

PETITIONER:
VELJI LAKSHMI & CO. ETC.

Vs.

RESPONDENT:
BENETT COLEMAN & CO. ETC.

DATE OF JUDGMENT 14/04/1977

BENCH:
SINGH, JASWANT
BENCH:
SINGH, JASWANT
SARKARIA, RANJIT SINGH

CITATION:
1977 AIR 1884 1977 SCR (3) 603
1977 SCC (3) 160

ACT:

Bombay Municipal Corporation Act, 1888--Respondents given permission to raise temporary structures on land on condition that they should be pulled down when called upon to do so--Premises let out to appellant--Municipal Commissioner directed respondents to pull down the structures to implement Town Planning Scheme--Commissioner, if competent to order demolition.

Interpretation: Rights and obligations acquired under a temporary Act--survive after expiry of the Act.

HEADNOTE:

Respondent No. 1 constructed some godowns on the plot of land leased out to them by the Bombay Port Trust in 1933. As a result of explosions in 1944, some of the buildings in the area were destroyed. In order that the building construction work in the area might be carried out on modern lines, the Bombay Municipal Corporation formulated a scheme under the provisions of the Bombay Town Planning Act, 1915 to restrain the owners of the land from re-constructing in a haphazard manner in the devastated area. The Governor of Bombay by a proclamation issued under s. 93 of the Government of India Act, 1935, enacted the City of Bombay (Building, Works and Reconstruction) Act, 1944.

Section 3 of the 1944-Act prohibited for a period of one year from the date of the commencement of the Act, the work of erecting, constructing, reconstructing, etc. of any building, wall or other structure situate within the specified area except under the written permission of the Commissioner and in accordance with the conditions that might be specified therein. Section 8 of the Act provided that the benefit of any written permission granted under s. 3 shall be annexed to and shall go with the ownership of the building in respect of which it was granted and may be enforced by every person in whom that ownership was vested.

In September 1947, the Municipal Commissioner granted written permission (Exhibit A) to respondent No. 1 under s. 3 of the 1944-Act to raise temporary godowns on the land on condition that the Commissioner might at any time direct the owner to pull down or remove the work forthwith or within such time, as may be prescribed.

One of the godowns erected by respondent No. 1 was

leased out to appellant No. 1 in 1953 and the lease was extended from time to time till 1957. In that year the State Government sanctioned a scheme called the Town Planning Bombay City No. 1 scheme under the Bombay Town Planning Act, 1954 and the scheme came into operation on December 1, 1957. The final scheme became a part and parcel of the Bombay Town Planning Act 1954. Respondent No. 1 issued a notice to the appellant calling upon it to quit and give vacant possession of the godown leased out to it. On September 19, 1953, the Municipal Commissioner, Greater Bombay, issued a notice (Exhibit B) to respondent No. 1 calling upon it to pull down and remove the entire building for the construction of which permission was granted to it in 1947. Respondent No. 1, in turn, issued a notice to the appellant calling upon it to quit. The appellant having refused to give vacant possession of the godown, respondent No. 1 filed a suit for the appellant's eviction on the ground that the premises were required under s. 13(1)(hhh) of the 'Bombay Rents (Hotel and Lodging Houses Rates) Control Act, 1947 for the immediate purpose of demolition ordered by the local authority.

604

The trial court ordered the appellant's eviction and delivery of immediate possession of the premises to respondent No. 1. The appellate court allowed the appellant's appeal. The High Court set aside the decree of the appellate court.

On appeal it was contended by the appellants that (i) the 1944-Act being a temporary Act, lapsed on the expiry of two years from April, 1946 and so the Commissioner was not competent to issue Exhibit B-Notice or to take steps to enforce the conditions imposed by him under s. 3 while granting written permission to construct the premises. (ii) The Municipal Commissioner having ceased to have statutory existence on the expiry of the 1944-Act, Exhibit B-notice was a nullity, (iii) Even assuming that the Municipal Commissioner did not become non est on the expiry of the 1944-Act, the notice was ineffective because s. 489 of the Bombay Municipal Corporation Act, 1888 envisages the issue of a notice only for giving effect to the requisition or order made under the section. (iv) No statutory rule or bye-law having been made under the 1944-Act, Exhibit B-notice did not constitute an order contemplated by s. 13(1)(hhh) of the Bombay Rent Control Act, 1947, (v) Under s. 13(1) (hhh) before passing the eviction order the Court must be satisfied that the demolition was imminent and the evidence led in this case showed that the premises were not required for immediate demolition; (vi) The final scheme having been suspended and varied, there was no subsisting order and since there was no urgency for the demolition of the premises, invocation of s. 13(1) (hhh) was not called for and (vii) Exhibit B- notice was ineffective because under the Town Planning Acts of 1915, 1954 or 1966, it was the local authority and not the landlord that had the power to evict. Dismissing the appeals,

HELD: 1(a) There is no force in the contention that the Municipal Commissioner was not competent to issue Exhibit B-notice. The provisions of ss. 3 and 8 of the 1944-Act were permanent as to the restrictions, rights and obligations imposed, acquired or incurred thereunder. A fortiori, the rights acquired by the Municipal Commissioner by virtue of the express conditions imposed by him while granting Exhibit A permission, were not subject to a time limit and did not lapse with the expiry of the Act. [621 E; 620 H]

(b) The analogy of the rule that criminal proceedings

taken against a person for offences committed under a temporary statute will ipsc facto terminate when the temporary statute expired cannot be extended to rights and liabilities as in the instant case. It is settled law that transactions concluded- and completed under a temporary statute, while the same was in force, often endure and continue despite the expiry of the statute and 'so do' the rights and obligations acquired or incurred thereunder, depending upon the provisions of the statute and the nature and character of the rights and liabilities. No rigid or inflexible rule can be laid down in this behalf. [616 F:G]

In the instant case, the City of Bombay (Building Works Restriction) Act 1944; as evident from its preamble and statement of Objects and Reasons was designed to prevent the growth of buildings in a haphazard fashion which might conflict with the contemplated scheme of systematic town planning in the area devastated by explosion. Section 3 of the 1944-Act which related to the imposition of restrictions on building work in that area, including the plot in question, authorised the Municipal Commissioner to impose such conditions as he might think fit to specify while granting permission for construction of building or a structure. The Municipal Commissioner gave permission to the respondents to build on the plot subject to the express condition that the structures would be pulled down whenever required to do so to give effect to any improvement scheme that might be made under the Town Planning Act. The rights and obligations flowing from the conditions subject to which the permission to build was granted to the respondents were annexed to the ownership of the building for all time to come and were not limited to the duration of the 1944-Act. [620 E-G]

state of Orissa v. Bhupendra Kumar Bose [1962] 2 Supp. S.C.R. 380, followed.
605

S. Krishnan and Ors. v. The State of Madras [1951] SCR 621, The State of Uttar Pradesh v. Seth Jagamandar Das and Ors. A.I.R. 1954 S.C. 683 and Gopi Chand v. The Delhi Administration [1959] supp. 2 SCR 87 distinguished.

Steavenson v. Oliver (151 E.R. 1024, 1026-1027) and Warren v. Windie [1803] 3 East 205, 211-212--102 E.R. (K.B.) 578, referred to.

