2024 INSC 71

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1543 OF 2016

BAITULLA ISMAIL SHAIKH
AND ANR. ...APPELLANT(S)

VERSUS

KHATIJA ISMAIL PANHALKAR
AND ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. 1544 OF 2016

J U D G M E N T

ANIRUDDHA BOSE, J.

The appellants before us are landlords and they assail a judgment delivered by a Single Judge of the Bombay High Court on 04.08.2015 exercising his revisional jurisdiction invalidating eviction decrees against two tenants in respect of two portions of the same building. The building in question carries House No.86 as per the municipal records, comprised in C.S. No. 111/b as per city survey records, located at Dr. Sobane Road in

Mahabaleshwar, District-Satara within the State of Maharashtra. The Civil Appeal No. 1543 of 2016 arises out of Civil Suit No. 136 of 2010 and the tenant/defendant in that suit is one Khatija Ismail Panhalkar. In this suit, two of his sons have also been impleaded as defendants. The premises involved in these proceedings comprise of two blocks within the aforesaid building. One block comprises of 10'×4' structure made of 'ita and tin shed'. Civil Appeal No. 1544 of 2016 arises out of Civil Suit No. 137 of 2010 and the tenant whose eviction is sought for in this suit is one Vasant Mahadeo Gujar (since deceased). Before us, his legal representatives have contested the appeal. The property from which the appellants want them to be evicted comprises of two rooms comprising of an area of 10'×12', which appears to be located in the middle of the said building. The two rooms, at the material point of time, were being used for residential purpose. The appellants purchased the subject-premises in the year 1992 from its erstwhile owner. Both the tenants were inducted by the erstwhile owner of the building in question.

2. On 23.01.2002, a demolition notice was issued by the Mahabaleshwar Giristhan Municipal Council for a part of the subject-building. This notice constituted one of the grounds on

which the appellants wanted to evict the respondents under the Maharashtra Rent Control Act, 1999 ("the 1999 Act"). This notice was followed by three subsequent notices by the said Municipal Council on 03.12.2005, 13.07.2009 and 05.07.2010, almost on similar terms. The suit, however, was founded on, inter-alia, the notice dated 23.01.2002. This notice is of relevance so far as these appeals are concerned and we quote below the text thereof:-

> *"ANNEXURE P- 1*
> *MAHABALESHWAR GIRISTHAN MUNICIPAL COUNCIL, MAHABALESHWAR, DIST. SATARA- 412806*
>
> *Municipal office no. 60220* *Chief officer no. 60673*
>
> *President office no. 60232* *Chief officer res. No 60671*
>
> ---
>
> *V.S. NO. 15/527* *Date; 23-1-2002*
>
> *Notice*
>
> *You are do hereby informed that on inspection of the property comprised in C.S. no. 111-b, house no. 86-b situated within the municipal council, as on today that is 22-1-2002 it is found that the wall from the eastern side is swollen and there are cracks. It is also found that the wooden pillars, wood is damaged and ceiling also has turned out of shape. Due to this the danger to the house is apprehended. There is risk to the persons residing in the house as well as the persons coming and going. At anytime thre is possibility of collapsing the said dangerous building due to which there is possibility of fatalities and the financial loss. Hence vide this notice it is to inform you to demolish the said dangerous portion immediately on receipt of this notice otherwise if any fatality occurs or the financial loss occurs due to the said house then municipal council will not be responsible and the entire responsibility will lie in your part. And please note the same.*

Sd/-
Chief officer
Mahabaleshwar Giristhan
Municipal council

To,
Baitulla lsmail sheikh and C.K. Aris.
Vasant Mahadev Gujar
Khatija lsmail Panhalkar"

3. Notices for eviction were subsequently sent to the tenants in each appeal and both these notices are dated 04.02.2002. So far as the notice to the respondents in Civil Appeal No. 1543 of 2016 is concerned, the delivery of vacant possession was asked for on five main grounds. The first one was default in payment of rent. The next ground was erection of a permanent structure by the tenant without permission of the landlord. The third point was subletting and it was also stated in that notice that the landlords had decided to construct a building thereon for residential purpose as also for operating a hotel. Under Section 16(1)(i) of the 1999 Act, the erection of a new building could come within "reasonable and bona fide" requirement of landlord, subject to satisfaction of certain other stipulated conditions. The municipality's demolition notice was also cited as a ground for eviction. We shall reproduce provisions of Sections 15 and 16 of the said enactment in subsequent paragraphs of this judgment. In the eviction notice to the respondent in Civil Appeal No. 1544

of 2016, the grounds cited were, inter-alia, issue of the demolition notice by the municipality, default in payment of rent and also necessity of the tenanted portion for construction of a new building upon demolishing the structures on the land.

