A

BOMBAY MUNICIPAL CORPORATION

v.

DHONDU NARAYAN CHOWDHARY

February 8, 1965

B [P. B. GAJENDRAGADKAR, C.J., M. HIDAYATULLAH, J. C. SHAH AND S. M. SIKRI, JJ.]

Bombay City Corporation Act, s. 68—Commissioner empowered to delegate his judicial functions under Chapter VI-A—Powers delegated subject to Commissioner's 'control' and 'subject to his revision'—Delegation whether proper.

C One C a tenant of a Chawl belonging to the Municipal Corporation of Bombay died, and his widow on whom the tenancy devolved, took in a boarder. Proceedings by the Corporation under Chapter VI-A of the Municipal Corporation Act for their ejectment were initiated by an officer to whom the commissioner had delegated his powers under s. 68 of the Act. After due enquiry the officer passed an order evicting C's widow and her boarder. In an appeal filed under s. 105F of the Act before the Bombay City Civil Court it was held that the delegation of the Commissioner's power was not proper inasmuch as the judicial functions of the Com-
D missioner under ss. 105B to 105E had been delegated to be exercised under the Commissioner's control and subject to his revision, and consequently the order of ejectment was without jurisdiction. The Corporation appealed, by special leave, to the Supreme Court. No question as to the validity of the law was raised. It was only contended that judicial power was delegated with administrative control over the delegates decision.

E HELD : (i) Section 68 was originally intended to cover very different matters because Chapter VI-A could not then have been in contemplation. When Chapter VI-A was added and a reference to ss. 105B to 105E was included in s. 68, the wording of that section became applicable to the powers exercisable under ss. 105B to 105E, even though that wording, taken literally, is somewhat inapt to cover delegation of judicial power. [932 D]

(ii) To the delegation of judicial power as such there can be no objection when the law either expressly or by necessary implication per-
F mits it. In the present case the amendment of s. 68 by inclusion of the delegation of the function of the Commissioner under ss. 105B to 105E does indicate the intention that the judicial and quasi-judicial powers contained in Chapter VI-A were expressly intended to be delegated. The words "the Commissioner's control" and "subject to his revision" in s. 68, as well as in order of delegation, are really appropriate to a delegation of administrative functions. They must be reasonably construed. In respect of judicial or quasi-judicial functions these words cannot bear
G the meaning which they bear in the delegation of administrative functions. When the Commissioner stated that his functions were delegated subject to his control and revision it did not mean that he reserved to himself the right to intervene to impose his own decision upon his delegate. The control envisaged was not control over the decision as such but over the administrative aspects of cases and their disposal and the delegation was valid. [932 F-933 B]

H The order of the Bombay City Civil Court could not therefore be sustained.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 865 of 1964.

Appeal by special leave from the judgment and order dated February 14, 1964 of the Bombay City Civil Court at Bombay in Appeal No. 86 of 1963. A

M. C. Setalvad, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the appellant.

B. K. Bhattacharjee and *S. N. Mukherjee*, for the respondent. B

The Judgment of the Court was delivered by

Hidayatullah, J. In this appeal by special leave against the judgment and order of the Principal Judge, City Civil Court, Bombay dated February 14, 1964, the only question is whether the C delegation by the Commissioner, Municipal Corporation of his functions under ss. 105B to 105E to certain officers of the Corporation was valid and proper. This question arises in the following circumstances :

One Govind Hari was a monthly tenant of room No. 23 of a *chawl* D at Chandanwadi. After his death in 1961 the tenancy devolved on his widow Anusuyabai, who took in a boarder. The *chawl* belonged to the Municipal Corporation and proceedings were taken to eject Anusuyabai and the boarder under Chapter VI-A of the Municipal Corporation Act. These proceedings were initiated by one of the officers to whom the powers of the Commissioner were E delegated by him under s. 68 of the Act. After due enquiry the officer passed an order evicting these persons. An appeal was filed under s. 105F of the Act before the Bombay City Civil Court. In that appeal it was held that the delegation was not proper inasmuch as the judicial functions of the Commissioner under ss. 105B F to 105E had been delegated to be exercised under the Commissioner's control and subject to his revision. The learned Judge pointed out that judicial or quasi-judicial power could not ordinarily be delegated and, in any event, it could not be delegated so that the control over the decision was kept by the Commissioner. He, therefore, held that the officer who had passed the order was G not properly invested with jurisdiction and the order was thus a nullity.