2. Though the 1944-Act was a temporary Act, the Commissioner did not cease to exist with the expiry of that Act. The 1944-Act was supplemental to the Bombay Municipal Corporation Act, 1888. Being a creature of the 1888 Act and a functionary required to be appointed from time to time in terms of s. 54 of that Act, his life did not depend upon the life of the 1944-Act. [621 F-G]

3(a) The challenge to the validity of the notice on the ground of lack of power in the Commissioner was wholly unjustified. Although Exhibit notice was purported to have been issued under s. 489 of the 1888-Act, it was really issued under Special Regulation 36 which became a part and parcel of the Town Planning Act 1954 by virtue of s. 51(3) of the Act. The notice showed that it was being issued under the Town Planning Act, 1954. The notice was, therefore, issued under the Special Regulation No. 36. [622 A B]

(b) The fact that reference to s. 489 of the 1888-Act was erroneously or incorrectly made in the notice, was immaterial. It is settled law that if the exercise of power could be traced to a legitimate source, the fact that it was exercised under a different power did not vitiate the exercise of the power in question. [622 C-D]

Afzal Uttak v. The State of Uttar Pradesh [1964] 4 SCR 991 1000; I.K. Steel Ltd. v. Union of India [1969] 2 SCR 481

505; N.B. Sanjana v. Elphinstone Mill [1971] 3 SCR 506 515 and H.L. Mehra v. Union of India [1975] 1 SCR 138, 149 referred to.

4. The direction in Exhibit B-notice for demolition of the premises clearly had its origin in the statutory provisions and it constituted an order within the meaning of s. 13(1)(hhh) of the 1947-Act. The Municipal Commissioner had plenary power under s. 3 of the 1944-Act to authorise the construction of any building or structure in the area subject to restrictions specified in the permission. The permission had been granted subject to the express condition that respondent No. 1 shall pull down or remove the temporary structure when called upon. It can be enforced by the Commissioner under Regulations 36 and 38 of the Special Regulation. [624 E; 622H]

5(a) In view of the findings of fact by the court below that the premises were required for the immediate purposes of demolition, it was not open to the appellants to raise the point at this stage. [624 F]

(b) There is a vital difference between cls. (hh) and (hhh) of s. 13(1). While cl. (hh) relates to the landlords bona fide intention to demolish the building of his own volition and to erect a new building in its place, cl. (hhh) relates to the compulsory demolition ordered by a local or competent authority and was aimed at preventing a landlord or tenant from impeding the Town Improvement or Town Planning Scheme framed in public interest. It is because of this difference that the ground specified in cl. (hhh) is not subject to the conditions and restrictions in s. 13(3A) and ss. 17A, 17B and 17C of the 1947-Act. [624 H]

(c) The statement of the Sub-Engineer that the Corporation would not expedite demolition without making alternative accommodation on which the appellant relied was made as far back as 1962, and had no relevance for the purposes of the present case. [625 C]

6(a) Though the State Government had suspended certain regulations of the principal scheme, this suspension had not the same effect as withdrawal or abandonment of the scheme, which had not been done. Moreover, there had

12--502 SCI/77

606
not been a total suspension of all the regulations. Regulations 36 and 38 which are material for the purposes of this case were allowed to continue. [625 D-E]

(b) The proposal for variation of the principal scheme having not materialised, it was not known what shape it would assume. Until it was actually carried into effect, the variation had no legal consequence. [625 F]

H.L. Mehra v. Union of India [1975] 1 SCR 138, 149 referred to.

7. There was nothing to show that it was the local authority and not the landlord who had the power to evict a tenant on the ground specified in s. 13(1) (hhh) of the 1947-Act. Under s. 507 of the 1888-Act, the landlord could get an order against a tenant to allow him (the landlord) reasonable facilities to enter the leased premises in order to enable him to comply with the notice issued by the Municipal Commissioner. [625 H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION Civil Appeals Nos 915 and 916 of 1972.

Appeals by Special Leave from the Judgment and Order

dated the 20-3-1972 of the Bombay High Court in S.C.A. Nos. 1686 and 1687 of 1969.

D.V. Patel (In CA 915) R.P. Bhatt (CA 916), M.P. Sabla. P.B. Agarwal and B.R. Agarwala for the Appellant. F.S. Nariman, H.C. Tunara and K.J. John for Respondents. The Judgment of the Court was delivered by

JASWANT SINGH, J.--These two appeals by special leave granted by this Court which are directed against the judgment and order dated 20th March, 1972 of the High Court of Bombay at Special Civil Applications Nos. 1686 and 1687 of 1969 shall be disposed of by this judgment.

The subject matter of dispute which has wended its way to this Court is a godown, being godown No. 2 built on Plot No. 37 bearing C.S. No. 130, Elphinstone Estate at Masjid Siding Road, Kurla Street, Bombay-9 which belongs to Port Trust, Bombay, Respondent No. 1 in both the above mentioned appeals viz. M/s Benett Coleman & Co. got the aforesaid plot No. 37 as also plot No. 36 on lease from the Port Trust, Bombay, on 1st August, 1933 on a yearly rent of Rs. 416.89. On plot No. 37, the said respondent erected some godowns which alongwith certain other buildings that had grown up in a haphazard manner and could be described as slums were destroyed as a result of terrific explosions which occurred on April 14, 1944 in the Bombay Docks. Being of the view that it was extremely desirable that rebuilding in the devastated area should be carried out on modern principles of town planning, the Bombay Municipal Corporation by its resolution No. 763 dated 23rd November, 1944, declared its intention to formulate a town planning scheme under the provisions of the Bombay Town Planning Act of 1915. The Government of Bombay sanctioned the making of the Scheme by their resolution No. 5355/33 dated 9th July, 1945 published in Official Gazette dated 12th July, 1945. As the preparation of the scheme was likely to take time and it was necessary to restrain owners of buildings in the devastated area from reconstructing them in a haphazard manner which would conflict

607

with the proposed scheme the Governor of Bombay in exercise of the powers vested in him by virtue of the Proclamation dated 4th November, 1939, issued by him under section 93 of the Government of India Act, 1935 assuming to himself inter alia all the powers vested by or under the Government of India Act, 1935 in either chamber of the Provincial Legislature made an Act called the City of Bombay (Building Works Restriction) Act, 1944 (Bombay Act, No. XVIII of 1944) (hereinafter referred to as 'the Bombay Act 1944'). Section 2 of this Act ordained that unless there is anything repugnant in the subject or context, words and expressions used in the Act shall have the same meaning as in the Principal Act viz. the City of Bombay Municipal Act, 1888 (Bombay III 1888). Section 3 of this Act prohibited every person during the period of one year from the date of the commencement of the Act to do any work of erecting, re-erecting, constructing, reconstructing, adding to or altering or repairing any building, wall or other structure or any part thereof situate in the area bounded on the South by the northern edge of Carnac Road and Camac bridge, on the East by the western edge of the Frere Road, on the North by the southern edge of Elphinstone Road and Sandhurst Road and on the West by the eastern edge of Mohamadally Road, or laying out any private street in the said area, except under the authority of a written permission granted by the Commissioner and in accordance with such conditions, if any, as the Commissioner might think fit to specify in the permis-

sion. The proviso to the section authorised the Provincial Government to extend the aforesaid period of one year by means of notification published in the Official Gazette. In exercise of the power conferred by the proviso, the Government of Bombay extended the period referred to in section 3 of the Act in respect of the restriction on building works without permission upto and inclusive of the 31st day of December, 1946, Section 8 of the Act provided that the benefit of any written permission granted under section 3 shall be annexed to and shall go with the ownership of the building, wall or other structure or private street, as the case may be, in respect of which it was granted and may be enforced by every person in whom that ownership is for the time being vested. By means of notification dated 3rd April, 1946, the Governor of Bombay in exercise of the powers conferred on him by sub-section (2) of section 93 of the Government of India Act, 1935 made a proclamation with the concurrence of the then Governor General revoking the aforesaid proclamation dated 4th November, 1939 as subsequently varied by the proclamations dated the 15th February, 1943 and 20th November, 1945. Section 93 of the Government India Act, 1935 under which the proclamations dated the 4th November, 1939, 15th February, 1943, 20th November, 1945 and 3rd April, 1946 were made provided as follows :--

"93. Provisions in case of failure of constitutional machinery.