4. As the eviction notices did not yield any result, the two suits were instituted on the same date, i.e. 07.08.2002. These suits appear to have had been tried simultaneously and they were decreed by the Trial Court, which was sustained by the Appellate Court. In the Civil Revision Petition, the tenants succeeded as the judgment and decree were set aside.

5. In course of the proceeding before the Trial Court, a Commissioner was appointed. He was an architect. His opinion, however, was not accepted by the Trial Court. He had given his opinion that a portion referred to as "C" in his report was dangerous and was required to be demolished. This portion, however, was in possession of the plaintiffs only, but adjacent to the suit property (in Civil Appeal No. 1543 of 2016). Though his report dated 08.12.2008 carries the caption of suit no. (239 of 2002) 136 of 2010, the report was examined by the Trial Court in connection with both the suits. His report on the necessity of urgent demolition of the tenanted portions was not fully

conclusive but his view was that the entire building was about 97 years old and life of the building was over. His opinion has been referred to and dealt with by the Trial Court in the following terms:-

> *"16) In this respect I have perused evidence of D.W.1 Vivek and his commission report at Exh.122. It is pertinent to note that in the commission report Exh.122, the commissioner has given actual position of every room situated in C.T.S.No.111/B. In his conclusion he has opined that, the building is approximately 96 to 97 years old and the life of building is over. Considering all the material he opined that the portion shown as 'C' in the map is dangerous and is required to be demolished. It is important to note that, said portion shown as 'C' is the room which is in possession of plaintiffs and adjacent to suit property. The commissioner has also filed number of photographs showing the position of property at Exh. 135 to Exh. 148. Further, if D.W.1 Vivek's deposition is perused it is clear that he has supported his commission report. In cross examination, he admitted that, if the cementing strength of soi! used for construction is gone then there may be cracks to the wall ·and to reconstruct the said wall the previous wall is required to be demolished, further, if the base of construction is not strong then new construction can also collapse. He further admitted that, if the portion shown by red ink in the map i.e. 'C' is demolished the entire roof on the property is also required to be removed and if said roof is removed it will create danger to the roof of the property on the western side and ta the roof on 'B' portion.* ***Further, if total evidence of D.W.1 Vivek is considered it cannot be said that, he had opined that, suit property is in dilapidated condition though he had admitted that the life of suit property is over****."*
>
> **(Emphasis supplied)**

6. It would be evident from this part of the judgment of the Trial Court that there was no specific finding that the portions in respect of which the respondents have tenancy required immediate demolition. It was a portion of the premises in

possession of the landlords which, in the opinion of the Commissioner was dangerous. The Trial Court proceeded on the basis that it could not sit in appeal over the decision of Municipal Council requiring demolition. On plaintiffs' plea of default, the Trial Court rejected that contention holding that the tenants were ready and willing to pay the rent of the suit property and during the pendency of the suit, they had deposited the rent. The Trial Court also rejected the landlord's contention that the subject-property was sublet or permanent structure was made without consent of the landlord. The Trial Court, however, opined that the landlord was the best judge of his own requirement and on that basis the issue of *bona fide* need was decided in favour of the appellants.

7. The Appellate Court sustained the judgment and decree on the ground of *bona fide* need as also necessity to effect demolition of the subject-building. In addition, it overturned the Trial Court's finding on there being no default in payment of rent on the ground that the provisions of Section 15(3) of the 1999 Act could not support the tenant's case. On the question of permanent structure having been made by the respondent in Civil Appeal No.

1543 of 2016 without permission of the landlord and question of sub-letting, the Trial Court's decision was sustained.

