BOMBAY HIGH COURT

Kurban Hussen Sajauddin

Vs

Ratikant Nilkant

(Gajendragadkar, J. Chainani, JJ.)

07.11.1956

JUDGMENT

Gajendragadkar, J.

1. The short question of law which arises for our decision in the present civil revision application is whether the word "may" used in Section 12 Sub-section (3) (a), of Bombay Act No. 57 of 1947 means "shall", or whether it is used in its usual enabling sense and it gives discretion to the Court either to sense and it gives discretion to the Court either to pass a decree for eviction or not. This question arises in this way. The petitioner is the tenant of the premises in suit. Notice was given by the opponents to the petitioner on 3-5-1954 calling upon him to vacate the premises on two grounds. It was alleged that the petitioner was in arrears as to rent and that the opponents wanted the premises bona fide for their own personal use. The petitioner denied the opponents case that the opponents needed the premises bona fide for their personal use; it was urged on his behalf that he was ready and willing to pay the rent. The petitioner also disputed the validity of the notice given by the opponents. The learned trial Judge found that the notice given by the opponents was valid. He also held that the petitioner was ready and willing to pay the standard rent. The plea made by the opponents that they needed the premises bona fide for their personal use was rejected by the learned trial Judge. In the result, the learned trial Judge held that a decree for ejectment could not be passed against the petitioner.

2. It appears that the petitioner paid to the opponents Rs. 125 on the 28th of August 1954 and he deposited in the trial Court a further amount of Rs. 135 on the 24th of August 1955. When this deposit was made the petitioner was not in arrears as to rent at all. During the course of the trial the petitioner deposited another amount of Rs. 147 on the 8th of November 1955. The learned trial Judge took into consideration these payments and held that the opponents were not entitled to eject the petitioner. The opponents preferred an appeal against this decree and it was urged on their behalf before the lower appellate Court that on facts admitted there was no discretion in the

learned trial Judge to refuse to pass a decree for ejectment in favour of the landlords. It is not disputed that the petitioner was in arrears in respect of the payment of rent from the 1st of October 1952 to the 1st of July 1954. It is also common ground that the petitioner did not pay up the arrears within one month from the date of the notice given to him by the opponents. The opponents argument was that under Section 12 Sub-section (3)(a), which has come into force on the 31st of March 1954, it was the duty of the learned trial Judge to pass a decree for ejectment against the tenant, and that there was no jurisdiction in the Court to grant relief against eviction to the tenant on equitable considerations. This argument has been accepted by the learned District Judge. He has held that when Section 12(3)(a) provides that, in case falling under the said Sub-section, the Court "may" pass a decree for eviction, Legislature really means that the Court "shall" pass a decree for eviction. On this construction of Section 12(3)(a) the lower appellate Court has set aside the decree passed by the learned trial Judge and has decreed the opponents, suit. The only point which Miss Jagtiani has raised before us in the present revisional application is that the lower appellate Court has not properly construed Section 12. Sub-section (3)(a). Her argument is that the word "may" used in this Sub-section is used in its usual enabling sense and that it gives discretion to the Court either to pass a decree for ejectment or not. According to Miss Jagtiani, it would not be fair or reasonable to hold that in the context of Section 12(3)(a) the word "may" introduces an element of compulsion and means in effect "shall".

3. Section 12, Sub-section (3)(a) provides that, where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in Sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession. There is no dispute that this Sub-section applies to the present proceedings and that the requirements of this Sub-section are otherwise satisfied. If the requirements of this Sub-section are satisfied, is it open to the Court, acting on equitable considerations, to hold that a decree for eviction would not, and should not, be passed, or is the Court bound to pass a decree for eviction as soon as it is satisfied that the requirements of this Sub-section have been complied with?

4. The question as to whether "may" in some cases can mean "must" has been considered by judicial decisions on several occasions. Usually the word "may" is an enabling word: it gives discretion to the person who is given the option to act in a particular manner mentioned in the section. But it is well recognised that the word "may" in the context can mean "shall". If statutes authorise any specified persons to do acts for the benefit of others, the authority conferred is coupled with an obligation to discharge a duty by the statutes themselves; and, in such a case, though the word used by the Legislature may be "may", the intention is to impose an obligation upon the authority to discharge his duty, with the result that the word "may" in the context means

"must" or "shall". Whether the authorised person is given a discretion or is under a compulsion or obligation to do a particular act would inevitably depend upon the context in which the word "may" has been used, the scheme of the statute wherein the section using the word "may" occurs, and such other relevant considerations. As Lord, Phillimore has observed in Alcock. *Ashdown and Co. Ltd. v. Chief Revenue Authority*[1], "When a capacity or power is given to a public authority, there may be circumstances which couple with the power a duty to exercise it". In dealing with the denotation of the word "may", the observation of Lord Cairns in the case of *Julius v. Lord Bishop of Oxford*[2]. are always cited with approval.

