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The Provincial Government had, therefore, the requisite power to issue the notification which has been impugned. The Additional District Magistrate, therefore, came to possess the powers of a District Magistrate under s. 56 of the Bombay Police Act immediately that Act was passed. [The rest of the judgment is not material to the report.]

Rule discharged.

K. B. S.

APPEAL FROM ORIGINAL CIVIL AND INHERENT JURISDICTION

Before Mr. M. C. Chagla, Chief Justice, and Mr. Justice Shah

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Feb. 12

AHMEDALLI ABDULHUSSEIN KAKA AND ANOTHER, APPELLANTS (ORIGINAL PETITIONERS) *v.* M. D. LALKAKA, THE CHIEF JUDGE OF THE COURT OF SMALL CAUSES, BOMBAY AND OTHERS, RESPONDENTS.*

The Bombay Municipal Corporation Act (Bombay Act III of 1888), s. 507 (2)—Constitution of India, art. 226—Writ of certiorari *and mandamus—Order passed by the Chief Judge, Small Causes Court under s. 507 (2)—Order directing the owner to effect repairs to premises in certain manner—Whether such order falls within the ambit of the section—Chief Judge's order challenged—Necessary parties to the petition challenging the order—Proper attitude for the Tribunal to take before the Court—Practice—When it shall appear at the hearing and show cause—Tribunal and order of costs.*

The petitioners who were owners of a building were served by the Bombay Municipality with two notices requiring them to carry out certain repairs to their property. They thereupon served notices on the tenants of the building to vacate it in order to enable the petitioners to carry out such repairs. As the tenants refused to vacate the premises in their occupation, the petitioners applied to the Chief Judge, Court of Small Causes, Bombay City, under s. 507 of the Bombay Municipal Corporation Act, 1888. By the order passed under s. 507 (2) the learned Chief Judge directed the tenants to afford reasonable facilities to the Petitioners to put up props in the rear portion of the building in order to carry out repairs to the rear portion. He further directed that after the repairs to the rear portion were carried out the tenants should remove themselves from the front portion in order to enable the petitioners to carry out the work of setting-back the front portion as required by the municipality. The petitioners wanted to carry out the work of repairs to the rear and front portions simultaneously, as it would cost

*O. C. J. App. No. 80 of 1952: Misc. Appln. No. 359 of 1951.

them more if the repairs were effected first to the rear portion and then to the front portion. The petitioners contended that the order of the Chief Judge compelled them to incur extra expenditure and practically directed them how they should repair their building. Such order, they course for the Tribunal to follow and the costs of the Tribunal in such cipal Corporation Act, 1888.

Held, that it was open to the learned Chief Judge to take the view that if all the tenants were asked to vacate in order to enable the petitioners to carry out the repairs as a whole it would not be asking the tenants to give 'reasonable' facilities.

Held, therefore, the order passed by the learned Chief Judge was within his jurisdiction.

At the hearing of the petition challenging the order of the Chief Judge, the learned Chief Judge put in an affidavit in reply to the petition and appeared at the hearing by Counsel. The trial Court awarded the Chief Judge only such costs as were incurred by him upto the date of the filing of the affidavit including the costs of the affidavit. On questions as to who are the necessary parties to such petitions, what is the proper course for the Tribunal to follow and the costs of the Tribunal in such petitions,

Held, that whenever a writ is sought challenging the order of a Tribunal, the Tribunal and persons affected by the order of the Tribunal are necessary parties to the petition.

Ordinarily, a Tribunal served with a rule issued by the Court on a petition challenging its order should not appear to show cause, as the Tribunal after it has made its order is in no way interested in the decision of the matter. And the practice according to which Tribunal merely appears to submit to the orders of the Court is to be disccouraged, for, whether it appears or not, it will have to submit to the orders of the Court. As a matter of practice, therefore, if the Tribunal appears merely to submit to the orders of the Court, it should not be awarded any costs.

But there may be cases when the order of the Tribunal is challenged on grounds which make it incumbent for the Tribunal to reply to the allegations made against it. For instance, where it is alleged in the petition that the parties were not properly heard or that it was influenced by improper motives in arriving at its decision, it would be perfectly proper for the Tribunal to appear at the hearing to show cause and resist the petition. But when the Tribunal appears to show cause and resists the petition, it takes the risk as to any order that may be passed with regard to costs.

Ahmedalli Abdulhussein Kaka and Abdullabhai Abdulhussein Kaka (1st and 2nd Petitioners) are the owners of a building at Abdul Rehaman Street, Bombay. The Municipal Commissioner of Bombay by two notices dated July 24, 1950 issued under s. 354 of the Bombay Municipal Corporation Act, 1888 called upon them to pull down certain portions of the building and to repair certain portions specified in the said notices. According to the petitioners it was absolutely necessary for

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the purpose of carrying out the Municipal requisitions that the tenants occupying the building should vacate the premises. They thereupon served on them notices to vacate. As the tenants failed to vacate, the petitioner on September 9, 1950 applied to the Chief Judge of the Small Causes Court, Bombay under s. 507 of the Bombay Municipal Corporation Act, 1888 for orders against the tenants for giving facilities to the petitioners for carrying out the Municipal requisitions.

At the hearing of the application before the learned Chief Judge it was contended on behalf of the tenants (respondents Nos. 2 to 26) that it was not necessary that they should be asked to vacate the premises for the purpose of carrying out the requisitions and that any order which required them to vacate the premises would cause great hardship to them and some alternative mode for carrying out the requisitions should be considered.

