft on the statute a new qualification, limiting that enactment.

Parke, B. - Then comes the question whether the privilege of practicing given by the state. 6 Geo. 4, referred to in the replication is one which continues notwithstanding the expiration of that statute. That depends on the construction of the temporary enactment. There is a difference between temporary statutes and statutes which are repealed, the latter (except so far as they relate to transactions already to the former, the extent of the restrictions imposed, and the duration of the provisions are matters of construction. We must therefore look at this act, and see whether the restriction in the 11th clause, that the provisions of the statute are only to last for a limited time, is applicable to this privilege. It seems to me that the meaning of the legislature was, that all assistant surgeons, who were such before August 1, 1826, should be entitled to the same privileges of practising as apothecaries, as if they had been in actual practice as such on August 1, 1815, and that their privilege as such was of an executory nature, capable of being carried into effect after August 1, 1826. As to that part of the section relating to the proof by the production of a certificate, although the language of the legislature became perfectly illusory, inasmuch as it left the party to the same mode of proof as before, still the intention was, that no other proof should be required than the production of the certificate; although by using the words, "that the proof should be by the production of a certificate under the seal of the corporate body", the mode of proof was left as it was before. With respect to the vested interests of those persons who held warrants as assistant surgeons in the navy

or army, the intention was that all who were such, either at the time of the passing of the act, or at any time before August 1, 1815. I am the more disposed to think thus, on the ground that the penalties given by this act would probably survive its expiration, and that persons who violated its provisions might afterwards be punished in the way pointed out. If it were not so, any person who had violated those provisions within six months prior to the expiration of the act, would not be liable to punishment at all. It is, however, necessary to decide that point; it is enough to say that we think those who were qualified by being assistant surgeons in the navy before August 1, 1826 retained that qualification notwithstanding the expiration of the statute.

Alderson, B. - I am of the same opinion. With respect to the difference between the 5th and 1st of August, supposing the latter to be the correct date, still the objection would not be good, for the alteration effected in this respect by 6 Geo. 4, c. 133, is one of a permanent nature, and the objection could only be rendered valid by holding that statute as one in all respects of a temporary character. But I apprehend that, on the true construction of these acts of Parliament, those parts of the 6th Geo. 4, which explain the provisions of the 55 Geo. 3, are in their own nature permanent and effectual, notwithstanding the final clause, which makes the act temporary. Independently, however, of this consideration, I agree in the opinion already expressed by my Brother Parke.

Rolfe, B. - The only important question in this case is that last. The 6 Geo. 4, when it says that the act shall continue in force till the 1st of August next, does not mean that what is therein enacted should be of no force after that day, if it were so, the act might be productive of the greatest injustice. . . . I think that although in one sense this act is not in force, yet it is still permanent as to the rights acquired under it.

19. In *Warren v. Windle* (supra) where the statute, 26 Geo. 3, c. 108 professed to repeal the statute of 19 Geo. 2, c. 35 absolutely though its own provisions, which it substituted in place of it were to be only temporary, Lord Ellenborough, C.J. held that "a law though temporary in some of its provisions, may have a permanent operation in other respects".

20. The foregoing discussion makes it abundantly clear that the question as to whether the restrictions, rights and obligations flowing from the provisions of a temporary statute which come to an automatic end by efflux of time expire with the expiry of the statute depends upon the construction of the statute and the nature and character of the rights, restrictions and obligations and no rigid or inflexible rule can be laid down in this behalf. We must, therefore, scrutinise the provisions of the temporary statute in question viz. the Bombay Act, 1944 which has long since expired and the permit (Ex 'A') to ascertain as to whether the restrictions, rights and obligations arising from any part of it endured and survived after the expiry of the Act. The Act, as evident from its preamble and Statement of Objects and Reasons, was designed to prevent the growth of buildings in a haphazard fashion which might conflict with the contemplated scheme of systematic town planning in the aforesaid area devastated by explosions. Section 3 of the Act which related to the imposition of restrictions on building works in the said area including the plot in question authorised the Municipal Commissioner to impose such conditions as he might think fit to specify while granting permission for construction of a building or a structure. In the instant case, the Municipal Commissioner gave permission to the respondents to build on the plot in question subject to the express condition that the structures would be pulled down by them whenever required to do

so to give effect to any improvement scheme that might be made under the Bombay Building Town Planning Act. The rights and obligations flowing from the conditions subject to which the permission to build was granted to respondent were annexed to the ownership of the building for all time to come and were not limited to the duration of the Bombay Act, 1944. Accordingly, we are satisfied that the provisions of Sections 3 and 8 of the Bombay Act, 1944 were permanent as to the restrictions, rights and obligations imposed, acquired and incurred thereunder. A fortiori, the rights acquired by the Municipal Commissioner, Greater Bombay, by virtue of the express conditions imposed by him while granting the permit (Ex. 'A') were not subject to a time limit and did not lapse with the expiry of the Act.

