

BOMBAY HIGH COURT

Lakhama Pesha

Vs.

Venkatrao Swamirao Nazare

Special Civil Applns. Nos.2176 and 2177 of 1953

(Chagla, C.J. and Dixit, J.)

16.02.1954

JUDGMENT

Chagla, C.J.

1. This seems to be a very gross case in which the assistance of this Court is sought. It seems that a notice, was served upon the landlord of a building situated at Bohra Street in Colaba under Section 354, Municipal Act, and the landlord was called upon to repair the building as it appeared to be in a dilapidated state. In October 1948 the landlord filed an application under Section 507 and an order was made by the Chief Judge, Small Causes Court, Bombay, under that section on 17-11-1948, and the order was to the following effect: The petitioners in the two petitions, who are the tenants of the landlord, were ordered to give to the landlord all reasonable facilities to enable him to carry out work in accordance with the Municipal requisition dated 23-6-1948. In particular, the petitioners were ordered to vacate as a temporary measure the premises in their occupation by 31-12-1948, and to give leave and license to the landlord to enter upon the premises for the purpose of carrying out the work in accordance with the Municipal requisition. The landlord undertook to commence the work immediately the petitioners vacated and to complete the work within two months thereafter and to reinstate the petitioners in their respective rooms forthwith on the completion of the repairs, and the matter was adjourned for compliance to 2-3-1949.

2. Now, this order makes it clear that the tenants were to give up possession to the landlord for a specific purpose in order to enable the landlord to carry out the repairs which he was bound to carry out under a requisition served upon him by the Municipality. It is also clear that the landlord's possession was that of a licensee and he was there by the leave and license of the tenants. It is equally clear that as soon as the repairs were carried out, the tenants were to be restored to possession. It is equally clear that although the tenants gave up their possession, their tenancy continued and the relationship of landlord and tenant was subsisting. Pursuant to this

order the petitioners vacated their respective premises. On March 10 the application of the landlord again came up before the learned Chief Judge. It appeared that the work had not been completed by March 2 and the petitioners had not been reinstated. Therefore, the learned Chief Judge passed the following order, viz. that the landlord was ordered to complete the work by April 16, and the matter was adjourned for compliance to April 18. On April 18 it seems from the order passed by the learned Chief Judge that the landlord came forward with a totally different story. His contention seemed to be that the Municipality had ordered him to demolish the building and not to repair it and, therefore, the learned Chief Judge passed an order to enable the landlord to produce an order from the Municipality declaring the building as irreparable and requiring the demolition of the same, and the matter was adjourned to 27-4-1949. On 27-4-1949, again it seems to appear from the order passed by the learned Chief Judge that no such order was produced before him and, therefore, the learned Chief Judge passed the following order:

"Petitioner is ordered finally and peremptorily to carry out work required by the Municipal requisition immediately and to complete the same and reinstate the respondents in their respective premises by 31-5-1949."

It also seems clear from this order that the learned Chief Judge did not accept the contention of the landlord that he had to demolish the building and, therefore, he called upon him to carry out the repairs and to reinstate the tenants by 31-5-1949. It appears that nothing further happened in this application which was filed by the landlord, but the facts disclose that instead of repairing this building and reinstating the tenants by 31-5-1949, as he was required to do by the learned Chief Judge's order, the landlord took the law into his own hands, demolished the building in 1952 and constructed a new building in 1953.

He was then called upon by the tenants to reinstate them into possession. He declined to do so and, therefore, the tenants applied to the learned Chief Judge to report the matter to the High Court for contempt and the learned Chief Judge took the view that inasmuch as he was not a Court subordinate to the High Court, in his opinion no contempt was committed under the Contempt of Courts Act and, therefore, he had no jurisdiction to report the matter to the High Court. It is in respect of this order that the petition has been preferred to us under Article 227 of the Constitution.

