

Prakash Warehousing Co.

Vs

Municipal Corporation of Greater Bombay and Another

Civil Appeal No. 2589 of 1978

(Dr. T. K. Thommen, R. M. Sahai JJ)

13.03.1991

JUDGMENT

THOMMEN, J. –

1. This appeal arises from the judgment of the Bombay High Court in Special Civil Application No. 983 of 1972 setting aside the order made by the appellate officer (the Principal Judge of the City Civil Court Bombay), under Section 105-F of the Bombay Municipal Corporation Act, 1888 ('the Act'), whereby he allowed the appellant's appeal against the order of eviction made against it under Section 105-B of the Act by the enquiry officer, acting in terms of Section 68 of the Act as a delegate of the Commissioner of the Municipal Corporation of Greater Bombay, respondent 1; hereinafter "the Corporation".

2. By the impugned judgment, the High Court has confirmed the order of eviction made against the appellant, the principal occupant of two godowns belonging to the Corporation. The original occupant of the godowns, Glenfield & Co., had on October 1, 1963 granted to the appellant a licence in respect of these premises and subsequently by a deed of assignment dated August 13, 1966 assigned all its rights, title and interest in the premises in favour of the appellant. The appellant had in the meantime by agreement dated March 27, 1964 permitted respondent 2 to store goods in the premises. The appellant thereafter requested the Corporation to recognise it as the principal occupant of the premises by means of a formal agreement. This request was at first rejected by the Corporation on the ground that Ghatge and Patil (Transport) Pvt. Ltd., respondent 2, had been already in occupation of the premises. Subsequently the Corporation examined the terms and conditions of the agreement dated March 27, 1964 (as renewed from time to time) upon which respondent 2 was allowed to occupy the premises, and after satisfying itself as to those terms, the Corporation transferred the occupancy right from Glenfield & Co. to the appellant on the appellant executing a formal agreement dated June 17, 1967. The Corporation was thus fully aware of the terms and conditions of occupation of the premises by respondent 2, and with the full knowledge of those terms, the appellant was recorded in the Corporation's books as the principal occupant in the place of Glenfield and Co. Respondent 2 was thus understood and accepted by the Corporation to be in occupation of the premises under the appellant. All this was in 1967.

3. A notice dated July 25, 1969 terminating tenancy purportedly in terms of the agreement dated June 17, 1967 was served on the appellant. This was followed by an enquiry under the Act which commenced in 1970 and resulted in the order of eviction dated January 6, 1971. The order of eviction refers to the appellant as the principal tenant and respondent 2 as a sub-tenant. The enquiry officer, acting as a delegate in terms of Section 68 and exercising the power of the Commissioner under Section 105-B, ordered eviction of the appellant on the ground of subletting the premises. She

held that the appellant had sub-let the premises contrary to the terms or conditions of occupation and had thus become and unauthorised occupant liable to be evicted from the premises.

4. The enquiry officer, on inspection, found that respondent 2 was in occupation of the premises as a sub-lessee. She noticed the terms and conditions of the agreement dated March 27, 1964 under which the premises had been allowed to be occupied by respondent 2. She concluded that the appellant had, by reason of sub-letting contrary to the terms or conditions of occupation, become liable to be evicted in terms of Section 105-B. Accordingly, she passed an order of eviction against the appellant.

5. This order was, on appeal, set aside by the appellate officer. On appreciation of the evidence on record, including the terms of the relevant agreements, the appellate officer held that the agreement dated March 27, 1964, under which respondent 2 occupied the premises, had been well known to the Corporation, and the Corporation, having satisfied itself as to the full implication and significance of that occupation, approved and recorded the assignment and transfer of the right, title and interest of Glenfield and Co. to the appellant, and recognised the appellant as the principal occupant. The Corporation was thus at all material times aware of the appellant's relationship with respondent 2 and the occupation of the premises by respondent 2 under the appellant. Accordingly the appellate officer held that, in the absence of any material to show that the relationship between the appellant and respondent 2 had so altered since the appellant's agreement with the Corporation as to violate the terms or conditions of occupation, the eviction of the appellant solely on the ground of sub-letting was unwarranted.

6. The reasoning of the appellate officer thus appears to be that the Corporation having allowed the transfer of the occupancy right of Glenfield and Co. to the appellant with the full knowledge of the terms and conditions under which respondent 2 was already let into the premises by the appellant, whatever be the nature of their relationship - whether it be a lease or licence - the Corporation was estopped from now contending that the alleged sub-letting was contrary to the terms or conditions of the appellant's occupation of the premises and that the appellant had for that reason become liable to be evicted.