8. The Revisional Court on analysing the provisions of Sections 15 and 16 of the said Statute set aside the judgment and decree and allowed the revision applications of the tenants.

9. The provisions of Sections 15 and 16 of the 1999 Act stipulate:-

> *"15. No ejectment ordinarily to be made if tenant pays or is ready and willing to pay standard rent and permitted increases.*
>
> *(1) 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.*
>
> *(2) No suit for recovery of possession shall be instituted by a landlord against the tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of ninety days 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, 1882.*
>
> *(3) No decree for eviction shall be passed by the court in any suit for recovery of possession on the ground of arrears of standard rent and permitted increases if, within a period of ninety days from the date of service of the summons of the suit, the tenant pays or tenders in court the standard rent and permitted increases then due together with simple interest on the amount of arrears at fifteen per cent per annum; and thereafter continues to pay or tenders in court regularly such standard rent and permitted increases till the suit is finally decided and also pays cost of the suit as directed by the court.*

(4) Pending the disposal of any suit, the court may, out of any amount paid or tendered by the tenant, pay to the landlord such amount towards the payment of rent or permitted increases due to him as the court thinks fit.

16. When landlord may recover possession.

(1) Notwithstanding anything contained in this Act but subject to the provisions of section 25, a landlord shall be entitled to recover possession of any premises if the court is satisfied-

(a) that the tenant has committed any act contrary to the provisions of clause (o) of section 108 of the Transfer of Property Act, 1882;

Explanation.- For the purposes of this clause, replacing of tiles or closing of balcony of the premises shall not be regarded as an act of a causing damage to the building or destructive or permanently injurious thereto; or

(b) that the tenant has, without the landlord's consent given in writing, erected on the premises any permanent structure;

Explanation.- For the purposes of this clause, the expression "permanent structure" does not include the carrying out of any work with the permission, wherever necessary, of the municipal authority, for providing a wooden partition, standing cooking platform in kitchen, door, lattice work or opening of a window necessary for ventilation, a false ceiling, installation of air-conditioner, an exhaust outlet or a smoke chimney; or

(c) that the tenant, his agent, servant, persons inducted by tenant or claiming under the tenant or, any person residing with the tenant has been guilty of conduct which is a nuisance or annoyance to the adjoining or neighbouring occupier, or has been convicted of using the premises or allowing the premises to be used for immoral or illegal purposes or that the tenant has in respect of the premises been convicted of an offence of contravention of any of the provisions of clause (a) of sub-section (1) of section 394 or of section 394A of the Mumbai Municipal Corporation Act, or of sub-section (1) or of section 376 or of section 376A of the Bombay Provincial Municipal Corporations Act, 1949, or of section 229 of the City of Nagpur Municipal Corporation Act, 1948; or of section 280 or of section 281 of the

Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965; or

(d) that the tenant has given notice to quit and in consequence of that notice,the landlord has contracted to sell or let the premises or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession of the premises; or

(e) that the tenant has,-

(i) on or after the 1st day of February 1973, in the areas to which the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 applied; or

(ii) on or after the commencement of this Act, in the Vidarbha and Marathwada, areas of the State,

unlawfully sub-let or given on licence, the whole or part of the premises or assigned or transferred in any other manner his interest therein; or

(f) that the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after commencement of this Act, to be in such service or employment; or

(g) that the premises are reasonably and bona fide required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust; or

(h) that the premises are reasonably and bona fide required by the landlord for carrying out repairs which cannot be carried out without the premises being vacated; or

(i) that the premises are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished; or

(j) that the premises let consist of a tenement or tenements on the terrace of a building such tenement or tenements being only in part of the total area of the terrace, and that the premises or any part thereof are required by the landlord for the purpose of the

demolition thereof and erection or raising of a floor or floors on such terrace;

Explanation.-For the purposes of this clause, if the premises let include the terrace or part thereof, or garages, servants quarters or out-houses (which are not on the terrace), or all or any one or more of them, this clause shall nevertheless apply; or

(k) that the premises are required for the immediate purpose of demolition ordered by any municipal authority or other competent authority; or

(l) that where the premises are land in the nature of garden or grounds appurtenant to a building or part of a building, such land is required by the landlord for the erection of a new building which a municipal authority has approved or permitted him to build thereon; or

(m) that the rent charged by the tenant for the premises or any part thereof which are sublet is in excess of the standard rent and permitted increases in respect of such premises or part or that the tenant has received any fine, premium other like sum of consideration in respect of such premises or part; or

(n) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months immediately preceding the date of the suit.