(1) If at any time the Governor of a Province is satisfied that a situation has arisen in which the Government of the Province cannot be carried on in accordance with the provisions of this Act, he may by proclamation:
608

(a) declare that its functions shall, to such extent as may be specified in the Proclamation be exercised by him in his discretion;
(b) assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority, and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(2) A Proclamation under this section:

(a) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;

(b) unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months :--

Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both

Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.

(4) If the Governor, by a Proclamation under this section assumes to himself any power of the Provincial Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect unless sooner repealed or reenacted by Act of the appropriate Legislature, and any reference in this Act to Provincial Acts, Provincial laws, or Acts or laws of a Provincial Legislature shall be construed as including a reference to such a law.

(5) The functions of the Governor under this section shall be exercised by him in his discretion and no Proclama-

609

tion shall be made by a Governor under this section without the concurrence of the Governor General in his discretion".

On 23rd September, 1947, the Municipal Commissioner, Bombay granted written permission (Exh. 'A') to respondent No. 1 under section 3 of the Bombay Act, 1944, to raise temporary structure in the form of godowns on the aforesaid plot No. 37 at C.S. No. 130, Masjid Siding Road, Bombay subject inter alia to the following express conditions :-

"(a) The provisions of the Municipal Act and bye-laws made thereunder in force from time to time shall be complied with;

(b) The Commissioner may at any time direct the owner of the said premises to pull down or remove the work hereby permitted or any portion thereof forthwith or within such time as he may prescribe. No compensation shall be claimable by or payable to the owner. Further if any such directions is not complied with by the owner, the same may be enforced or carried out in the manner provided by s. 489(1) (of the Municipal Act).

(c) No compensation whatsoever, whether for damages loss or injury, shall be claimable by or payable to the owner or any other person in respect of any work carried out pursuant to this permit, if the building wall comes within (i) the regular line of any street, (ii) any improvement scheme that may be made under the provisions of the Municipal Act, (iii) any town planning scheme that may be made under Bombay Building Town Planning Act, 1915.

(d) The conditions of this permit shall bind not only the owner of the said premises but also his heirs, executors, administrators".

Below the permission so granted, it was endorsed on behalf of respondent No.1 that the above conditions were acceptable to it.

Pursuant to the aforesaid permission, the respondent erected some godowns, one of which (godown No.2) was leased out by it to M/s Velji Lakshmi & Co. the appellant in Appeal No. 915 of 1972 on 21st December, 1953 for a period of eleven months with effect from 1st February, 1954. The period of the lease in favour of the said appellant was extended from time to time on the original terms and conditions with the result that it continued to remain in occupation of the premises. On 4th September, 1957, the Government of Bombay sanctioned what came to be called the Town Planning Bombay City No. 1 (Mandvi and Elphinstone Estates) Scheme under section 51 of the Bombay Town Planning Act, 1954 (Act XXVII of 1955) which had come into force on 1st August, 1957 and fixed 1st of December, 1957 as the date on which the Scheme would come into operation. A notification was published in the Official Gazette on 12th

610
September, 1957 declaring that the land on which the suit premises stood was affected by the said Scheme. It may be mentioned that under the aforesaid final scheme which became a part and parcel of the Bombay Town Planning Act, 1954 by virtue of section 51 (3) of the Act, certain special regulations were also made by the arbitrator to control development of the area included in the Scheme. On 10th September, 1957, respondent No. 1 issued a notice to the said appellant calling upon it to quit, vacate and deliver quiet, vacant and peaceful possession to it of the said godown. This notice was issued by the respondent on the grounds that the godown was required by it for its bonafide use and occupation and the appellant had sublet and/ or transferred interest in the godown to someone else without the permission of the respondent and infringed the terms and conditions of the lease dated 21st of December, 1953, the period of which had also expired on 31st of August, 1957. On 19th September, 1958, the Municipal Commissioner, Greater Bombay, issued the following notice (Exh. 'b') to respondent No. 1 :--

"The Bombay Municipal Corporation, Bombay
Town Planning Act, 1954 Town Planning Scheme
Bombay City No. 1.

Notice No. FE/221

To

The Times of India
Owner: Original Plot No. 37 Elphinstone
Estate Section.

WHEREAS the Government of Bombay has been pleased to sanction the above scheme under section 51 of the Bombay Town Planning Act, 1954 (XXVII of 1955) on the 4th September, 1957 and to fix the 1st December, 1957 as the date on which the scheme shall come into operation AND WHEREAS the Notification relating to such sanction has been published under No.. TPB-I054-M. Local Self Government and Public Health Department at page 2611 of Part I of the Bombay Government Gazette dated the 12th September, 1957 and 'since under section 53 of the said Act all rights and liabilities created by the said Scheme shall come into force from the 1st December- 1957 the date notified 'by Government in their above notification AND WHEREAS you are aware that the land delineated in the Scheme Plans (which may be, inspected, if necessary at the office of the City Engineer. Town Planning Scheme No.1 Bombay Municipal Corporation) upon which your temporary structure stands, is affected by the said Scheme AND WHEREAS all the rights of the local Authority under the Bombay Town Planning Act, 1954 and the Bombay Town Planning Rules, 1955 are hereby expressly reserved AND

WHEREAS you are permitted under the City of Bombay (Building Works Restriction) Act, 1944, to erect a temporary structure on the terms and conditions mentioned in the said permit AND WHEREAS you agreed to pull down or remove the building or

611

work whenever required by me, to do so, you are hereby called upon to pull down and remove the entire building or work in respect of which permission was granted under Permit No. 52/1520/TP dated 23rd December, 1947 on or before 30th October, 1958 failing which I shall cause the building or work to be pulled down or removed under section 489 of the Bombay Municipal Corporation Act and shall seek to recover the costs thereof as provided by that Municipal Act.

Please note that this notice is being served strictly with out prejudice to the rights of the local authority under the Bombay Town Planning Act, 1954 and the Bombay Town Planning Rules, 1955 which rights are hereby expressly reserved.

Dated this 19th day of September, 1958.

Sd/-

Municipal Commissioner
For Greater Bombay".