7. This is what the appellate officer stated on the point :

"... There is not allegation that after the tenancy was transferred in the name of the appellants, with the full knowledge and consent of the Municipal Corporation as to the terms and conditions on which the premises were occupied by respondent 2, there has been any change in the nature of respondent 2's occupation of the part of the premises and also in the terms and conditions of the occupation. Although the subsequent agreement was entered into between the appellants and respondent 2, it was on the same terms and conditions as the first agreement which was produced before the ward officer before the transfer of tenancy in favour of the appellants... In this case, therefore, even if the agreement between the appellants and respondent 2 is interpreted as a sub-tenancy agreement and under the said agreement the appellants are said to have sub-let the premises to respondent 2, the said sub-letting was prior to the transfer of tenancy in favour of the appellants and was with the full knowledge and consent of the Municipal Corporation; and, therefore, that cannot be considered to be sub-letting in breach of the agreement of tenancy so as to enable the Municipal Corporation to evict the appellants on that ground..."

8. This is essentially a finding of fact. The order of the appellate officer is final and is not ordinarily liable to be called in question (see Section 105-G). Nevertheless, this finding was set aside by the High Court by the impugned judgment in exercise of its jurisdiction under Article 227 of the Constitution. The High Court held :

"..... Even otherwise, in our view, respondent 1 was liable to be evicted under Section 105-B (1) clause (a) sub-clause (ii). We are unable to agree with the finding given by the learned Principal Judge that no change in the circumstances under which the tenancy had been transferred in the name of respondent 1 has taken place after the grant of the lease and, therefore, the Corporation would be estopped from alleging that respondent 1 had sub-let the premises...."

9. The High Court thus held that the appellate officer was wrong in saying that the circumstances had not altered so as to warrant an order of eviction on the ground of sub-lease. The High Court also held that the lease in favour of the appellant had been duly determined by the Corporation in terms of the contract, and the appellant having thus become an "unauthorised" occupant was as such liable to be evicted under clause (b) of sub-section (1) of Section 105-B. The High Court stated :

"..... if a tenancy is terminated in accordance with the terms of the tenancy agreement, it must be held to be duly terminated. Such a person was liable to be evicted under the provisions of Section 105-B (1) of the Act."

10. The Corporation has indeed the power to order eviction on the ground of sub-letting which is contrary to the terms or conditions of occupation. But it cannot be gainsaid that, when by specific agreement dated June 17, 1967 the Corporation recognised the assignment of all rights, title and interest made by Glenfield and Co. on August 13, 1966 in favour of the appellant in respect of the premises in question, and thus treated the appellant as the principal occupant, the Corporation was fully aware of the terms and conditions of the agreement dated March 27, 1964 under which respondent 2 was already in occupation of the premises. Nevertheless, the Corporation entered into the agreement dated June 17, 1967 accepting the appellant as the principal occupant in the place of Glenfield and Co. In the absence of any evidence to show that the relationship between the appellant and respondent 2 has since altered so as to violate the terms of the agreement of occupation dated June 17, 1967, it is not open to the Corporation to order eviction of the appellant on the ground of sub-letting which is alleged to be contrary to the terms or conditions of occupation. The High Court, in our view, wrongly reversed the finding of fact on that question by the appellate officer. Whether the circumstances had changed or not was a question of fact and that fact has been decided in favour of the appellant by the highest fact finding authority under the Act. The question then is, whether, as found by the High Court, it is open to the Corporation to have recourse to clause (b) of sub-section (1) of Section 105-B to order eviction of the appellant as an unauthorised occupant. Is clause (b) attracted where eviction is sought to be made by determination of authority otherwise than in terms of that statute ?

11. Mr. V. M. Tarkunde, appearing for the appellant, submits that the appellate officer having found that the Corporation was, when it entered into an agreement of occupation with the appellant on June 17, 1967, fully aware of the terms and conditions under which respondent 2 was in occupation of the premises in question under the appellant, the High Court was not justified in upholding the eviction of the appellant on the very same ground. The application of clause (b) of sub-section (1) of Section 105-B, counsel says, is confined to persons in unauthorised occupation. Persons in occupation of premises under authority are not liable to be evicted otherwise than on any one of the

statutorily specified grounds.

12. Mr. S. B. Bhasme, appearing for the Corporation, submits that in view of the finding that the sub-lease granted or renewed by the appellant was contrary to clause (6) of its agreement dated June 17, 1967 which provided :

".... I agree that this godown will not be assigned or sub-let or allowed to be occupied by any person and if it or any part of it is assigned or sub-let to any other party, I will be liable to be ejected immediately,"

and also in view of clause (2) of the said agreement which reads :

"Each party may terminate the tenancy at the end of any English calendar month by giving to the other party one month's notice in writing,"

the appellant has, after the expiry of the period stipulated in the notice dated July 25, 1969, become an unauthorised occupant, and is liable to be evicted in terms of clause (b) of sub-section (1) of Section 105-B of the Act.

