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BABUBHAI & CO. & ORS.

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v.

STATE OF GUJARAT & ORS

April 9, 1985

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[V. D. TULZAPURKAR AND V. KHALID, JJ.]

Bombay Town Planning Act 1954, s. 54 read with Rule 27 of Bombay Town Planning Rules 1955-Provision for summary eviction of lands required for public purpose-Absence of a corrective machinery by way of appeal or revision—validity of.

D

The respondent-State issued notice u/s. 54 of the Bombay Town Planning Act 1954 (for short the Act) read with Rule 27 of the Bombay Town Planning Rules 1955 (for short the Rules) to the appellants to hand over possession of their lands lying within the limits of Borough Municipality of Ahmedabad to the Municipal Corporation of Ahmedabad as the same had vested absolutely E in the Municipal Corporation free from all encumbrance u/s. 53 (a) of the Act and were required for construction of roads and other public purposes. The appeallants challenged before the High Court under Art. 226 the constitutional validity of s. 54 of the Act and Rule 27 of the Rules. The High Court dismissed the writ petitions holding ; (i) that the rights of the local authority (to own and obtain possession of such lands) with the corresponding liability of the occupants to suffer eviction therefrom did not exist under the general F law prior to the making of the Final Scheme, that such rights and liabilities were created for the first time by the Final Scheme which is to be read as part of the Act and since the Act while creating these new rights and liabilities provided for a special and particular remedy for enforcing them under s. 54, the remedy of summary eviction must be held to be an exclusive remedy and the liability to eviction arising under s. 53 (a) or (b) cannot be enforced by the ordinary remedy of a suit ; (ii) that s. 54 conferred upon the local G authority a quasi-judicial power andnot administrative power and as such it was bound, in conformity with the principles of natural justice, to give an opportunity of hearing to the occupants before taking the threatened action of summary eviction and therefore no question of section being bad in law arose ; and (iii) that since Rule 27 did not contain any express exclusion of such hearing and since s. 54 impliedly required the H observance of principles of natural justice on the part of the local authority

while exercising the power of summary eviction, the said requirement must also be read in Rule 27 and so read the Rule could not be regarded as *ultra vires* the section. A

In appeals to this Court, the appellants contended that even proceeding on the basis that s. 54 impliedly required a hearing to be given and consequently such a requirement could be read into Rule 27 which was a subordinate B piece of legislation, there was no corrective machinery provided for by way of an appeal or revision to any superior authority against an adverse order that may be passed by the local authority acting under Rule 27 and in the absence of any such corrective machinery the entire provision must be held to be bad in law and therefore the impugned notices served on the appellants sould be quashed.

C

Dismissing the appeals,

HELD : (1) Mere absence of a corrective machinery by way of appeal or revision by itself would not make the power unreasonable or arbitrary, much less would render the provision invalid. Regard will have to be had to several factors, such as, on whom the power is conferred whether on a high official or a petty officer, what is the nature of the power-whether the exercise thereof depends upon the subjective satisfaction of the authority or body on D whom it is conferred or is it to be exercised objectively by reference to some existing facts or tests, whether or not it is a quasi-judicial power requiring that authority or body to observe principles of natural justice and make a speaking order etc. ; the last mentioned factor particularly ensures application of mind on the part of the authority or body only to pertinet or germane material on the record excluding the extreneous and irrelevant and also subjects the F order of the authority or body to a judicial review under the writ jurisdiction of the Court on grounds of perversity, extraneous influence, malafides and other blatant infirmities. Moreover all these facts will have to be considered in the light of the scheme of the enactment and the purpose intended to be achieved by the concerned provision. If on an examination of the scheme of the enactment as also the purpose of the concerned provision it is found that the power to decide or do a particular thing is conferred on a very minor or petty officer, E that the exercise thereof by him depends on his subjective satisfaction, that he is expected to exercise the power administratively without any obligation to make a speaking order then, of courtse, the absence of a corrective machinery will render the provision conferring such absolute and unfettered power invalid. But it is the cumulative effect of all these factors that will render the provision unreasonable or arbitrary and liable to be struck down.