21. All the aforesaid three decisions cited by the learned counsel for the appellants are clearly distinguishable. In *State of Uttar Pradesh v. Seth Jagamander Das* (supra), this Court while upholding the order of the High Court of Judicature at Allahabad quashing the proceedings taken against the respondent under Section 120B, Indian Penal Code, read with Rules 81 (4) and 121 of the Defence of India Rules for the alleged violation of clause (2) of the Non-Ferrous Metals Control Order (1942) held that prosecution could not be commenced for contravention of the Non-Ferrous Metals Control Order (1942) after the expiry of the Defence of India Act under which it had been made because that would amount to the enforcement of a dead Act.

22. *Gopi Chand v. The Delhi Administration* (supra) was also a criminal case where this Court set aside the conviction and sentence of the appellant in three cases for offences ordinarily triable under the warrant case procedure but which were tried according to the procedure prescribed for trial of summons cases by Chapter XX of the Code of Criminal Procedure. The conviction and sentence were quashed on the ground that the summons case procedure which had been adopted for trial of the appellant according to Section 36(1) of the East Punjab Public Safety Act, 1949 could not be continued after the expiry of the Act in the absence of a saving clause similar to Section 6 of the General Clauses Act.

23. *S. Krishnan v. State of Madras* (supra) related to detention under the Preventive Detention (Amendment) Act of 1951 and is not germane to the point under consideration.

24. Consequently we have no hesitation in holding that there is no merit in the appellants' plea that Municipal Commissioner, Greater Bombay was not competent after the expiry of the Bombay Act, 1944 to issue the notice (Ex 'B') to respondent 1 calling upon it to demolish the premises in question.

25. Re : Point 2 : This plea is also misconceived. The Bombay Act, 1944 was indisputably supplemental to the Bombay Municipal Act, 1888 as the latter Act has been clearly referred to in Sections 2 and 6 of the former Act as "the Principal Act". Though the former Act was temporary, the Municipal Commissioner alluded to therein did not cease to exist with the expiry of the Act. Being a creature of the Bombay Municipal Corporation Act, 1888, and a functionary who is required to be appointed from time to time in terms of Section 54 of the Act, his life did not depend upon the life of the Bombay Act, 1944. The submission made by the learned Counsel for the appellant is, therefore, repelled.

26. Re : Point 3 : There is no substance in this point as well. A careful perusal of the notice (Ex 'B') would show that though it held out an threat to respondent 1 that in case it failed to comply with the direction regarding the demolition of the entire structure in question the Municipal Commissioner would cause the structure to be pulled down or removed under Section 489 of the Bombay

Municipal Act, it was really issued under the Special Regulation 36 which, as stated earlier, became a part and parcel of the Bombay Town Planning Act, 1954, by virtue of Section 51 (3) of the Act. The notice ex facie shows that it was being issued under the Bombay Town Planning Act, 1954. It expressly referred to the aforementioned scheme viz. the Town Planning Bombay City 1 (Elphinstone Estate) Scheme, the sanction of the Scheme by the Government of Bombay under Section 51 of the Bombay Town Planning Act, 1954 (Act XXVII of 1955), the coming into operation of the Scheme with effect from December 1, 1957, the publication of the sanction of the Scheme in the Bombay Government Gazette and intimated to respondent 1 that the land upon which its premises in question stood was affected by the Scheme. We have, therefore, no doubt in our mind that the notice was issued under the Special Regulation 36. The fact that reference to Section 489 of the Municipal Act, 1888 was erroneously or incorrectly made in the notice is immaterial as it is well settled that if the exercise of a power can be traced to a legitimate source, the fact that it was purported to have been exercised under a different power does not vitiate the exercise of the power in question. A reference in this connection may usefully be made to the decisions of this Court in *Afzal Ullah v. State of Uttar Pradesh* (1964) 4 SCR 991 (1000) : AIR 1964 SC 264 : 1964 (1) Cri LJ 156, *J. K. Steel Ltd. v. Union of India* (1969) 2 SCR 481 (505) : AIR 1970 SC 1173 : (1970) 1 SCJ 829, *N. B. Sanjana v. Elphinstone Mill* (1971) 3 SCR 506 (515) : (1971) 1 SCC 337 and *H. L. Mehra v. Union of India* (1974) 4 SCC 396 : 1974 SCC (L&S) 351). We feel tempted at this juncture to reproduce the following observation made by this Court in *N. B. Sanjana v. Elphinstone Mill* :

Dr. Syed Mohammad is, no doubt, well founded in his contention that if the appellants have power to issue notice either under Rule 10A or Rule 9(2) (of the Central Excise Rules, 1944), the fact that the notice refers specifically to a particular rule, which may not be applicable, will not make the notice invalid on that ground as has been held by this Court in *J. K. Steel Ltd. v. Union of India*.