On 22nd of February, 1960 respondent No. 1 issued another notice to M/s Velji Lakhamsi & Co. calling upon it to quit, vacate and deliver peaceful and vacant possession of the godown in its occupation within 24 hours from the date of the receipt of the notice. This notice of ejectment was issued by the respondent to M/s Velji Lakhamsi & Co. on four grounds viz. (a) that it was in arrears of rent from 1st November, 1959 at the rate of Rs. 2,500/p.m., (b) that the premises were required by the respondent for the immediate purpose of demolition ordered by the Municipal Commissioner for Greater Bombay, (c) that the appellant had sublet the premises to M/s Jamnadas Bhimji & Co., the appellant in Appeal No. 916 of 1972 against the provisions of Bombay Act LVII of 1947 and (d) that it was profiteering from such subletting.

On M/s Velji Lakhamsi & Co.'s failure to comply with respondent No.1's aforesaid notices calling upon it to vacate the premises, the latter brought a suit in the Court of Small Causes, Bombay on 18th April, 1960 'for eviction of the former on the ground that the premises were required under section 13(1) (hhh) of the Bombay Rents (Hotel and Lodging Houses Rates) Control Act, 1947 (hereinafter referred to as 'the Bombay Rents Control Act, 1947') for the immediate purpose of demolition ordered by the Local Authority i.e. the Town Planning Authorities and the Bombay Municipal Corporation or other competent authority. Although it was also averred by respondent No. 1 in the plaint that it required the premises reasonably and bonafide for its own use and occupation, it abandoned this plea later on. The said respondent also sought a decree against M/s Velji Lakhamsi & Co. for Rs. 2,500/- on account of arrears of rent for the month of March, 1960 as also for future mesne profits and costs. M/s Jamnadas Bhimji & Co. being in possession through M/s Velji Lakhamsi & Co. of a part of the premises as a sub-tenant, it was also impleaded by respondent No. 1 as a defendant to the suit.

612

The suit was contested by the appellants inter alia on the grounds that respondent No.1's aforesaid notices to quit were not valid; that they were not bound by any undertaking given by respondent No. 1 to the Municipal Corporation; that the aforesaid notice (Exh. 'B') given by the

Municipal Corporation to respondent No. 1 did not subsist in view of the fact that the aforesaid scheme having been kept in abeyance, the Corporation did not propose to take immediate action in pursuance of the notice; that nothing was outstanding against M/s Velji Lakhamsi & Co. by way of arrears of rent and that Rs. 2,500/p.m. claimed by respondent No. 1 was far in excess of the standard rent. On the pleadings of the parties, the trial court framed the following issues :--

"1. Is the tenancy of defendant No. 1 not properly terminated ?

2. Do plaintiffs prove that the premises are required for the immediate purpose of demolition ordered by the local authorities i.e. the Town Planning Authorities and the Municipality or other competent authorities ?

3. To what decree, if any, are the plaintiffs entitled ?"

On a consideration of the evidence adduced in the case, the trial court by its judgment dated 12th September, 1963 negatived the contentions raised by the appellants and decreed the suit and ordered the appellants to deliver possession of the suit premises to respondent No. 1 by 11th September, 1964, holding that the tenancy of M/s Velji Lakhamsi & Co. had been validly terminated; that respondent No. 1 having been served with a notice of demolition by the local authority, it had fulfilled the requisite of the requirement of the premises for the immediate purpose of demolition as contemplated by section 13(1) (hhh) of the Bombay Rents Control Act, 1947; that while clause (hh) of section 13(1) of the Act relates to landlord's intention to demolish the building of his own volition and to erect a new building, its succeeding clause (hhh) relates to forcible demolition ordered by the local authority or by a competent authority whose powers are not hampered in any way by the provisions of the Rent Act; that if the local authority issued a notice that the premises are required for the purpose of demolition, it would not then be open either to the landlord or the tenant, whosoever may be in possession, to question the authority trying to seek protection under the provisions of the Rent Act, and whenever such a notice was issued, the purpose would have to be taken to be immediate in spite of the fact that the actual implementation of the Scheme may take some time. The Court further held that as the Scheme had been sanctioned, the Commissioner who gave the notice (Exh 'B') should be deemed to have given it as a competent authority under the Municipal Act.

Aggrieved by this decision, the appellants in both the appeals preferred separate appeals to the appellate Bench of the Court of Small Causes at Bombay which were allowed by a common Judgment dated 10th December, 1968 with the observations that the conditions which the Commissioner laid down in the written permission (Exh. 'A')

613

granted under section 3 of the Bombay Act, 1944 (made by the Governor under the proclamation dated 4th November, 1939) were not analogous to statutory rules and regulations or bye-laws; that the said Act which was of temporary character having lapsed on 3rd April, 1948, the commissioner ceased to have statutory authority to call upon respondent No. 1 to demolish the suit premises and thus to enforce the conditions mentioned in Exhibit 'A' which also lapsed on the expiry of the Act and as the notice (Exh. 'B') by the Municipal Commissioner to respondent No. 1 was not under any statutory power exercisable by him but was given under the

contract between him and respondent No. 1, it could not be called an order within the meaning of section 13(1) (hhh) of the Bombay Rents Control Act, 1947 and form the basis of a suit for eviction of the appellants from the suit premises. The appellate Bench, however, held that there was no substance in the argument advanced on behalf of the appellants that the final scheme having been kept in abeyance, the requirement of respondent No. 1 could not be called an immediate purpose of demolition as ordered by the local authority. The appellate Bench further remarked that if the notice (Exh. 'B') could be construed as an order under section 13(1) (hhh) of the Bombay Rents Control Act, 1947, the purpose for which respondent No. 1 called upon M/s Velji Lakhamsi & Co. to vacate the premises would be for the immediate purpose of demolition as ordered by the local authority Respondent No. 1 thereupon took the matter to the High Court of Judicature at Bombay by means of the aforesaid petitions Nos. 1686 and 1687 of 1969 under Article 227 of the Constitution. By its judgment dated 20th March, 1972, the High Court granted the petitions and set aside the judgment and decree passed by the appellate Bench of the Court of Small Causes and restored those of the trial Court holding that the notice (Exh. 'B') given by the Municipal Commissioner on 19th September, 1958, was clearly an order of demolition by the competent authority; that if the Commissioner granted any permission to build some work subject to certain conditions which he could have imposed during the period in which the restrictions imposed by section 3 of the Bombay Act, 1944 were in force, it could not be legitimately contended that the person who contravened the conditions by which he was bound could not be dealt with under sections 5 and 6 of the Act; that the mere fact that respondent no. 1 had agreed to the conditions specified in Exhibit 'A' did not in any way affect the legal consequences of the permission or the legal nature of the power exercised by the Commissioner under section 3 of the Act and that as long as the structures built under that permission stood, the Commissioner could have called upon respondent No. 1 to remove the same; that the Commissioner was within his powers to issue the notice (Exh. 'B') dated 19th September, 1958, and that the trial Court was right in its view that the said notice was an order within the meaning of section 13 (1) (hhh) of the Bombay Rents Control Act, 1947. With regard to the appellants' plea that the notice (Exh. 'B') had lost its efficacy as the town planning scheme had been held in abeyance, the High Court observed :--

"It may be that the town planning scheme is in abeyance for the very fact that persons like Mr. Bhatt's clients are

614

obstructing eviction proceedings filed by the landlords. It may be that there are very many other reasons for its abeyance. The question that the Court must consider under section 13(1)(hhh) is as to whether the landlord is entitled to recover possession as the premises are required for the immediate purpose of demolition. It may be that some landlords would like to postpone the removal of the structure. But where a landlord bound by the notice, wants to comply with the notice issued to him by the Municipal Commissioner without delaying further in the matter and perhaps is eager to co-operate with authorities in enforcing the town planning scheme,

it cannot be, said that he does not require the premises for the purpose of demolition".