The Bombay Municipal Corporation Act is an Act of 1888 and it has been amended frequently. Section 68 is one of the original sections and it provides as follows : H

"68. Municipal officers may be empowered to exercise certain of the powers, etc. of the Commissioner.

A (1) Any of the powers, duties or functions conferred or imposed upon or vested in the Commissioner by any of the sections, sub-sections or clauses mentioned in sub-section (2) may be exercised, performed or discharged, under the Commissioner's control and subject to his revision and to such conditions and limitations, B if any, as he shall think fit to prescribe, by any municipal officer whom the Commissioner generally or specially either by name or by virtue of office, empowers in writing in this behalf; and in each of the said sections, sub-sections and clauses the word "Commissioner" shall, to the extent to which any municipal officer is so C empowered, be deemed to include such officer.

(2) The sections, sub-sections and clauses of this Act referred to in sub-section (1) are the following namely :—

D . . . . . .

Section 105B.

„ 105C.

„ 105D.

E „ 105E.

. . . . . .

A reference to ss. 105B, 105C, 105D and 105E was inserted by the Maharashtra Act XIV of 1961. These sections are in Chap- F ter 6A which was also newly added by the same Act. It is not necessary to refer to these sections, except a portion from s. 105B which brings into prominence the action taken by the Corporation against the respondents :

"105B. Power to evict person from corporation premises.

G (1) Where the Commissioner is satisfied—

(a) that the person authorised to occupy any corporation premises has, whether before or after the commencement of the Bombay Municipal Corporation (Amendment) Act, H 1960,——

(i) . . . . .

(ii) sub-let, contrary to the terms or conditions of his occupation, the whole or any part of such premises; or

. . . . . .

. . . . . .

the Commissioner may notwithstanding anything contained in any law for the time being in force, by notice . . . . . order that that person, as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice."

It will be noticed that s. 68 was originally intended to cover very different matters because Chapter 6A could not have been in contemplation. When Chapter 6A was added and a reference to ss. 105B to 105E was included in s. 68, the wording of that section became applicable to the powers exercisable under ss. 105B to 105E, even though that wording, taken literally, is somewhat inapt to cover delegation of judicial power.

No question has been raised that any of the amendments is *ultra vires* so the words of s. 68 must be reasonably construed. It goes without saying that judicial power cannot ordinarily be delegated unless the law expressly or by clear implication permits it. In the present case the amendment of s. 68 by inclusion of delegation of the functions of the Commissioner under ss. 105B to 105E does indicate the intention that the judicial or quasi-judicial powers contained in Chapter VIA were expressly intended to be delegated. To the delegation as such there can be no objection. What is objected to is the provision, both in the section as well as in the order of delegation, that the exercise of the function is to be under "the Commissioner's control" and "subject to his revision". These words are really appropriate to a delegation of administrative functions where the control may be deeper than in judicial matters. In respect of judicial or quasi-judicial functions these words cannot of course bear the meaning which they bear in the delegation of administrative functions. When the Commissioner stated that his functions were delegated subject to his control and revision it did not mean that he reserved to himself the right to intervene to impose his own decision upon his delegate. What those words meant was that the Commissioner could control the exercise administratively as to the kinds of cases in which the delegate

A could take action or the period or time during which the power might be exercised and so on and so forth. In other words, the administrative side of the delegate's duties were to be the subject of control and revision but not the essential power to decide whether to take action or not in a particular case. This is also the intention of s. 68 as interpreted in the context of the several dele-
B gated powers. This is apparent from the fact that the order of the delegate amounts to an order by the Commissioner and is appealable as such. If it were not so the appeal to the Bombay City Civil Court would be incompetent and the order could not be assailed. The order of the delegate was the order of the Commissioner and
C the control envisaged both in s. 68 and the order of delegation was not control over the decision as such but over the administrative aspects of cases and their disposal. No allegation has been made that the Commissioner intervened in the decision of the case or improperly influenced it. In these circumstances the order impugned in the appeal cannot be sustained.

D We allow the appeal and set aside the order of the Bombay City Civil Court and restore the order of the officer who exercised powers under s. 105B of the Act, but make no order about costs.

Appeal allowed.

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