(2) No decree for eviction shall be passed on the ground specified in clause (g) of subsection (1), if the court is satisfied that, having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

Where the court is satisfied that no hardship would be caused either to the tenant or to the landlord by passing the decree in respect of a part of the premises, the court shall pass the decree in respect of such part only.

Explanation. - For the purposes of clause (g) of sub-section (1), the expression "landlord" shall not include a rent-farmer or rent-collector or estate-manager.

(3) A landlord shall not be entitled to recover possession of any premises under the provisions of clause (g) of sub-section (1), if the premises are let to the Central Government

in a cantonment area, and such premises are being used for residence by members of the armed forces of the Union. or their families.

(4) The court may pass the decree on the ground specified in clause (h) or (i) of subsection (1) only in respect of a part of the premises which in its opinion it is necessary to vacate for carrying out the work of repair or erection.

(5) Notwithstanding anything contained in any other law for the time being in force, an assignment of a decree for eviction obtained on the grounds specified in clauses (g), (h), (i) and (j) of sub-section (1) shall be unlawful.

(6) No decree for eviction shall be passed on the ground specified in clause (i) or (j) of sub-section (1), unless the court is satisfied-

(a) that the necessary funds for the purpose of the erection of new building or for erecting or raising of a new floor or floors on the terrace are available with the landlord,

(b) that the plans and estimates for the new building or new floor or floors have been properly prepared;

(c) that the new building or new floor or floors to be erected by the landlord shall, subject to the provisions of any rules, bye-laws or regulations made by municipal authority contain residential tenements not less than the number of existing tenements which are sought to be demolished;

(d) that the landlord has given an undertaking.-

(i) that the plans and estimates for the new building or new floor or floors to be erected by the landlord include premises for each tenant with carpet area equivalent to the area of the premises in his occupation in the building sought to be demolished subject to a variation of five per cent in area;

(ii) that the premises specified in sub-clause (i) will be offered to the concerned tenant or tenants in the re-erected building or, as the case may be, on the new floor or floors;

(iii) that where the carpet area of premises in the new building or on the new floor or floors is more than the carpet area specified in sub-clause (i) the landlord shall, without prejudice to the liability of the landlord under sub-clause (i), obtain the consent 'in writing' of the tenant or tenants concerned to accept the premises with larger area; and on the tenant or tenants declining to give such consent the landlord shall be entitled to put the additional floor area to any permissible use;

(iv) that the work of demolishing the premises shall be commenced by the landlord not later than one month, and shall be completed not later than three months, from the date he recovers possession of the entire premises; and

(v) that the work of erection of the new building or new floor or floors shall be completed by the landlord not later than fifteen months from the said date:

Provided that, where the court is satisfied that the work of demolishing the premises could not be commenced or completed, or the work of erection of the new building or, as the case may be, the new floor or floors could not be completed, within time, for reasons beyond the control of the landlord, the court may, by order, for reasons to be recorded. extend the period by such further periods, not exceeding three months at a time as may, from time to time, be specified by it, so however that the extended period shall not exceed twelve months in the aggregate.

(7) Where the possession of premises is recovered on the ground specified under clause (g), (h), (i) or (j) of sub-section (1) and the premises are transferred by the landlord, or by operation of law before the tenant or tenants are placed in occupation, then such transfer shall be subject to the rights and interests of such tenants.

(8) For the purposes of clause (m) of sub-section (1), the standard rent or permitted increase in respect of the part sub-let shall be the amounts bearing such proportion to the standard rent or permitted increases in respect of the premises as may be reasonable having regard to the extent of the part sub-let and other relevant considerations.