27. Testing the notice (Ex. 'B') from the point of view of the existence of the power of the Commissioner to issue it, we are convinced that he enjoyed the power in full measure and the challenge to the validity of the notice on the ground of lack of power in the Commissioner is wholly unjustified.

28. Re : Point 4 : This point is also devoid of substance. Though no statutory rule or bye-law appears to have been made under the Bombay Act, 1944. The Municipal Commissioner had plenary power under Section 3 of the Act to authorise by means of a written permission the construction of any building; or structure in the area described in the Schedule to the Act subject to such conditions, if any, as he might have thought fit to specify in the permission. The permission (Ex. 'A') having been granted subject to the express condition that the plaintiff shall pull down or remove the temporary structure in question whenever called upon to do so and the same having been annexed to and made to go with the ownership of the structure in respect whereof, it was granted by virtue of Section 8 of the Bombay Act, 1944, it could be enforced by the Municipal Commissioner under Regulations 36 and 38 of the Special Regulations made by the Arbitrator which, as already stated, became a part and parcel of the Bombay Town Planning Act, 1954 by virtue of Section 51 (3) of the Act as also under Section 55(1) (a) read with Rule 28 made under Section 87 of the Act. The Special Regulations 36 and 38 as well as Section 55 of the Bombay Town Planning Act, 1954 and Rule 28 made under Section 87 of the Act are reproduced below for facility of reference :

Regulation 36 : All temporary structures within the boundaries of a final plot i.e. those which have been permitted to be constructed by the Municipal Corporation

under Section 15 of the Bombay T. P. Act subject to a condition or under an agreement whereby an agreement whereby such structures have to be removed by the owners concerned at their cost whenever called upon to do so by the Municipal Corporation, shall be so removed within a period of two years from the date the final scheme comes into force :

Provided, however, that this limit may be extended by the Municipal Commissioner in cases where genuine hardship may be caused to the owners concerned in complying with this regulation for reasons beyond their control and provided further that such an extension shall not be granted save in exceptional cases.

Regulation 38 : Any person contravening any of the aforesaid regulations or any of the provisions of the scheme shall, on being convicted for such contravention, be liable to fine which may extend to Rs. 1,000 (One thousand) and in the case of continuing contravention of the aforesaid provisions, he shall be liable to an additional fine which may extend to Rs. 10 (Ten) for each day during which such contravention continues after conviction for the first such contravention.

Section 55 of the Bombay Town Planning Act, 1954. - (1) On and after the day on which the final scheme comes into force the local authority may after giving the prescribed notice and in accordance with the provisions of the scheme -

(a) remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the scheme or in the erection or carrying out of which any provision of the scheme has not been complied with;

#(b) * * *##

(2) Any expenses incurred by the local authority under this section may be recovered from the persons in default or from the owner of the plot in the manner provided for the recovery of sums due to the local authority under the provisions of this Act.

(3) If any question arises as to whether any building or work contravenes a town planning scheme, . . . , it shall be referred to the State Government or any officer authorized by the State Government in this behalf and the decision of the State Government or of the officer, as the case may be, shall be final and conclusive and binding on all persons.

Rule 28 made under Section 87 of the Bombay Town Planning Act, 1954. - Before removing, pulling down or altering any building or other work of executing any work under sub-section (1) of Section 55, a local authority shall serve a notice on the owner or occupier of the building or work, as the case may be, calling upon him to remove, pull down or alter such building or work or execute such work within such reasonable time as may be specified in the notice and intimating him the intention of the local authority to do so on failure to comply with the requirement of the notice.

29. The conclusion is, therefore, inescapable that the direction in the notice (Ex 'b') for demolition of the premises in question which clearly had its genesis in the aforesaid statutory provisions did constitute an order within the meaning of clause (hhh) of sub-section (1) of Section 13 of the Bombay Rents Control Act, 1947 and the appellants' plea that no statutory rule or bye-law having been made under the Bombay Act, 1944 and the notice (Ex 'B') not being based on any statutory

power exercisable by the Commissioner did not constitute such an order is wholly untenable.