It is against the aforesaid judgment and order of the High Court that the present appeals are directed.

Appearing in support of the appeals, Mr Patel and Mr. Bhatt, learned counsel for appellant in C.A. No. 915 of 1972 and C.A. No. 916 of 1972 respectively have reiterated almost all the contentions raised on behalf of their clients before the courts below regarding the validity and efficacy of the notice (Exh. 'B'). They have strenuously urged that the ground specified in clause (hhh) of sub-section (1) of section 13 of the Bombay Rents Control Act, 1947, on which the suit out of which the present appeals have arisen was based could not be called in aid by respondent No. 1 as the elements of that clause were not at all satisfied. Elaborating their contention, the learned counsel have canvassed the following points :--

(1) That the Bombay Act, 1944, being a temporary statute, not governed by the rule enunciated in section 7 of the Bombay General Clauses Act, having automatically disappeared or lapsed on the expiry of two years commencing from 3rd April, 1946 on which the aforesaid proclamation dated 4th November, 1939 made under section 93(1) of the Government of India Act, 1935 ceased to have effect, the Commissioner was not competent to issue the notice (Exh. 'B') or take any step to enforce the conditions imposed by him under section 3 of the Act while granting written permission (Exh. 'A') to construct the premises in question. They have, in support of their submission, invited our attention to the decisions of this Court in S. Krishnan and Ors. v. The State of Madras (1951 S.C.R. 621), The State of Uttar Pradesh v. Seth Jagamander Das and Ors. (A.I.R. 1954 S.C. 683) and Gopi Chand v. The Delhi Administration (1959) Supp 2 S.C.R. 87.

(2) That the Municipal Commissioner, Bombay, having ceased to have a statutory existence on the, expiry of

615
the Bombay Act, 1944, the notice, Exh. ('B') was a nullity.

(3) That assuming without admitting, that the Municipal Commissioner did not become non est on the lapse of the Bombay Act, 1944 even then the notice is invalid and ineffective as section 489 of the Bombay Municipal Corporation Act, 1883 under which it purports to have been issued envisages the issue of a notice only for giving effect to the requisition of order made under the sections, sub-sections and clauses of the Act specified therein.

(4) That no statutory rule or bye-law having been made under the Bombay Act, 1944 and the notice (Exh. 'B') which was based upon the agreement contained in Exhibit 'A' between the Municipal Commissioner, Bombay, and respondent No. 1 and not on any statutory power exercisable by the Commissioner, did not constitute an order as contemplated by clause (hhh) of sub-section (1) of section 13 of the Bombay Rents

Control Act, 1947.

(5) That assuming without admitting that the notice (Exh. 'B') amounted to an order, still clause (hhh) of sub-section (1) of section 13 of the Bombay Rents Control Act, 1947 requires the Court to be satisfied before passing a decree for eviction of a tenant that the premises are required for the immediate purpose of demolition ordered by any local authority or other competent authority. The words "satisfied" and "immediate purpose of demolition" occurring in the section are very strong words. They denote that the urgency should be such as to leave no room for doubt that it can brook no delay. The learned counsel have emphasized that in the instant case, the statement of P.W. Chitaman Krishnaji L, may, the Sub Engineer, Bombay Municipal Corporation, to the effect that the general policy of the Corporation is not to expedite the demolition unless some alternative accommodation is made for the inmates of the plots where the constructions are to be demolished unequivocally shows that the premises in question are not really required for the immediate purpose of demolition.

(6) That the final scheme having been suspended and varied, there was no subsisting order and the requirement of the premises by the respondent No. 1 could not be said to be for the immediate purpose of demolition ordered by the local authority so as to permit the invocation of clause (hhh) of sub-section (1) of section 13 of the Bombay Rents Control Act, 1947.

616

(7) That the notice (Exh. 'B') is ineffective as under the Town Planning Act of 1915 or of 1956 or of 1966, it is local authority and not the landlord who has the power to evict the tenant.

Mr. Nariman, learned counsel for respondent No. 1 has stoutly combated and countered all the points raised on behalf of the appellants. He has referred us to various provisions of the City of Bombay Municipal Act, 1888, the Bombay Act, 1944, the Bombay Town Planning Acts, 1915, 1954 and 1966, the Bombay Rents Control Act, 1947 and a number of authoritative pronouncements which would be adverted to at appropriate places to show that the Bombay Act, 1944 is supplemental to the Bombay Municipal Act, 1888; that the rights acquired and liabilities incurred by virtue of Exhibit 'A' granted under the Bombay Act, 1944 were of abiding nature and did not lapse with the expiry of the said Act; that the Municipal Commissioner survived the lapse of the Bombay Act, 1944 and had plenary powers to enforce the conditions subject to which permission (Exh. 'A') was granted and that the notice (Exh. 'B') which had its genesis in the statutory provisions is perfectly valid and effective and constitutes an order within the meaning of clause (hhh) of sub-section (1) of section 13 of the Bombay Rents Control Act, 1947.

We shall deal with the points raised on behalf of the appellants in the order in which they have been raised.

Re: Point No. 1 :--This pivotal point canvassed by the learned counsel for the appellants though it looks attrac-

tive at first sight cannot stand a close scrutiny. It is true that the offences committed against a temporary statute have, as a general rule, to be prosecuted and punished before the statute expires and in the absence of a special provision to the contrary, the criminal proceedings which are being taken against a person under the temporary statute will ipso facto terminate as soon as the statute expires. But the analogy of criminal proceedings or physical constraints cannot, in our opinion, be extended to rights and liabilities of the kind with which we are concerned here for it is equally well settled that transactions which are concluded and completed under the temporary statute while the same was in force often endure and continue in being despite the expiry of the statute and so do the rights or obligations acquired or incurred thereunder depending upon the provisions of the statute and nature and character of the rights and liabilities. The following observations at pages 409 & 410 in Craies on Statute Law (Seventh Edition) are worth quoting in this connection :--

"The difference between the effect of the expiration of a temporary Act and the repeal of a perpetual Act is pointed out by Parke B. in *Steavenson v. Oliver* (1841) 8 M. & W. 234, 240, 241. There is a difference between temporary statutes and statutes which are repealed; the latter (except so far as they relate to transactions already completed under them) become as if they had never existed, but with respect

617
to the former, the extent of the restrictions imposed, and the duration of the provisions, are matters of construction".

It will also be advantageous in this connection to refer to Para 720 at page 475, Volume 36 of Halsbury's Laws of England (Third Edition) :--

"720. Effect of expiry a matter of construction. The effect of the expiry of a temporary statute is in each case a matter of construction. There is no presumption that a statute is to be treated on expiry as dead for all purposes."