(9) Notwithstanding anything contained in this Act, where the premises let to any person include-

(i) the terrace or part thereof; or

(ii) any one or more of the following structures, that is to say, tower-rooms, sitting-outrooms, ornamental structures, architectural features, landings, attics on the terrace of a building, or one or more rooms of whatsoever description on such terrace (such room or rooms being in the aggregate of an area not more than one-sixth of the total area of the terrace); or

(iii) the terrace or part thereof and any such structure,

and the court is satisfied that the terrace or structure or terrace including structure, as aforesaid, are required by the landlord for the purpose of demolition and erection or raising of a floor or floors on such terrace, the landlord shall be

entitled to recover possession of the terrace including such tower-rooms, sitting-out-rooms, ornamental structures, architectural features, landings, attics or rooms, the court may make such reduction, if any, in the rent as it may deem just.

(10) A suit for eviction on the grounds specified in clause (h), (i), (i) or (k) of sub-section (1) may be filed by the landlord jointly against all the tenants occupying the premises sought to be demolished."

10. The eviction proceeding was instituted in the suit giving rise to Civil Appeal No.1543 of 2016 against the appellants, inter-alia, on the grounds of having made construction of permanent nature by extending the area of the shop premises, without the landlords' consent, causing permanent damage to the property in question, causing nuisance and annoyance to the adjoining area and neighbouring occupiers as also inducting a relative as sub-tenant. It was pleaded by the appellants that because of rusting of beams holding the tenanted structure, the roof of the rented property was damaged as a result of which it had become dangerous for the occupation of human beings. Demolition notice issued by Mahabaleshwar Giristhan Municipal Council to the landlords dated 23.01.2002 was relied upon in the plaint in this regard. So far as the suit forming the basis of Civil Appeal No.1544 of 2016 is concerned, the grounds for eviction were default in the payment of rent, demolition notice having been

issued by the Municipal Council on 23.01.2002, as also for necessity of having the premises for the purpose of carrying out construction for residential purpose and hotel. This requirement, the appellant argued, constituted *bona fide* requirement by the landlord. On the finding of the Appellate Court that there was default in payment of rent, the High Court held:-

> *"12(c) The Appeal Court has committed an error of law, apparent on face of record in interpreting Section 15 of the Rent Act, in the manner it has. The interpretation is contrary to both, the text as well as the rulings of this Court on the subject. This is a case where ·rents were regularly offered and dispatched by way of money orders. The rents were, however, refused by the landlords. In such circumstances, there is no obligation upon the tenants to comply with conditions prescribed in Section 15(3) of the Rent Act. It is always open to a tenant to establish and prove that the tenant was always ready and willing to pay rent and therefore, there was no cause of action to even initiate proceedings for eviction under Section 15(1) of the Rent Act. Besides, a careful perusal of the impugned orders would indicate that concurrently the two Courts have accepted that there was no default in payment of rents. There is, in any case, ample evidence on record to establish that there was no default in payment of rent;"*

11. The Revisional Court examining the question of reasonable and *bona fide* requirement of the landlords found eviction was sought for demolishing the suit premises and erecting a new building thereon. In the opinion of the High Court, it was incumbent on the part of the fact finding fora to come to a finding on that question and record satisfaction as required under sub-sections (4), (5), (6) and (7) of Section 16 of the 1999 Act. We have

quoted above Section 16 of the 1999 Act. The High Court appears to have connected the claim based on reasonable and *bona fide* requirement to Sections 16 (1)(h) and (i) of the said statute. Though these two provisions apply in different contexts, sub-section (4) thereof requires the Court to carry out an exercise to determine which part of the rented-out premises ought to be vacated for carrying out the work of repair or erection. The first two fora did not address this question, which is a statutory requirement. A three-Judge Bench of this Court, in the case of **P. ORR & Sons (P) Ltd. -vs- Associated Publishers (Madras) Ltd.** [(1991) 1 SCC 301] dealing with a provision similar to Section 16(1)(i) contained in the rent legislation for the State of Tamil Nadu, Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 opined that the condition of building had to be considered for determining the legitimacy of the demand for timely demolition by reason of extent of damage to the structure, apart from considering other factors. It was also pointed out in this judgment that there was no necessity of the building being in crumbling condition to invoke the said provision. This view was echoed in a Constitution Bench judgment of this Court in the case of **Vijay Singh and Others -vs- Vijayalakshmi Ammal** [(1996) 6 SCC