30. Re : Point 5 : In face of the findings of the Rent Courts i.e. Court of Small Causes, Bombay as also of the appellate Bench of that Court which are courts of special and exclusive jurisdiction that the premises in question are required for the immediate purpose of demolition, we think it is not open to the appellants to raise the point before us. That apart what is sought to be urged before us cannot be sustained in view of the fact that the ground specified in clause (hhh) of sub-section (1) of Section 13 of the Bombay Rents Control Act, 1947 does not stand on the same footing as the ground specified in its preceding clause viz. clause (hh). Whereas clause (hh) which appears to have been enacted with a view to provide better and more housing accommodation in the interest of the public relates to a landlord's bona fide intention to demolish the building of his own volition and to erect a new building in its place, clause (hhh) which was inserted by Bombay Act 61 of 1953 inter alia to prevent a landlord or a tenant from impeding the town Improvement or town planning scheme which is presumed to be in public interest relates to compulsory demolition ordered by a local or competent authority. It is because of this difference that the ground specified in clause (hhh) is not subject to the conditions and restrictions embodied in sub-section (3A) of Section 13 and Sections 17A, 17B and 17C of the Bombay Rents Control Act, 1947. It is sufficient to satisfy the requirement of the ground specified in this clause that the order of demolition is issued by the local or competent authority in exercise of the powers vested in it and the order discloses that in the opinion of the local or competent authority, the premises are required for the immediate purpose of demolition.

31. The statement of PW Chitaman Krishnaji Limaya, Sub-Engineer, Bombay Municipal Corporation made nearly fourteen years ago to the effect that "the general policy of Corporation is not to expedite the demolition unless some alternative accommodation is made for the inmates of the plots where the construction are to be demolished" on which strong reliance is placed on behalf of the appellants has no relevance for our purpose as the instructions on which the statement was based related to the period between July 1, 1962 and December 31, 1962. We are, therefore, of opinion that there is no force in point 5.

32. Re : Point 6 : This point needs consideration under two heads viz. suspension of the Scheme and variation of the Scheme.

33. Suspension of the Scheme : It is no doubt true that on the request of the Corporation, the State Government has, by its notification TPB 1073/33184 published in the Government Gazette dated July 25, 1974, suspended certain regulations of the principal Scheme but this suspension has not the same effect as withdrawal or abandonment of the scheme which admittedly has not been done. What is more significant is that there has not been a total or wholesale suspension of all the regulations by virtue of the aforesaid notification. On the contrary, the Government has been careful enough to allow regulations 36 and 38 besides some others to continue. Thus the regulations which are material for our purpose having been specifically saved, the notice (Ex. 'B') is immune from the impact of the aforesaid notification.

34. Variation of the Scheme : Though there is a proposal for variation of the Principal Scheme, the same has not so far materialized. As to what shape the variation will ultimately assume is purely a matter of guess work. As such, until it is actually carried into effect, the proposed variation is of no legal consequence and the case has to be decided keeping in view its own facts and circumstances and the relevant law as at present in existence. In *Willow Wren Canal Carrying Co. Ltd. v. British Transport Commission* (1956) 1 All ER 567, it was held that the plaintiffs were entitled to have their action tried according to law as in force and the court would not take into account the possible

effect of a bill before the Parliament which may never become a law or if passed into law may contain provisions which ultimately do not affect the rights of the parties before the Court.

35. Re : Point 7 : This point is also devoid of merit. Nothing has been brought to our notice on behalf of the appellants to show that it is the local authority and not the landlord who has the power to evict the tenant on the ground specified in clause (hhh) of sub-section (1) of Section 13 of the Bombay Rents Control Act, 1947. Moreover the submission made on behalf of the appellants conveniently overlooks the provisions of Section 507 of the Bombay Municipal Corporation Act, 1888 whereunder the landlord can get an order against the tenant to allow him (the landlord) reasonable facilities to enter the leased premises in order to enable him to comply with the notice issued by the Municipal Commissioner.

36. For the foregoing reasons, there is no merit in any of the points raised by the appellants. Consequently, the appeals fail and are hereby dismissed but in view of the circumstances of the case without any order as to costs. Respondent 1 shall not, however, as agreed to on its behalf, evict the appellants till the end of the year, 1977 A. D. unless it is required by the Municipal Commissioner at any time before that date to pull down the premises in question in implementation of the scheme.

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