

Emperor Vs. Jaffer Cassam Moosa

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Court : Mumbai

Decided On : Aug-24-1928

Reported in : (1928)30BOMLR1442

Judge : Mirza and; Patkar, JJ.

Appeal No. : Criminal Application for Revision No. 169 of 1928

Appellant : Emperor

Respondent : Jaffer Cassam Moosa

Judgement :

Mirza, J.

1. The applicant has been convicted by the Presidency Magistrate, Second Court, Bombay, under Section 248, Sub-section (1), of the City of Bombay Municipal Act, and sentenced to pay a fine of Rs. 25.

2. The applicant is the estate manager of His Highness the Agakhan, and works under a power of attorney from his master. The Bombay Municipality served him with a notice to provide certain water-closet accommodation in respect of certain premises belonging to His Highness the Aga Khan and known as Adelphi Chambers at Clare Road, Byculla. About the same time, it appears, the Bombay Municipality served a similar notice upon one Nowroji Bhathena who is said to

have been at the time the lessee of those premises. Default having been made to comply with the notice, the Bombay Municipality, through the Municipal Commissioner, launched a prosecution against both the applicant and Nowroji Bhathena. After several adjournments, the Municipal Commissioner withdrew the case against Nowroji Bhathena on December 18, 1927, and proceeded thereafter only against the applicant.

3. The applicant contends that he is not bound to carry out the requisition contained in the Municipal notice for two reasons: (1) that at the date of that notice, the premises were leased to Nowroji Bhathena under the terms of a lease which inter alia provided that the lessee will do at his own costs, charges and expenses all work that may be required to be done by the Municipality in respect of water-pipes, drainage and sanitary condition of the premises; and (2) that the Municipality are bound to give to the applicant the benefit of a certain subvention scheme sanctioned by the Municipality in respect of the construction of such water-closets and that they have refused to do so.

4. Section 248 of the City of Bombay Municipal Act, 1888, inter alia provides that:-

(1) Where any premises are without a water-closet, or privy or if the Commissioner is of opinion that the existing water-closet, or privy...available for the persons occupying or employed in any premises is insufficient, inefficient, or on any sanitary grounds objectionable, the Commissioner may, with the previous approval of the standing committee, by written notice, require the owner of such premises-...
(c) to substitute water-closet accommodation for any privy accommodation.

5. The term 'owner' is defined by Section 3, Clause (m), of the Act as follows:-

Owner when used in reference to any premises, means the person who receives the rent of the said premises, or who would be entitled to receive the rent thereof if the premises were let, and includes-(1) an agent or trustee who receives such rent on account of the owner;....

6. Mr. Divatia, on behalf of the applicant, has contended that the applicant cannot be regarded as 'owner' of the premises within the meaning of Section 248 of the

Municipal Act. He contends that by virtue of the lease granted by the applicant's master to Nowroji Bhathena, it is the lessee Nowroji Bhathena who alone is now to be regarded as the 'owner' of the premises within the meaning of Section 248 of the Municipal Act, Mr. Divatia has argued that Mr. Bhathena alone can now be said to be entitled to receive the rent of the premises because he is the rent-farmer and the premises are let out by him in separate portions to several tenants. He contends that the relationship between the applicant's master and the lessee Mr. Nowroji Bhathena is not one whereby it can be said that the applicant's master is entitled to receive the rent of the premises. The amount fixed by the lease, he contends, is a definite amount which the lessee is made liable to pay from month to month irrespective of what he may or may not recover from the tenants in occupation of the premises. This fixed amount Mr. Divatia contends is not rent, We are unable to agree with that argument. As between the applicant's master and the lessee Mr. Nowroji Bhathena the relationship is one of landlord and tenant in respect of these premises, Mr. Bhathena in his turn can be regarded as landlord of certain tenants in occupation of portions of those premises but those are separate tenancies. The fact of Mr. Bhathena being in a position to recover rent from certain tenants to whom he has let out portions of the premises, does not, in our opinion, exclude the applicant's master from being entitled to receive the rent of the premises which he has let out to Mr. Bhathena.

7. Reliance was placed by Mr. Divatia upon the judgment in *Emperor v. Aziz Gaffoor* (1927) 30 Bom. L.R. 1439 where this Court held that a lessee, occupying a position similar to the one alleged to be held by Mr. Bhathena under his lease, could be proceeded against by the Municipality under Section 248, Sub-section (1), Clause (c), of the Municipal Act, The judgment, however, is no authority for the proposition that such a lessee is exclusively liable under the provisions of that section. In our opinion, the proper construction of Section 243(1)(c) of the Bombay Municipal Act is that the Municipality may at their option proceed either against the landlord or his lessee who under the term of his lease is entitled to sub-let the premises and receive rent from his sub-tenants. The term 'owner', as defined in the Act, covers both cases. In *Emperor v. Lakshman Pandu* (1927) 30 Bom. L.R. 339 this Court, in construing the term 'owner' used in Section 380 of the Municipal Act, applied to it in the absence of anything repugnant in the subject or context,

the general definition of the term 'owner' ins. 3, Clause (m) of the Act. The Court construed that definition as laying down that not only the person who ultimately receives the rent for a building but also an agent or trustee receiving it on his account can be treated as an 'owner.' In the case before us, no doubt it Cannot be said that Mr. Bhathena is receiving rents from his sub-tenants as an agent or trustee of the applicant's master. He is liable to the Municipality as 'owner' because he is receiving rent in his own right from his sub-tenants. That fact, however, does not in itself absolve the applicant's master from liability as he continues to be 'owner' in respect of the premises as he receives and is entitled to receive rent in respect of the same premises from his tenant Mr. Bhathena. The amount fixed by the lease as the rent of the premises does not cease to be rent because the lessee may or may not recover the exact amount from the sub-tenants who are in actual occupation of the premises.

8. With regard to the applicant's contention that Mr. Bhathena is liable under the terms of his lease to defray the expenses connected with the carrying out of the requisition of the Municipality, this is a matter, in our opinion, which might be litigated in a civil Court. As a Criminal Bench we are not concerned with any civil rights which the applicant's master may have against a third party. Mr. Bhathena has appeared before us on a notice he received from the applicant and has contended that he has been wrongly brought here on the notice. The complaint of the Municipality having been withdrawn against him, in our opinion, he is no longer a proper party to these proceedings. We cannot make an order against him as we are asked to do either to pay up the amount which the applicant may spend in pursuance of the requisition of the Municipality or direct his joint retrial with a view to the Magistrate ordering him to incur these expenses in the first instance.

9. With regard to the contention of the applicant that the Municipality have wrongly refused to give him the benefit of the subvention scheme in respect of the construction of the water-closets, that again is a matter which, in our opinion, might be litigated between the applicant's master and the Municipality if he is so advised to do. As a Criminal Bench it is beyond our province to try matters relating to civil liability. A wrongful refusal of this nature would not, in our opinion, absolve the applicant from carying out the requisition.

10. In our opinion, this application fails, and the rule should be discharged.

Patkar, J.

11. I agree.

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