[619F-H; 620A-D] G

(2) In the instant case, it is at the stage of execution of a town planning scheme that the power of summary eviction of occupants who have ceased to be entitled to occupy the plots in their occupation has been conferred upon the Local Authority itself — a highly responsible body, and that the power is required to be exercised by it in objective manner (it is to be found by reference to the Final Scheme and its interpretation whether the occupants are occupying H

lands which they are not entitled to occupy.) Further, as already held by the High Court, the power conferred upon the local Authority is a quasi-judicial power which implies that the same has to be exercised after observing the principles of natural justice, and that too by passing a speaking order which implies giving of reasons and that ensures the application of mind to only germane or relevant material on the record eschewing extraneous and irrelevant, Moreover any order of summary eviction based on any extraneous, non—germane, irrelevant or malafide considerations would be subject to the writ jurisdiction of Court. [625E-H; 622A]

C. R. H. Readymoney Ltd. case in AIR 1956 Bombay 304, *Chandrakant Krishnarao's* case, in [1962] 3 SCR 108, *Lala Hari Chand Sarda's* case, [1967] 1 SCR 1012 ond *Excel Wear's* case in [1979] 1 SCR 1009, referred to

Organo Chemical Industries & Another v. *Union India and Others*, relied upon.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2084-2089 (N) of 1972

From the Judgment dated 24.12.1971 of the High Court of Gujarat in Special Civil Applications Nos. 650/71, 652-654/71, 81/71 and 64/71

Soli J. Sorabjee, Kamal Mehta, Aditya Narayan and Mrs. A.K. Verma for the Appellants

M.N. Phadke and *R.N. Poddar* for the Respondents.

S.T. Desai and *H.S.Parihar* for Respondent Nos. 2 & 3.

The Judgment of the Court was delivered by

TULZAPURKAR, J. There is no substance in these appeals preferred by the appellants aginst a common judgment rendered in a batch of writ petitions by the High Court on 24th December 1971 wherein the High Court has upheld the constitutional validity of s. 54 of the Bombay Town Planning Act 1954 (for short the Act) and Rule 27 of the Bombay Town Planning Rules 1955 (for short the Rules).

By a notification dated 21st July, 1965 the State Government of Gujarat sanctioned the Final Town Planning Scheme in respect

of certain areas lying within the limits of Borough Municipality of Ahmedabad and directed that the said Final Scheme shall come into force on 1st September, 1965. The lands in the possession of the appellants were allotted or reserved for construction of roads and other public purposes in that Scheme and therefore, being lands required by the Municipal Corporation they vested absolutely in Municipal Corporation (local authority) free from all encumbrances under s. 53 (a) of the Act. Thereafter by notices issued under s.54 read with Rule 27 the Municipal Corportion called upon the appellants to hand over possession of the lands in their occupation, which, since such vesting, they were not entitled to occupy ; in other words, the procedure or the remedy for summary eviction of the appellants was resorted to by the Municipal Corporation.

By writ petitions filed under s. 226 of the Constitution the appellants challenged the validity of these notices on two grounds :

(a) that s. 54 confers absolute discretion upon the local authority to adopt for evicting the occupants of such lands either the normal remedy of a civil suit or the drastic remedy of summary eviction under it without any guide-lines being prescribed or indicated for the exercise of such discretion and therefore the section was violative of Art. 14 inasmuch as the local authority could pick and choose at its sweet will some of such occupants for subjecting them to the more drastic remedy;

(b) that s. 54 which provides for summary eviction by service of notice contemplated thereunder was opposed to principles of natural justice inasmuch as no opportunity was contemplated to be afforded to the occupants of such lands to show cause against the proposed eviction and as such was bad in law ; and in any event even if s. 54 was, on proper construction held to include the affording of such opportunity Rule 27 was *ultra vires* the said section inasmuch as it laid down the procedure which did not conform to principles of natural justice.