> "There may be something in the nature of the thing empowered to be done", observed Lord Cairns, "something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so."

In the case of Alcock Ashdown and Co. Ltd. 25 Bom LR 920: (AIR 1923 PC 138), their Lordships of the Privy Council were considering the effect of the word "may" used in Section 51 of the Indian Income-tax Act, which provided that the Chief Revenue Authority may, either on its own motion or on reference from any revenue officer subordinate to it, draw up a statement of the case, and refer it, with its opinion thereon, to the High Court. It was held that, though the word used was "may", having regard to the scheme of the Act and the other relevant facts to which I have just referred, when the other conditions of Section 51(1) were satisfied, it was the duty of the Chief Revenue Officer to make the reference. In Hookamchand v. Nowroji, 10 Bom L. Rule 345, Mr. Justice Beaman has similarly construed the word "may" occurring in Section 49 of the Indian Insolvency Act. Similarly, the word "may" used in Section 59 of the Indian Stamp Act has been construed to mean "shall" by Chagla, Acting C.J., and Bhagwati J., in *Chief Controlling Revenue Authority, Bombay v. Maharastra Sugar Mills, Ltd.*[3],

5. We must, therefore, proceed to consider whether the context in which the word "may" has been used in Section 12, Sub-section (3)(a) and the other relevant considerations justify the view taken by the lower appellate Court that the word "may" in the material Sub-section means "shall". Section 12 deals with claims which may be made by landlords against their tenants for ejectment of the tenants. it would be necessary to consider the scheme of this section. It would also be necessary to take into account the amendments made in the material Sub-sections of this section. Section 12 Sub-section (1) provides that a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other

conditions of the tenancy,in so far as they are consistent with the provisions of this Act. In other words, unless this Sub-section is satisfied, no claim for ejectment can be made. I thas been urged before us by Miss Jagtiani that the learned trial Judge has found in favour of the petitioner that he was ready and willing to pay the rent and there is no allegation that the tenant has not complied with or observed the other conditions of tenancy. That, no doubt, is true. But the finding of the learned trial Judge that the tenant was ready and willing to pay the rent is patently erroneous. When Section 12, Sub-section (1) refers to the readiness and willingness of the tenant to pay, it refers to the readiness and willingness at the date of the suit. It is true that the verbs "pays, or is ready and willing to pay" are used in the present tense; but it is well settled that the material time by reference to which this test has to be judged is the date of the suit vide *Mathurdas Maganlal v. Nathubhai Vithaldas*[4], and Ismail *Dada Bhamani v. Bai Zuleikabai*[5], Applying this test, it is clear that at the date of the suit the petitioner had not paid the rent and was not ready and willing to pay the rent either. Therefore, it would not be possible to accept the argument that the opponents' claim for ejectment against the petitioner is barred under Section 12, Sub-section (1).

6. Section 12, Sub-section (2) provides another safeguard in favour of the tenant. Under this Sub-section, no suit for the recovery of possession shall be instituted by the landlord against a tenant on the ground of non-payment of standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act. This Sub-section prima facie appears to give the tenant a further opportunity to pay the rent within one month from the date of receipt of the notice. If that be so, in case the tenant fails to avail himself of this benefits, then the landlord is entitled to ask for his ejectment and the matter would then fall to be governed by the subsequent Sub-sections of Section 12. As it originally stood, Sub-section (3) of Section 12 had provided that no decree for eviction shall be passed in any such suit if, at the hearing of such suit, the tenant pays or tenders in Court the standard rent or permitted increases then due together with costs of the suit. This Sub-section provided one more safeguard in the interest of the tenant. If the tenant paid or tendered in Court the rent due at the hearing of the suit, a decree for his eviction could not be passed. It is a matter of history that this Sub-section was construed by this Court as giving an opportunity to the tenant to pay or tender rent at the appellate stage. It was held that an appeal in law amounts to a re-hearing of the suit and is a continuation of the suit and so relief was given to the tenants against ejectment if the tenants paid or tendered the amount due up to date even in the appellate Court. It was presumably because of this interpretation of Section 12, Sub-section (3) that Legislature thought of making suitable amendments in the structure of Section 12 itself. We have now two Sub-divisions in Sub-section (3) of Section 12. Sub-section (3)(a) of Section 12 is the Sub-section with which we are concerned in the present revisional application and I have already cited it. Sub-section (3)(b) deals with cease not falling under Sub-section (3)(a) and it provides