We are also fortified in our view by the decision of this Court in *Slate of Orissa v. Bhupendra Kumar Bose* [1962] 2 Supp. S.C.R. 380, where while dealing with the question whether the rights created by Orissa Ordinance No. 1 of 1959 promulgated by the Governor validating the election to the Cuttack Municipality (which had earlier been declared to be invalid by the High Court) and curing the invalidity of the electoral rolls in respect of other Municipalities were of lasting character and endured after the expiry of the ordinance, Gajendragadkar, J. (as he then was) speaking for the Court observed:

"In our opinion, it would not be reasonable to hold that the general rule about the effect of the expiration of a temporary Act on which Mr. Chetty relies is inflexible and admits of no exceptions. It is true for instance that offences committed against temporary Acts must be prosecuted and punished before the Act expires. If a prosecution has not ended before that day, as a result of the termination of the Act, it will ipso facto terminate. But is that an inflexible and universal rule? In our opinion, what the

effect of the expiration of a temporary Act would be must depend upon the nature of the right and obligation resulting from the provisions of the, temporary Act and upon their character whether the said right and liability are enduring or notIn considering the effect of the expiration of a temporary statute, it would be unsafe to lay down any inflexible rule. If the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired. If a penalty had been incurred under the statute and had been imposed upon a person, the imposition of the penalty would survive the expiration of the statute. That appears to be the true legal position in the matter In our opinion having regard to the object of the Ordinance and to the rights created by the validating provisions, it would be difficult to accept the contention that as soon as the Ordinance expired the validity of the elections came to an end and their invalidity was revived.. The rights created by this Ordinance are, in our opinion, very similar to the rights with which the court was dealing in the case of Steavenson and they must be held to endure and, last even after the expiry of the Ordinance. The Ordinance has in terms

618

provided that the Order of Court declaring the elections to the Cuttack Municipality to be invalid shall be deemed to be and always to have been of no legal effect whatever and that the said elections are thereby validated. That being so, the said elections must be deemed to have been validly held under the Act and the life of the newly elected Municipality would be governed by the relevant provisions of the Act and would not come to an end as soon as the Ordinance expires". (underlining is ours).

In arriving at his conclusion, the learned Judge relied on *Steavenson v. Oliver* (151 E.R. 1024, 1026-1027 and *Warren v. Windle* (1803) 3 East 205, 211-212: 102 E.R. (K.B.) 578. *Steavanson v. Oliver* (supra) related to 6th Geo. 4, c 13 3, section 4 whereof provided that every person who held a commission or warrant as surgeon or assistant surgeon in His Majesty's Navy or Army, should be entitled to practise as an apothecary without having passed the usual examination. The statute was temporary and it expired on 1st August, 1826. It was urged in that case that a person who was entitled to practise as an apothecary under the Act would lose his right after 1st August, 1826, because there was no saving provision in the statute and its expiration would bring to an end all the rights and liabilities created by it. The Court rejected this contention and held that the person who had acquired a right to practise as an apothecary, without having passed the usual examination, by virtue of the provision of the temporary Act, would not be deprived of his right after its expiration. In dealing with the question about the effect of the expiration of the temporary statute, the learned Judges composing the Bench observed:

"Lord Abinger, C.B.--We are of opinion

that the replication is good, and there must therefore be judgment for the plaintiff. It is by no means a consequence of an act of Parliament's expiring, that rights acquired under it should likewise expire. Take the case of a penalty imposed by an act of Parliament, would not a person who had been guilty of the offence upon which the legislature had imposed the penalty while the act was in force, be liable to pay it after its expiration. The case of a right acquired under the act is stronger. The 6 Geo. 4, c. 133, provides, that parties who hold such warrants shall be entitled to practise as apothecaries; and we cannot engraft on the statute a new qualification, limiting that enactment.

Parke, B.--Then comes the question whether the privilege of practising given by the stat. 6 Geo. 4, referred to in the replication is one which continues notwithstanding the expiration of that statute.. That depends on the construction of the temporary enactment. There is a difference between temporary statutes and statutes which are repealed, the latter (except so far as they relate to transactions already completed under them) become as if they had never existed; but

619
with respect to the former, the extent of the restrictions imposed, and the duration of the provisions are matters of construction. We must therefore look at this act, and see whether the restriction in the 11th clause, that the provisions of the statute are only to last for a limited time, is applicable to this privilege. It seems to me that the meaning of the legislature was, that all assistant surgeons, who were such before the 1st of August, 1826, should be entitled to the same privileges of practising as apothecaries, as if they had been in actual practice as such on the 1st of August, 1815, and that their privilege as such was of an executory nature, capable of being carried into effect after the 1st of August, 1826. Also that part of the section relating to the proof by the production of a certificate, although the language of the legislature became perfectly illusory, inasmuch as it left the party to the same mode of proof as before, still the intention was, that no other proof should be required than the production of the certificate; although by using the words, "that the proof should be by the production of a certificate under the seal of the corporate body, "the mode of proof was left as it was before. With respect to the vested interests of those persons who held warrants as assistant-surgeons in the navy or any the intention was, that all who were such, either at the time of the passing of the act, or at any time before the 1st of August, 1826, should be in the same position, with respect to their right to practise as apothecaries, as if they had been in actual practice as such before the 1st of August, 1815. I am the more

disposed to think thus, on the ground that the penalties given by this act would probably survive its expiration, and that persons who violated its provisions might afterwards be punished in the way pointed out. If it were not so, any person who had violated those provisions within six months prior to the expiration of the act, would not be liable to punishment at all. It is, however, necessary to decide that point; it is enough to say that we think those who were qualified by being assistant-surgeons in the navy before the 1st of August 1826 retained that qualification notwithstanding the expiration of the statute.

Alderson, B.--I am of the same opinion. With respect to the difference between the 5th and 1st of August, supposing the latter to be the correct date, still the objection would not be good, for the alteration effected in this respect by 6th Geo. 4, c. 133, is one of a permanent nature, and the objection could only be rendered valid by holding that statute as one in all respects of a temporary character. But I apprehend that, on the true construction of these acts of Parliament, those parts of the 6th Geo. 4, which explain the provisions of the 55 Geo. 3 are in their own nature permanent and effectual, notwithstanding the final clause, which makes the act temporary. Independently, however of this consideration, I agree in the opinion already expressed by any Brother Parke.

620

Rolfe, B.--The only important question in this case is the last. The 6 Geo. 4, when it says that the act shall continue in force till the 1st of August next, does not mean that what is therein enacted should be of no force, after that day, if it were so, the act might be productive of the greatest injustice I think that although in one sense this act is not in force, yet it is still permanent as to the rights acquired under it."

In *Warren v. Windle* (supra where the statute, 26 Geo. 3, c. 108 professed to repeal the statute of 19 Geo. 2, c. 35 absolutely though its own provisions, which it substituted in place of it, were to be only temporary, Lord Ellenborough, C.J. held that "a law though temporary in some of its provisions, may have a permanent operation in other respects".