The High Court has negatived both the grounds of challenge. As

A regards ground (a), relying upon the decision in *Wolver-hampton New Water Works* case reported in (1859) 6 C.B. (N.S.) 336 and observations of Willes J. therein (appearing at page 356 of the Report) the High Court took the view that the rights of the local authority (to own and obtain possession of such lands) with the corresponding liability of the occupants to suffer eviction therefrom did not exist under the law perior to the making of the Final Scheme, that such rights and liabilities were created for the first time by the Final Scheme which is to be read as part of the Act and since the Act creating these new rights and liabilities provided for a special and particular remedy for enforcing them under s. 54 the remedy of summary eviction must be held to be an exclusive remedy and the liability to eviction arising under s. 53 (a) or (b) cannot be enforced by the ordinary remedy of a suit ; in other words, the remedy of summary eviction under s. 54 having been held to be an exclusive remedy the entire ground of challenge disappeared. As regards ground (b) the High Court took the view that s. 54 conferred upon the local authority a quasi-judicial power and not administrative power and as such it was bound, conformity with the principles of natural justice, to give an oppotunity of hearing to the occupants before taking the threatened action of summary eviction and therefore no question of section being bad in law arose ; as regrds Rule 27 the High Court held that since the said Rule did not contain any express exclusion of such hearing and since s. 54 impliedly required the observance of principles of natural justice on the part of the local authority while exercising the power of summary eviction, the said requirement must also be read in Rule 27 and so read the Rule could not be regarded as *ultra vires* the section. The High Court also proceeded to indicate in what ways such hearing could be afforded by the local authority while acting under the said Rule. This is how the High Court upheld the constitutional validity of s. 54 of the Act and Rule 27 of the Rules.

Counsel for the appellants fairly conceded the validity of the High Court's view on the first ground of challenge to s. 54. It was only in regard to the second ground of challenge that he pressed one more aspect before us on the basis of which he contended that s. 54 read with Rule 27 may have to be struckdown. He urged that even proceeding on the basis that s. 54 impliedly required a hearing to be given and consequently such a requirement could be read into Rule 27 which was a subordinate piece of legislation, there was no

corrective machinery provided for by way of an appeal or revision to any superior authority against an adverse order that may be passed by the local authority acting under Rule 27 and in the absence of any such corrective machinery the entire provision must be held to be bad in law and therefore the impugned notices served on the appellants should be quashed. In support of this contention counsel relied upon three or four decisions in *C.R.H. Readymoney Ltd.* case(1) *Chandrakant Krishnarao*'s case,(2) *Lala Hari Chand Sarda's* case(3) and *Excel Wear'* scase(4) where a view has been taken that in the absence of a provision for corrective machinery by way of appeal or revision, the provision conferring a power to decide or do a particular thing may have to be regarded as unreasonable and or un-guided, un-controlled and arbitrary and hence violative of Article 14 of the Constitution. It is not possible to accept the contention.

It cannot be disputed that the absence of a provision for a corrective machinery by way of appeal or revision to a superior authority to rectify an adverse order passed by an authority or body on whom the power is conferred may indicate that the power so conferred is unreasonable or arbitrary but it is obvious that providing such corrective machinery is only one of the several ways in which the power could be checked or controlled and its absence will be one of the factors to be considered along with several others before coming to the conclusion that the power so conferred is unreasonable or arbitrary ; in other words mere absence of a corrective machinery by way of appeal or revision by itself would not make the power unreasonable or arbitrary, much less would render the provison invalid. Regard will have to be had to several factors, such as, on whom the power is conferred-whether on a high official or a petty officer, what is the nature of the power—whether the exercise thereof depends upon the subjective satisfaction of the authority or body on whom it is conferred or is it to be exercised objectively by reference to some existing facts or tests, whether or not it is a quasi-judicial power requiring that authority or body to observe principles of natural justice and make a