13. According to Mr. Bhasme, the agreement under which the appellant occupied the premises has expired or has been duly determined by order of the competent authority. Further continuance by the appellant is an unauthorised occupation so as to attract the provisions of Section 105-B. Apart from the grounds mentioned in sub-clauses (i), (ii), (iii) and (iv) of clause (a) of sub-section (1) of Section 105-B, the Corporation is also empowered under clause (b) of sub-section (1) of that section to evict any person whose authority to occupy has expired or has been duly determined and who thereafter remains in occupation of the premises. The authority to occupy, he says, is duly determined even if the determination is sought to be founded on the ground of sub-letting contrary to the terms and conditions of occupation, or on any other ground specified in clause (a) or clause (c) so sub-section (1) of Section 105-B, and that ground is subsequently held to be not proved and the order of eviction on that ground is accordingly found to be invalid. This invalidity, according to counsel, is only as far as it related to the alleged ground. Nevertheless, he says, such order determining authority to occupy is sufficiently efficacious to make further occupation 'unauthorised', so as to attract clause (b) of sub-section (1), provided the determination of authority can otherwise be justified in terms of the agreement of occupation. In such circumstances, he says, clause (b) of sub-section (1) is a potent weapon in the hands of the Corporation.

14. We shall now examine the relevant provisions. Section 105-A to Section 105-H of Chapter V-A were inserted in the Act in 1961 so as to provide for speedy eviction of persons in 'unauthorised occupation' of Corporation premises. Section 105-A (d) defines 'unauthorised occupation' in the following words :

"105-A. (d) 'unauthorised occupation in relation to any corporation premises' means the occupation by any person of corporation premises without authority for such occupation; and includes the continuance in occupation by any person of the premises after the authority under which he was allowed to occupy the premises has expired, or has been duly determined."

This definition shows that occupation of Corporation premises without authority for such occupation is an unauthorised occupation. Such occupation included continuance in occupation by a person after the authority under which he occupied the premises has "expired" or it has been "duly

determined". The definition thus included not only a trespasser whose initial and continued occupation has never been under any valid authority, but it also includes in equal measure a person whose occupation at its commencement was under authority, but such authority has since expired, or, has been duly determined - which means validly determined. The expiry of authority to occupy occurs by reason of the terms or conditions of occupation. On the other hand, the determination of authority to occupy to be due or valid must be founded on one of the grounds specified by the statute. Any order of eviction on the ground of either "expiry" or "due determination" has to be made in accordance with the procedure prescribed by the statute.

15. Section 105-B, insofar as it is material, reads :

"105-B. Power to evict person from corporation premises. -

(1) Where the Commissioner is satisfied -

(a) that the person authorised to occupy any corporation premises has, whether before or after the commencement of the Bombay Municipal Corporation (Amendment) Act, 1960, -

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

(ii) sub-let, contrary to the terms or conditions of his occupation, the whole or any part of such premises; or

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

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

(b) that any person is in unauthorised occupation of any corporation premises;

(c) that any corporation premises in the occupation of any person are required by the corporation in the public interest,

the Commissioner may notwithstanding anything contained in any law for the time being in force, by notice (served by post, or by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be provided for by regulations), order that that person, as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice.

(2) Before an order under sub-section (1) is made against any person, the Commissioner shall issue, in the manner hereinafter provided, a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

The notice shall, -

- (a) specify the grounds on which the order of eviction is proposed to be made, and
- (b) require all persons concerned, that is to say, all persons who are or may be in occupation of, or claim interest in, the corporation premises, to show cause against the proposed order, on or before such date as is specified in the notice.

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- (3) If any person refuses or fails to comply with an order made under sub-section (1), the Commissioner may evict that person and any other person who obstructs him and take possession of the premises; and may for that purpose use such force as may be necessary."

16. Clause (a) of sub-section (1) of this section contains various grounds upon which a person is liable to be evicted. Clause (b) says that unauthorised occupation itself is a ground for eviction. Clause (c) provides that requirement in the public interest is a ground for eviction. Sub-section (2) speaks of show cause notice before an order of eviction by notice is made under sub-section (1). Sub-Section (3) has conferred sufficient power on the Commissioner to enforce an order of eviction made by him under sub-section (1). For the purpose of holding an enquiry under the Act, the Commissioner is invested with all the powers of a civil court (Section 105-E). An appeal lies from every order of the Commissioner under Section 105-B or Section 105-C to the appellate officer, namely, the Principal Judge of the City Civil Court of Bombay (Section 105-F), whose orders are final and not liable to be "called in question in any original suit, application or execution proceeding" (Section 105-G).