The foregoing discussion makes it abundantly clear that the question as to whether the restrictions, rights and obligations flowing from the provisions of a temporary statute which come to an automatic end by efflux of time expire with the expiry of the statute or whether they endure and survive after the expiry of the statute depends upon the construction of the statute and the nature and character of the rights, restrictions and obligations and no rigid or inflexible rule can be laid down in this behalf. We must, therefore, scrutinise the provisions of the temporary statute in question viz. the Bombay Act, 1944 which has long since expired and the permit (Exh. 'A') to ascertain as to whether the restrictions, rights and obligations arising from any part of it endured and survived after the expiry of

the Act. The Act, as evident from its preamble and Statement of Objects and Reasons, was designed to prevent the growth of buildings in a haphazard fashion which might conflict with the contemplated scheme of systematic town planning in the aforesaid area devastated by explosions. Section 3 of the Act which related to the imposition of restrictions on building works in the said area including the plot in question authorised the Municipal Commissioner to impose such conditions as he might think fit to specify while granting permission for construction of a building or a structure. In the instant case, the Municipal Commissioner gave permission to the respondents to build

on the plot in question subject to the express condition that the structures would be pulled down by them whenever required to do so to give effect to any improvement scheme that might be made under the Bombay Building Town Planning Act. The rights and obligations flowing from the conditions subject to which the permission to build was granted to respondent No. 1 were annexed to the ownership of the building for all time to come and were not limited the duration of the Bombay Act, 1944. Accordingly, we are satisfied that the provisions of sections 3 and 8 of the Bombay Act, 1944 were permanent as to the restrictions, rights and obligations imposed, acquired and incurred thereunder. A fortiori, the rights acquired by the Municipal Commissioner, Greater Bombay, by virtue of the express conditions imposed by him while granting the permit (Exh. 'A') were not subject to a time limit and did not lapse with the expiry of the Act.

621

All the aforesaid three decisions cited by the learned counsel for the appellants are clearly distinguishable. In the State of Uttar Pradesh v. Seth Jagamander Das (supra), this Court while upholding the order of the High Court of Judicature at Allahabad quashing the proceedings taken against the respondent under section 120B, Indian Penal Code, read with Rules 81 (4) and 121, of the Defence of India Rules for the alleged violation of clause (2) of the Non-Ferrous Metals Control Order (1942) held that prosecution could not be commenced for contravention of the Non-Ferrous Metals Control Order (1942) after the expiry of the Defence of India Act under which it had been made because that would amount to the enforcement of a dead Act.

Gopi Chand v. The Delhi Administration (supra) was also a criminal case where this Court set aside the conviction and sentence of the appellant in three cases for offences ordinarily triable under the warrant case procedure but which were tried according to the procedure prescribed for trial of summons cases by Chapter XX of the Code of Criminal Procedure. The conviction and sentence were quashed on the ground that the summons case procedure which had been adopted for trial of the appellant according to section 36(1) of the East Punjab Public Safety Act, 1949 could not be continued after the expiry of the Act in the absence of a saving clause similar to section 6 of the General Clauses Act.

S. Krishnan & Ors. v. The State of Madras (supra) related to detention under the Preventive Detention (Amendment) Act of 1951 and is not germane to the point under consideration.

Consequently we have no hesitation in holding that there is no merit in the appellant's plea that Municipal Commissioner, Greater Bombay was not competent after the expiry of the Bombay Act, 1944 to issue the notice (Exh. 'B') to respondent No. 1 calling upon it to demolish the premises in question.

Re. Point No. 2 :--This plea is also misconceived. The Bombay Act, 1944 was indisputably supplemental to the Bombay Municipal Act, 1888 as the latter Act has been clearly referred to in sections 2 and 6 of the former Act as "the Principal Act". Though the former Act was temporary, the Municipal Commissioner alluded to therein did not cease to exist with the expiry of the Act. Being a creature of the Bombay Municipal Corporation Act, 1888, and a functionary who is required to be appointed from time to time in terms of section 54 of the Act, his life did not depend upon the life of the Bombay Act, 1944. The submission made by the learned counsel for the appellants is therefore, repelled.

Re. Point No. 3 :--There is no substance in this point as well. A careful perusal of the notice (Exh. 'B') would show that though it held out a threat to respondent No. 1 that in case it failed to comply with the direction regarding the demolition of the entire structure in question, the Municipal Commissioner would cause the structure to be pulled down or removed under section 489 of the

622
Bombay Municipal Act, it was really issued under the Special Regulation No. 36 which, as stated earlier, became a part and parcel of the Bombay Town Planning Act, 1954, by virtue of section 51(3) of the Act. The notice ex facie shows that it was being issued under the Bombay Town Planning Act, 1954. It expressly referred to the aforementioned scheme viz. the Town Planning Bombay City No. 1 (Elphinstone Estate) Scheme, the sanction of the Scheme by the Government of Bombay under section 51 of the Bombay Town Planning Act, 1954 (Act XXVII of 1955), the coming into operation of the Scheme with effect from 1st of December, 1957, the publication of the sanction of the Scheme in the Bombay Government Gazette and intimated to respondent No. 1 that the land upon which its premises in question stood was affected by the Scheme. We have, therefore, no doubt in our mind that the notice was issued under the Special Regulation No. 36. The fact that reference to section 489 of the Municipal Act, 1888 was erroneously or incorrectly made in the notice is immaterial as it is well settled that if the exercise of a power can be traced to a legitimate source, the fact that it was purported to have been exercised under a different power does not vitiate the exercise of the power in question. A reference in this connection may usefully be made to the decisions of this Court in *Afzal Ullah v. The State of Uttar Pradesh*(D; *J.K. Steel Ltd. v. Union of India*(2); *N.B. Sanjana v. Elphinstone Mill*(3) and *H.L. Mehra v. Union of India*(4). We feel tempted at this juncture to reproduce the following observation made by this Court in *N.B. Sanjana v. Elphinstone Mill* (supra) :--

"Dr. Syed Mohammad is, no doubt, well founded in his contention that if the appellants have power to issue notice either under rule 10A or rule 9(2) (9f the Central Excise Rules, 1944), the fact that the notice refers specifically to a particular rule, which may not be applicable, will not make the notice invalid on that ground as has been held by this Court in *J.K. Steel Ltd. v. Union of India* (supra).

Testing the notice (Exh. 'B') from the point of view of the existence of the power of the Commissioner to issue it, we are convinced that he enjoyed the power in full measure and the challenge to the validity of the notice on the ground of lack of power in the Commissioner is wholly unjustified.

Re. Point No. 4:--This point is also devoid of substance. Though no statutory rule or bye-law appears to have been made under the Bombay Act, 1944, the Municipal Commissioner had plenary power under section 3 of the Act to authorise by means of a written permission the construction of any building or structure in the area described in the Schedule to the Act subject to such conditions, if any, as he might have thought fit to specify in the permission. The permission (Exh. 'A') having been granted subject to the express condition that the plaintiff shall pull down or remove the temporary

(1) [1964] 4 S.C.R. 991, 1000. (2) [1969] 2 S.C.R. 481, 505.

(3) [1971] 3 S.C.R. 506, 515. (4) [1975] 1 S.C.R. 138, 149.