that no decree for eviction shall be passed in any such suit it, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court. It would be noticed that for the expression "at the hearing of the suit" Legislature has introduce different expressions in this Sub-section by the amendment. The payment in question has to be made "on the first day of hearing of the suit or on or before such other date as the Court may fix." If the payment is made during this period, then a decree for ejectment would not be passed. It is thus clear that in case falling under Section 12, Sub-section (3)(b) a decree for ejectment cannot be passed if the other requirements of this Sub-section are satisfied. It is in the light of this provision that we must go back to Section 12, Sub-section (3)(a).

7. Sub-section (3) (a) of Section 12 deals with cases of tenants who are in arrears as to payment of rent for a period of six months or more and who fail or neglect to make payment of the rent in question until the expiration of the period of one month after notice as mentioned in Sub-section (2) of Section 12. Legislature has used the word "may" while dealing with cases of tenants who are in arrears for a long period and who fail or neglect to make payment of rent due within a month after receiving notice in that behalf from the landlord. In our opinion, it is clear that the scheme of Section 12 indicates that, in regard to tenants who are in arrears for a long period and who refuse to pay the rent even within a month after receiving notice, a decree for ejectment shall follow as a matter of standard rent or permitted increases are covered by the explanation to Section 12. In such cases, the tenant is required to make an application to the Court in the manner and within the period mentioned in the explanation for fixation of standard rent; so that these cases do not fall within the purview of Section 12, Sub-section (3) (a). Section 12, Sub-section (3)(b) naturally deals with cases where the rent due from the tenant is for a period less than six months. In respect of such cases Legislature has provided that no decree for ejectment shall be passed provided the payment of rent is made as specified in the Sub-section. Having given adequate protection to tenants who are not in arrears for such a long period as six months, Legislature appears to have taken the view that, where tenants are in arrears for such a long period as six months, if the tenants do not take steps, to pay the rent within one month after receiving notice from the landlord, they are not entitled to any further protection and the landlord would be entitled to obtain a decree as a matter of right. That is why we are inclined to take the view that in the context in which the word "may" in used in Section 12, Sub-section (3)(a), it must be held that the said word introduces an element of obligation or compulsion and in effect means "must" or "shall." If the word "may" in Section 12 (3)(a) is held to have its usual permissive meaning, it would really be difficult to understand why it was thought necessary to introduce this Sub-section by an amendment at all. Even without this Sub-section the Courts would have acted in their discretion: Courts would have passed a decree for ejectment in some

cases and would have refused to pass a similar decree in other cases, having regard to relevant facts and circumstances. It is because Legislature thought that failure to pay rent for six months or more and refusal to comply with the demand for the payment of rent within a month after receiving notice disentitled the tenant from any protection against ejectment that Section 12. Sub-section (3)(a) has been introduced by the Legislature by way of amendment in 1954. That the word "may" has been used by the Legislature in the same Act in the sense of "must" or "shall" would be clear if we were to took at Section 11 of the Act. This section deals with the fixation of standard rent and permitted increases in certain cases and it provides that, in any of the cases mentioned therein, the Court may fix the standard rent or permitted increases. It would be impossible to hold that the word "may" in this section is used in its permissive sense and does not mean "shall" or "must". In our opinion Section 12, Sub-section (3)(a) similarly uses the word "may" in its compulsory, obligatory sense and should be taken to mean "shall" or "must." That is the view which the learned District Judge has taken and we see no reason to differ from this view.

8. In the result, the application fails and the rule is discharged. There will be no order as to costs.

9. Rule in the civil application is discharged. No order as to costs.

10. Rule discharged.

Cases Referred.

125 Bom LR 920; (AIR 1923 PC 138)
2(1880) 5 A C. 214
349 Bom LR 893: (AIR 1948 Bom 254)
4 25 Bom LR 345: (AIR 1923 Bom 387)
546 Bom LR 244, at pp. 258 and 262: (AIR 1944 Bom 181 at pp. 182, 183 and 185)