475]. But these authorities do not clash with the reasoning of the High Court anchored on Section 16(4) of the 1999 Act. That provision lays down an entirely different test, and that is to ascertain if part-demolition could save the tenant's interest. Dealing with claim based on Section 16(1)(h) and (i) of the 1999 Act, the statutory mandate for the Court is to test the question of part vacating. Neither the Trial Court nor the Appellate Court chose to analyse this requirement before directing eviction. This provision becomes relevant as the initial demolition notice identifies a part of the premises requiring demolition and the Commissioner's report is also on that line. Sub-section (2) of Section 16 relates to reasonable and *bona fide* need in terms of Section 16(1)(g) and if the requirement is in the aforesaid terms, then the Court has to be satisfied having regard to all the circumstances of the case including the question whether other reasonable accommodation is available to the landlord or the tenant. This provision essentially incorporates the principle of "comparative hardship", as such a test has come to be known in tenancy jurisprudence. We have been taken through the judgments of the Trial Court and the Appellate Court on this point. The Appellate Court came to the finding that balance on

this point tilts in favour of the landlord. The High Court rejected this finding, holding:-

> *"54] However, the respondent-landlords, have not at all been candid with the Court insofar as the pleadings are concerned. In the course of evidence, it has come on record that the respondent-landlords have, besides the suit premises several other premises, which are being used by them for purposes of commerce as well as residence. Some of the premises, may have been acquired post the institution of the suit including in particular, the premises acquired by one of the sons of Baitullah Shaikh. Nevertheless, there were no disclosures volunteered in the course of examination-in-chief. Even if, the premises subsequently acquired are left out of consideration, there was a duty upon the respondent-landlords to fully and candidly make disclosure about the premises in their occupation, both for the purposes of residence as well as commerce and thereafter to explain, howsoever briefly, the subsistence of the need in respect of suit premises. The respondent-landlords have completely failed in this aspect. Such non-disclosure is a relevant consideration in the context of determining both the reasonability as well as bona fides.*
> *55] The tenants have managed to bring on record the material in the context of occupation and control of several premises by the respondent-landlords. Looking to the conduct of the respondent-*
>
> > *landlords, there is no certainty as to whether the premises in respect of which the tenants have obtained and produced documents, are only premises which are in the occupation or control of the respondent-landlords or whether there are some others as well.*
> >
> > *However, even on basis of the existing material on record, there was no question of making any decree under Section 16(1) (g) of the Rent Act."*

We affirm the view taken by the High Court that there was no satisfaction in the manner contemplated in Section 16 (2) of the 1999 Act as far as *bona fide* need in terms of Section 16(1)(g) was concerned. In the impugned judgment, the High Court has dealt

with in detail the list of properties which were with the landlords and on that basis gave its own finding in that regard. We do not find any perversity in such view taken by the High Court.

12. Sub-section (6) of Section 16 also mandates satisfaction of the conditions stipulated in sub-clauses (a) to (d) thereof. Sub-clause (d) in particular, contemplates the landlord to give undertaking in terms of paragraphs (i), (ii), (iv) and (v) of that sub-clause, while dealing with landlord's eviction claim based on Section 16(1)(i) of the said statute. These are all mandatory requirements and we cannot find any flaw with the judgment of the High Court to the extent it rejects the claim of the landlord for non-compliance of the aforesaid provisions.

13. Section 16(1)(k) of the said Act permits recovery of possession of tenanted premises on the ground that the premises are required for immediate purpose of demolition ordered by any municipal or other competent authority. In the present case, the respective suits were instituted seeking recovery of possession, inter-alia, under this provision. We have already referred to the demolition notice issued by the municipal authority. The High Court opined that it was necessary to satisfy itself that the suit premises were required for immediate purpose of demolition.