(1) A.I.R. 1956 Bom. 304
(2) [1962] 3 S.C.R. 108
(3) [1967] 1 S.C.R. 1012
(4) [1979] 1 S.C.R. 1009

A speaking order etc ; the last mentioned factor particularly ensures application of mind on the part of the authority or body only to pertinent or germane material on the record excluding the extraneous and irrelevant and also subjects the order of the authority or body to a judicial review under the writ jurisdiction of the Court on B grounds of perversity, extraneous influence, malafides and other blatant infirmities. Moreover all these factors will have to be considered in the light of the scheme of the enactment and the purpose intended to be achieved by the concerned provision. If on an examination of the scheme of the enactment as also the purpose of the concerned provision it is found that the power to decide or do C a particular thing is conferred on a very minor or petty officer, that the exercise thereof by him depends on his subjective satisfaction, that he is expected to exercise the power administratively without any obligation to make a speaking order then, of course, the absence of a corrective machinery will render the provision conferring such absolute and unfettered power invalid. But it is the D cumulative effect of all these factors that will render the provision unreasonable or arbitrary and liable to be struck down. In three of the decisions referred to by counsel where the concerned provision was struck down the cumulative effect of several factors that were present in each was taken into consideration by the Court, while in C.R.H. Readymoney's case the provision was held to be valid.

E

In this behalf we might usefully refer to a decision of this Court in *Organo Chemical Industries Another* v. *Union of India and Others*.(1) In this case s. 14B of the Employees Provident Fund and Miscellaneous Provisions Act 1952 which conferred power upon the Central Provident Fund Commissioner to levy and recover punitive F damages from a defaulting employer was challenged on the ground that within the limit of 100% of the defaulted amount it conferred naked and unguided power on the Commissioner to impose any quantum of damages as he fancied that no reasons were required to be given by him for such imposition and that no appellate or revisional review was prescribed against any adverse order that may G be made by him and as such the section was violative of Art. 14 of the Constitution. Negativing the contention this Court took the

(1) [1980] 1 S.C.R. 61.

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view that the power under the section had been conferred upon one of the highest officials of the Government, that the power to impose damages on a party after hearing him was a quasi-judicial one that observance of requirements of natural justice was implicit in such jurisdiction that one *desideratum* thereof was spelling out of the reasons for the order to be made, that giving of reasons ensured B rational action on the part of the Officer because reasons implied relevant reasons necessitating the application of mind on the part of the Officer only to pertinent and germane material on record and that once reasons were set out the order readily exposed itself to the writ jurisdiction of the Court so that perversity, illiteracy, C extraneous influence, malafides and other blatant infirmities got caught and corrected. Under such circumstances this Court held that the needs of the factual situation and the legal milieu were such that the absence of appellate review in no way militated against the justice and reasonableness of the provision and that the argument of arbitrariness on this score was untenable.

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In the instant case on an examination of the Scheme of the Act as also the purpose sought to be achieved by s. 54 it will appear clear that the topic of making of town planning schemes is dealt with in ss. 21 to 53 while s. 54 (and some of the following sections like 55 and 71 to 78) deal with the aspect of the execution of town E planning schemes and it is at the stage of execution of a town planning scheme that the power of summary eviction of occupants who have ceased to be entitled to occupy the plots in their occupation has been conferred upon the Local Authority itself—a highly responsible body, and that the power is required to be exercised by F it in objective manner (it is to be found by reference to the Final Scheme and its interpretation whether the occupants are occupying lands which they are not entitled to occupy). Further we are in agreement with the High Court that the power conferred upon the Local Authority is a quasi-judicial power which implies that the same has to be exercised after observing the principles of natural justice, that is to say, the decision that the occupants are not G entitled to occupy the plots in their occupation has to be arrived at after hearing such occupants and that too by passing a speaking order which implies giving of reasons and that ensures the application of mind to only germane or relevant material on the record

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A eschewing extraneous and irrelevant. Moreover any order of summary eviction based on any extraneous, non-germane, irrelevant or malafide considerations would be subject to the writ jurisdiction of Court. Having regard to these aspects, mere absence of corrective machinery by way of appeal or review would not in
B our view render the provision invalid.

In the result the appeals are dismissed with no order as to costs.

C M.L.A. *Appeals dismissed.*