17. The satisfaction of the Commissioner, which is the condition precedent to the exercise of power of eviction by the summary procedure prescribed by the Act, may be in respect of any of the circumstances falling under clause (a), (b) or (c) of sub-section (1) of Section 105-B. Clause (a) contemplates eviction of any person on any one of the grounds mentioned in sub-clauses (i) to (iv) thereof. These grounds relate only to a person in authorised occupation of Corporation premises. They have not application to a trespasser. This is clear from the grounds themselves as well as from the wording of clause (a) which read "that the person authorised to occupy...". Likewise, clause (c) presumably applies to authorised occupation of Corporation premises, which the Commissioner is empowered to terminate by ordering eviction of the occupation otherwise than on any of the ground specified under clause (a), provided the Commissioner is satisfied that the premises in question are required by the Corporation in the public interest. All that the Commissioner has to satisfy himself in a case falling under clause (c) is as regards the public interest requiring eviction. Construction of parks, playgrounds, hospitals, colleges, markets, destitute homes and the like will indeed qualify for invoking the Commissioner's power under clause (c). Clause (b), on the other hand, is a powerful weapon for eviction of an unauthorised occupant. This clause is applicable equally to a trespasser as it is to a person whose occupation has ceased to be an authorised occupation by reason of expiry of authority in terms thereof or due determination of authority under clause (a) or clause (c) of sub-section (1) of Section 105-B.

18. If a person is in occupation without authority, as in the case of a trespasser, or if the authority under which a person has been in occupation has expired in terms thereof and he continues to remain in occupation of the premises, he will be liable to be evicted on the ground mentioned in clause (b) of sub-section (1) of Section 105-B, but in accordance with the procedure laid down in that section and on the satisfaction of the Commissioner, expressed by an order, as to the lack of

expiry of authority. It must, however, be remembered that, except in the case of a trespasser or a person remaining in occupation even after the expiry the period of authority, clause (b) can be invoked only where the Commissioner is satisfied and has so found by an order that any one of the grounds falling under clause (a) or clause (c) of sub-section (1) for determination of authority has been established. In the absence of such a valid order invoking clause (a) or clause (c), a person in occupation under authority, which has not expired, is not liable to be evicted under Section 105-B. We do not accept Mr. Bhasme's argument to the contrary on this point.

19. It is not the case of the Corporation that the authority under which the appellant has been in occupation has expired in terms thereof. That was not the basis upon which the enquiry was conducted and the order of eviction was made. If that was the ground and that ground was rightly invoked, the position might well be different. The specific ground upon which eviction was sought, as seen in the order of the enquiry officer and as categorically found by the High Court, was one of sub-letting contrary to the terms or conditions of occupation. No other ground, as the High Court says, was relied upon by the Corporation. In the circumstances, the Commissioner (or his delegate) must be understood to have restricted the scope of the enquiry to the ground falling under clause (a) (ii) of sub-section (1) of Section 105-B for the purpose of invoking the summary power of eviction vested in him under the statute.

20. Sub-letting as such, without more, is not a ground for eviction under clause (a)(ii). What attracts eviction in terms of that provision is sub-letting which is contrary to the terms or conditions of occupation. The appellate office has found that the occupation of the premises by respondent 2 under the appellant was well known to the Corporation; the terms and conditions of that occupation were closely scrutinised by the Corporation before recognising the transfer of rights and interest from the previous principal occupant to the appellant; and, it was on that basis and with that knowledge that the Corporation authorised the occupation of the premises by the appellant in terms of the agreement dated June 17, 1967.

21. In such circumstances, whatever right of occupation which respondent 2 enjoyed under the appellant must be deemed to have been incorporated as a term of the authority granted by the Corporation in favour of the appellant. The appellate officer has categorically found that there was no evidence whatsoever to indicate that the circumstances in which the premises had been occupied by respondent 2 had in any manner, or at any time, altered so as to affect the terms or conditions under which the appellant was recognised as the principal occupant. The Corporation is, accordingly on the facts found, estopped from having recourse to the ground falling under clause (a) (ii) of sub-section (1) of Section 105-B. As stated by the High Court, this was the only ground on which eviction was sought, and that ground, as found by the appellate officer, has not been established.

22. In proceedings under Article 227 of the Constitution, the High Court was not, in our view, justified in interfering with the finding of fact rendered against the Corporation by the appellate officer. Accordingly, we set aside the impugned judgment of the High Court and restore the order of the appellate officer.

23. The appeal is allowed in terms of what is stated above. The parties shall, however, bear their respective costs.

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