2. Now, under the Contempt of Courts Act the High Court has been given the power under Section 3 to exercise the same jurisdiction in respect of contempt's of Courts subordinate to it as it has and exercises in respect of contempt of itself. Therefore, if the learned Chief Judge was a Court subordinate to us and if a contempt was committed of the Chief Judge, we would be able to deal with the person committing the contempt in the same manner as if he had committed a contempt of this Court. But the question that is mooted at the bar is whether the Chief Judge is a Court subordinate to the High Court. Turning to the Municipal Act under which he exercises his jurisdiction and powers, there can be no doubt that when the learned Chief Judge passed the order under Section 507, he passed the order not as a Court but as a 'persona designata'. That

position is not disputed by Mr. Pardiwala on behalf of the petitioners. The question is whether in view of the Constitution a 'persona designata' exercising judicial powers can be considered to be a Court subordinate to the High Court. Under the Constitution the High Court has been given the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction, and the superintendence contemplated by this article is not only administrative superintendence but judicial superintendence. Till the Government of India Act, 1935, was passed and Sub-Section (2) of Section 224 was enacted, the High Court had powers both of administrative and judicial supervision over Courts subject to its appellate jurisdiction. This was the position under the Government of India Acts prior to the Act of 1935 and under the Charter Act, but the Government of India Act, 1935, made an important difference in the position of the High Court because Sub-Section (2) in terms provides that

"Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision."

Therefore, under Section 224 the various powers conferred upon the High Court were purely administrative powers and no judicial power was conferred upon the High Court under that section. But the position has been altered by the enactment of Article 227. As we have just observed, the power of superintendence conferred upon the High Court under Article 227 is clearly not only administrative but also judicial and the restriction imposed upon the High Court by Section 224(2), Government of India Act is thereby removed. Now, the power of judicial superintendence which has been conferred upon the High Court is in respect not only of Courts but also of Tribunals throughout the territories in relation to which the High Court exercises jurisdiction, and the question that arises is whether in view of this constitutional position it could be said of a 'persona designata' that it is a Court subordinate to the High Court. Now, the subordination contemplated by Section 3 is a judicial subordination and there can be no doubt that the Chief Judge, although he is a 'persona designata', is a Tribunal which would fall within the purview and ambit of Article 227. Therefore, the High Court can exercise judicial supervision against the Chief Judge and can judicially interfere with his decisions in proper cases.

The distinction has been drawn in various authorities between a Court and a Tribunal, but these decisions have approached the question from the point of view of whether the particular authority is a Court subordinate to the High Court and in considering that what has been emphasized is the judicial subordination of the authority. If, therefore, the Chief Judge constitutes a Tribunal which is judicially subordinate to the High Court, there is no reason or principle on which any distinction can be drawn between a civil Court which is subordinate to the High Court and a Tribunal which is subordinate to the High Court under Article 227 of the Constitution. It is unnecessary, in our opinion, to restrict the meaning of the expression "Court subordinate to the High Court" used in Section 3. All that that section requires is that there must be an authority exercising judicial powers and further that that authority must be judicially subordinate to the High Court. Both the conditions are satisfied in the case of the Chief Judge of the Small Causes

Court. He is undoubtedly an authority exercising judicial functions and he is also, as already pointed out, judicially subordinate to the High Court. Therefore, if a contempt is committed of the Chief Judge as a 'persona designata' under the Municipal Act, it is open to the High Court to take cognisance of it and to take action against the person who committed that contempt as if the contempt had been committed of the High Court itself. The same view of the law has been taken in - '*Sukhdeo v. Brij Bhu-shan*¹', at p.670 and - '*Kapur Singh v. Jagat Narain*²',

3. Now, Mr. Shah who appears for the landlord points out that the learned Chief Judge's order merely deals with the question of jurisdiction and he has refused to make a report

¹ AIR 1951 All 667

² AIR 1951 Pun 49

under the Contempt of Courts Act and, therefore, Mr. Shah says' that he should be given an opportunity for placing all materials before the Chief Judge before any action is taken.

4. We will, therefore, send the matter back to the learned Chief Judge, direct him to determine whether any contempt was committed by the landlord and what was the nature of the contempt and when the contempt was committed; because if the contempt was committed before the Constitution came into force, we would have no power to act under the Contempt of Courts Act, because, as already pointed out, before the Constitution the Chief Judge could not have been under our judicial superintendence. The learned Chief Judge will also determine, as contended by Mr. Pardiwala, whether the contempt was a continuing contempt and even though it might have been committed initially before the Constitution came into force, the contempt continued after the Constitution came into force and we would have jurisdiction to take action against the landlord. The report to be made within a month from today.

Order accordingly.