623

structure in question whenever called upon to do so and the same having been annexed to and made to go with the ownership of the structure in respect whereof, it was granted by virtue of section 8 of the Bombay Act, 1944, it could be enforced by the Municipal Commissioner under Regulations Nos. 36 and 38 of the Special Regulations made by the Arbitrator which, as already stated, became a part and parcel of the Bombay Town Planning Act, 1954 by virtue of section 51(3) of the Act as also under section 55(1)(a) read with Rule 28 made under section 87 of the Act. The Special Regulations Nos. 36 and 38 as well as section 55 of the Bombay Town Planning Act, 1954 and Rule 28 made under section 87 of the Act are reproduced below for facility of reference :--

"Regulation No. 36 :--All temporary structures within the boundaries of a final plot i.e. those which have been permitted to be constructed by the Municipal Corporation under section 15 of the Bombay T.P. Act subject to a condition or under an agreement whereby such structures have to be removed by the owners concerned at their cost whenever called upon to do so, by the Municipal Corporation, shall be so removed within a period of two years from the date the final scheme comes into force.

Provided, however, that this limit may be extended by the Municipal Commissioner in cases where genuine hardship may be caused to the owners concerned in complying with this regulation for reasons beyond their control and provided further that such an extension shall not be granted save in exceptional cases.

Regulation No. 38 :--Any person contravening any of the aforesaid regulations or any of the provisions of the scheme, shall, on being convicted for such contravention, be liable to fine which may extend to Rs. 1,000/- (One thousand) and in the case of continuing contravention of the aforesaid provisions, he shall be liable to an additional fine which may extend to Rs. 10/- (Ten) for each day during which such contravention continues after conviction for the first such contravention.

Section 55 of the Bombay Town Planning Act, 1954--

(1) On and after the day on which the final scheme comes into force the local authority may after giving the prescribed notice and in

accordance with the provisions of the scheme

(a) remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the scheme or in the erection or carrying out of which any provision of the scheme has not been complied with;

(b) * * *

(2) Any expenses incurred by the local authority under this section may be recovered from the persons in default

624

or from the owner of the plot in the manner provided for the recovery of sums due to the local authority under the provisions of this Act.

(3) If any question arises as to whether any building or work contravenes a town-planning scheme, it shall be referred to the State Government or any officer authorised by the State Government in this behalf and the decision of the State Government or of the officer, as the case may be, shall be final and conclusive and binding on all persons.

Rule 38 made under section 87 of the Bombay Town Planning Act, 1954---Before removing, pulling down or altering any building or other work or executing any work under subsection (1) of section 55, a local authority shall serve a notice on the owner or occupier of the building or work, as the case may be, calling upon him to remove, pull down or alter such building or work or execute such work within such reasonable time as may be specified in the notice and intimating him the intention of the local authority to do so on failure to comply with the requirement of the notice."

The conclusion is, therefore, inescapable that the direction in the notice (Exh. 'B') for demolition of the premises in question which clearly had its genesis in the aforesaid statutory provisions did constitute an order within the meaning of clause (hhh) of sub-section (1) of section 13 of the Bombay Rents Control Act, 1947 and the appellants' plea that no statutory rule or bye-law having been made under the Bombay Act, 1944 and the notice (Exh. 'B') not being based on any statutory power exercisable by the Commissioner did not constitute such an order is wholly untenable.

Re: Point No. 5 :--In face of the findings of the Rent Courts i.e. Court of Small Causes, Bombay as also of the appellate Bench of that Court which are courts of special and exclusive jurisdiction that the premises in question are required for the immediate purpose of demolition, we think it is not open to the appellants to raise the point before us. That apart what is sought to be urged before us cannot be sustained in view of the fact that the ground specified in clause (hhh) of sub-section (1) of section 13 of the Bombay Rents Control Act, 1947 does not stand on the same footing as the ground specified in its preceding clause viz. clause (hh). Whereas clause (hh) which appears to have been enacted with a view to provide better and more housing accommodation in the interest of the public relates to a landlord's bonafide intention to demolish the building of his own volition and to erect a new building in its

place, clause (hhh) which was inserted by Bombay Act 61 of 1953 inter alia to prevent a landlord or a tenant from impeding the town improvement or town planning scheme which is presumed to be in public interest relates to compulsory demolition ordered by a local or competent authority. It is because of this difference that the ground specified in clause (hhh) is not subject to the conditions and restrictions embodied in sub-section (3A) of section 625

section 13 and sections 17A, 17B and 17C of the Bombay Rents Control Act, 1947. It is sufficient to satisfy the requirement of the ground specified in this clause that the order of demolition is issued by the local or competent authority in exercise of the powers vested in it and the order discloses that in the opinion of the local or competent authority, the premises are required for the immediate purpose of demolition.

The statement of P.W. Chitaman Krishnaji Limaya, Sub-Engineer, Bombay Municipal Corporation made nearly fourteen years ago to the effect that "the general policy of Corporation is not to expedite the demolition unless some alternative accommodation is made for the inmates of the plots where the constructions are to be demolished" on which strong reliance is placed on behalf of the appellants has no relevance for our purpose as the instructions on which the statement was based related to the period between 1st July, 1962 and 31st December, 1962. We are, therefore, of opinion that there is no force, in point No.5.

Re: Point No. 6 :--This point needs consideration under two heads viz. suspension of the Scheme and variation of the Scheme.

Suspension of the Scheme: It is no doubt true that the request of the Corporation, the State Government has, by its notification No. TPB 1073/33184 published in the Government Gazette dated 25th July, 1974, suspended certain regulations of the principal Scheme but this suspension has not the same effect as withdrawal or abandonment of the scheme which admittedly has not been done. What is more significant is that there has not been a total or wholesale suspension of all the regulations by virtue of the aforesaid notification. On the contrary, the Government has been careful enough to allow regulations Nos 36 and 38 besides some others to continue. Thus the regulations which are material for our purpose having been specifically saved, the notice (Exh 'B'). is immune from the impact of the aforesaid notification.

Variation of the Scheme: Though there is a proposal for variation of the Principal Scheme, the same has not so far materialized. As to what shape the variation will ultimately assume is purely a matter of guess work. As such, until it is actually carried into effect, the proposed variation is of no legal consequence and the case has to be decided keeping in view its own facts and circumstances and the relevant law as at present in existence. In Willow Wren Canal Carrying Co. Ltd. v. British Transport Commission(1), it was held that the plaintiffs were entitled to have their action tried according to law as in force and the court would not take into account the possible effect of a bill before the Parliament which may never become a law or if passed into law may contain provisions which ultimately do not effect the rights of the parties before the Court.

Re: Point No. 7: --This point is also devoid of merit. Nothing has been brought to our notice on behalf of the appellants to show that it is the local authority and not the landlord who has the power to evict the tenant on the

ground specified in clause (hhh) of sub-section

(1) [1956] 1 All E.R. 567.

626

(1) of Section 13 of the Bombay Rents Control Act, 1947. Moreover the submission made on behalf of the appellants conveniently overlooks the provisions of Section 507 of the Bombay Municipal Corporation Act, 1888 where under the landlord can get an order against the tenant to allow him (the landlord) reasonable facilities to enter the leased premises in order to enable him to comply with the notice issued by the Municipal Commissioner.

For the foregoing reasons, there is no merit in any of the points raised by the appellants. Consequently, the appeals fail and are hereby dismissed but in view of the circumstances of the case without any order as to costs. Respondent No. 1 shall not, however, as agreed to on its behalf, evict the appellants till the end of the year, 1977 A.D. unless it is required by the Municipal Commissioner at any time before that date to pull down the premises in question in implementation of the scheme.

P.B.R.

Appeals dismissed.

627