Contention of the appellants is that the Statute does not require the Court to come to a satisfaction on this point. In the event a tenant questions immediacy of demolition, then the proper course for him would be to question legality of the said notice. Section 195 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 ("1965 Act") to which the High Court has also referred to, stipulates:-

> *"195. (1) If it shall at any time appear to the Chief Officer that any building or other structure or anything affixed to such building or structure is in a ruinous condition or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such building or structure or any other structure or place in the neighbourhood thereof, the Chief Officer may, by written notice, require the owner or occupier of such building or structure to pull down, secure, remove or repair such building, structure or thing or do one or more such things and to prevent all causes of danger therefrom.*
>
> *(2) The Chief Officer may also, if he thinks fit, require the said owner or occupier, by the said notice, either forthwith or before proceeding to put down, secure, remove or repair the said building, structure or thing, to set up a proper and sufficient board or fence for the protection of passers by and other persons.*
>
> *(3) If it appears to the Chief Officer that the danger from a building, structure or thing which is ruinous or about to fall is of hourly imminence he shall, before giving notice as aforesaid or before the period of notice expires, fence of, take down, secure or repair the said structure or take such steps or cause such work to be executed as may be required to arrest the danger.*
>
> *(4) Any expenses incurred by the Chief Officer under sub-section (3) shall be paid by the owner or occupier of the structure and shall be recoverable in the same manner as an amount due on account of a property tax."*

14. The High Court found fault with the demolition notice as it carried no reference to the said provision (Section 195 of the 1965 Act). This flaw, by itself would not make the notice unenforceable. Omission to label a notice with the provision under which it is issued would not make it nugatory, if substance thereof is clearly conveyed. But the High Court also found:-

> *"76…Further, the notice is not directly in the context of suit premises occupied by the tenants, but rather pertains to certain portions of House No.86B. The notice, does not require demolition of the entire House No.86B, but rather requires removal of portions thereof, including in particular eastern wall, rafters and roofing. On basis of such notice, it is difficult to sustain an eviction order under Section 16(1)(k) of the Rent Act, particularly where no satisfaction whatsoever has been recorded by the two Courts on the aspect of 'immediate purpose of demolition', which satisfaction, was required to be recorded, both in terms of the context of Section 16(1)(k) of the Rent Act as also the decision of this Court in case of M.L Sonavane (supra).*
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> *77] There is yet another significant aspect in the context of order of eviction under Section 16(1)(k) of the Rent Act. On 6 August 2002, the tenants lodged the complaint to the Municipal Authorities that the landlord Baitulla Shaikh was deliberately indulging in weakening of the walls of the portion of House N0.86, in his possession, with the objective of weakening the entire structure. Based upon such complaint, on 29 August 2002, an inspection was held by the Municipal Authority. Upon finding some merit in the complaint of the tenants, the decision was taken to issue appropriate notice to the landlords Baitulla Shaikh and C.K. Aris, Hamid. Pursuant to such decision, the Municipal Authority, by notice dated 29 August 2002, notified the landlords that during inspection it was revealed that the landlords are illegally and unauthorisedly weakening the walls of House No. 86 and that in future, if the wall collapses and causes loss to the life and property of the tenants, then, it is the landlords, who will be entirely responsible for the same. The documents like compliant of the tenants, inspection report as well as notice dated 29 August 2002 have been proved in the course of evidence and have been marked as Exhibits 223, 224 and 225. This*

vital material has been completely ignored by the two Courts. Exclusion of relevant and vital material, is also a species of perversity in the record of any finding of fact. The Court Commissioner was also appointed and even the Report of the Court Commissioner does not make out the case that the premises were required for immediate purpose of demolition. The evidence of the Municipal Engineers as well as the Court Commissioner, at the highest indicates that certain portions of House No.86 are in need of repairs. But the evidence does not make out any case that the suit premises were required for the immediate purpose of demolition. By virtually ignoring such material, the two Courts have proceeded to make a decree of eviction under Section 16(1)(k) of the Rent Act. This is an exercise in excess of jurisdiction. There is both illegality as well as material irregularity in the record of findings of fact, inasmuch as the Courts have failed to ask itself correct question in the context of 'immediate purpose' and further failed to consider relevant circumstances, rather the two Courts have allowed themselves to be persuaded by irrelevant circumstances."

(quoted verbatim from the paperbook)

15. Scope of Section 195 of the 1965 Act has been examined by the Bombay High Court in its judgment in the case of **M.L. Sonavane -vs- C.G. Sonar** [1981 (1) All India Rent Control Journal 466]. It is recorded in this judgment:-

"25. The more pertinent question however, is, whether the satisfaction of a local authority can be a substitute for the satisfaction of a court. The court must be satisfied as the section says of two things. It must be satisfied that a decree for possession has to be passed against a tenant and secondly, "premises are required for the immediate purposes of demolition." Unless the court is satisfied about the existence of both these things, it would be difficult to see how a court can pass a decree for eviction against a tenant. The satisfaction must relate to the requirement of passing a decree for possession against the tenant, and the immediate necessity of demolition. The satisfaction of the court is not a substitute for the satisfaction of the local authority. Nor is it that the court must itself inquire that the premises are in such a ruinous condition that they are required to be demolished. That satisfaction is relegated to the local authority. But, even apart from that satisfaction, an area of

satisfaction is still reserved for the court by the terms of the section, which deals with that satisfaction with regard to the passing of a decree for possession against the tenant, such satisfaction has also to be with regard to the immediate purpose of demolition. It is there and under those circumstances that the subsequent events and actions enter into the considerations of the court. If the court is satisfied on a consideration of the subsequent events that the premises are not required "for the immediate purposes of demolition," then, notwithstanding the order passed, upon a bona fide exercise of the power by the local authority, the court may still refuse to pass a decree. To my mind, that is the decision and principle laid down in 72 Bombay Law Reporter 569 and the judgment of Justice Patel referred earlier."

16. After holding that the satisfaction contemplated in the aforesaid provision is that of the local authority in a suit for eviction, it has been held that an area of satisfaction is still reserved for the Court. Court has to examine if there is immediacy of the need for demolition. Broadly, the same view has been taken by the Bombay High Court in a later judgment, in the case of **Manohar Prabhumal Rajpal -vs- Satara City Municipal Corporation, Satara and Another** [(1993) 1 All India Rent Control Journal 81]. In this judgment, the Court dealt with an eviction suit filed under the provisions of Section 13(1)(hhh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("1947 Act"). The said provision is near identical to the provisions of Section 16(1)(k) of the Rent Control Act, 1999. While analysing the said provision of the 1947 Act, the High Court had held that

the Trial Court while examining a plea for decree under similar statutory provision cannot sit in appeal over the decision of the local authority once the latter had exercised its power after taking into relevant factors into consideration. In our opinion, these two decisions lay down the correct principles of law for construing the provisions of Section 16(1)(k) of the 1999 Act. We accept the appellant's argument that the Court trying an eviction proceeding under the aforesaid provision has very limited role in determining as to whether demolition is really necessary or not, but it does not automatically follow therefrom that the Court would mechanically adopt the view of municipal authority of there being urgent need of demolition. The conditions under which a landlord can bring an eviction action under clauses (i) and (k) of Section 16(1) are different in their operations. In respect of an eviction proceeding founded on the former provision, it contemplates a lesser degree of immediacy or urgency, as held in the Constitution Bench judgment which we have referred to above. But the latter provision requires a greater degree of urgency and it is within the jurisdiction of the Court to test this factor, as held in the cases of **M.L. Sonvane** (supra) and **Manohar P. Rampal** (supra). Both the fact finding fora failed on this count.

17. On behalf of the appellants, it was brought to our notice that after the first demolition notice on 23.01.2002, three other notices were issued. Obviously the two fact finding Courts did not consider these notices as they did not form part of cause of action and it also does not appear that the said facts were admitted to be brought on the record by way of amendment of plaint or otherwise. These notices would run their own course and we also do not want to take cognizance of these subsequent notices as it would be up to the authorities to take such steps as may be permissible in law in respect of the subsequent notices. The tenants shall also be entitled to question the legality thereof, if so advised.

18. We are conscious that the Revisional Court was examining a judgment and decree already tested by the Appellate Forum and on facts, decree was made. Ordinarily the Revisional Court ought not to interfere with findings on fact. But in the judgment under appeal, we find that the Revisional Court has fitted the facts with the legal provisions and found that there was mismatch on the basis of which the judgment and decree were set aside. We have been taken through the judgment of the Revisional Court and do

not find any flaw that needs re-appreciation. We accordingly dismiss both the appeals.

19. Pending application(s), if any, shall stand disposed of.

.....J.
(ANIRUDDHA BOSE)

.....J.
(BELA M. TRIVEDI)

New Delhi;
30th January, 2024