Thereupon by consent of parties the matter was referred to P. P. Kapadia, Architect, for report on a questionaire agreed to by both the parties. In his report dated October 8, 1951 the Architect suggested that the petitioners should first carry out repairs to the rear portion of the building which would not require the tenants to vacate but which would require them to give all facilities to the petitioners to put up props in the rear portion while the repairs to that portion were being carried out, and after these repairs were carried out, repairs to the front portion of the building should be undertaken which would require the occupants of that portion to vacate temporarily while these repairs were being carried out. This method, the Architect pointed out, would undoubtedly entail some additional expenditure.

At the hearing of the application before the learned Chief Judge the Advocate for the petitioners suggested that a formal order should be passed against the respondents for giving the petitioners facilities as mentioned in the Architect's report. The learned Chief Judge thereupon passed an order on November 12, 1951, requiring the tenants to give all reasonable facilities to the petitioners to put up props in the rear portion so as to enable the petitioners to comply with the municipal requisitions and after the work of repairs to the rear portion was carried out, requiring the tenants of the front portion to give similar facilities to the petitioners by removing themselves and all other persons and goods from the front portion to enable the petitioners to carry out the work of setting back the front portion which fell within the set-back line.

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On December 21, 1951, the petitioners filed this petition for a writ of *certiorari,* mandamus and other reliefs against the learned Chief Judge only alleging that the said order compelled the petitioners to incur additional expenditure and practically directed them to carry out the work in a particular manner and was therefore in excess of jurisdiction vested in the learned Chief under s. 507 (*2*) of the Bombay City Municipal Corporation Act, 1888. The learned Chief Judge, who was then the only respondent to the petition filed his affidavit in reply on February 28, 1952. On March 5, 1952 the petition was amended by adding respondents Nos. 2 to 26 making them party respondents. At the hearing of the Rule the learned Chief Judge, the 1st respondent, appeared by counsel and contested the Rule. Mr. Justice Tendolkar, who heard the petition dismissed it on June 18, 1952, reserving the question of costs which was argued on June 19, 1952. Mr. Justice Tendolkar ordered the petitioners to pay to the respondents their costs of the petition. And as regards the costs of the 1st respondent, he directed the petitioners to pay the 1st respondent only such costs as were incurred upto the date of the filing of the affidavit including the costs of the affidavit.

The petitioners appealed against the order of Mr. Justice Tendolkar dismissing their Petition. The 1st respondent filed cross-objections on the question of his costs of the Petition.

K. T. Desai with *P. N. Bhagwati,* for the appellants.

Y. B. Rege, for the 1st respondent.

Purshottam Tricumdas, for respondents Nos. 2 to 26.

CHAGLA C. J. There is not much substance in this appeal. An order made by the learned Chief Judge of the Court of Small Causes, Bombay, under s. 507 of the Bombay Municipal Corporations Act was challenged by the petitioners who asked for a writ of *certiorari.* The learned Judge dismissed the petition, and from that order of dismissal this appeal is preferred.

The petitioners are the owners of a property situate at Abdul Rehman Street. Two notices were served by the Municipality upon the petitioners calling upon them to carry out certain repairs. Plans were submitted by the landlords to the Municipality; those plans were not approved of by the Municipality, and a further notice was served upon the owners drawing their attention to the fact that a part of the property abutted upon

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Abdul Rehman Street and was within the set-back line, and the owners were called upon to carry out the repairs and to demolish that part of the building which was within the set-back line. The owners then served notice upon the occupants of the building calling upon them to vacate the property in order to enable the landlords to carry out the repairs as requisitioned by the Municipality. But as the occupants refused to vacate, the landlord applied to the Chief Judge of the Court of Small Causes under s. 507 of the Bombay Municipal Corporations Act, and the learned Judge made an order under that section. Now that section authorises the Chief Judge of the Court of Small Causes to make an order requiring the occupier of a building to offer all reasonable facilities to the owner for complying with any requisition made by the Municipality under the Act. After the application was made, by consent of the parties the matter was referred to an architect, and the architect made his report; and in substance the report was that the landlords should first carry out repairs to the rear of the building which would not require the occupants to vacate, and after those repairs were carried out, repairs to the front of the building should be undertaken, which would require the occupants to vacate temporarily while those repairs were being carried out. The architect in his report pointed out that if the landlords carried out the repairs to the rear of the building first and then to the front of the property, it would cost them a certain amount of money more than what it would cost them if they carried out the repairs to the property as a whole. This report came before the learned Chief Judge, and on the strength of that report he made an order that the tenants should afford all reasonable facilities to the landlords to put up props in the rear portion of the building to carry out the repairs to the rear portion of the building as contemplated by the report of the architect; and he also directed by the order that after this work was carried out the tenants should remove themselves and all other persons and goods from the front portion of the premises in order to enable the landlords to carry out the work of setting back the front portion of the building which fell within the set-back line.

The order of the learned Chief Judge is challenged on the ground that the learned Chief Judge by making this order is compelling the landlords to incur extra expenditure and practically dictating to the landlords how they should repair their own building. Mr. Desai on behalf of the appellant says that

the object of s. 507 of the Act is not to give an authority to the Chief Judge to decide how the repairs should be carried out, but that the only object of the section is to authorise the Chief Judge to compel the tenants or the occupants to give reasonable facilities to the landlord for carrying out the repairs. In advancing this argument Mr. Desai forgets two relevant facts (*i*) that the architect was appointed by the consent of the parties, and (*ii*) Mr. Godambe, the Advocate of the Landlords, requested the learned Chief Judge to pass a formal order against the occupants for facilities to be provided by them to the landlords as mentioned in the architect's report. Therefore, Mr. Godambe accepted the report of the architect, and wanted an order on the basis of that report; and if the basis of that report were to be accepted, the only order that the learned Chief Judge could have passed was the order which in fact he did pass.

We are also not at all satisfied, that apart from the report of the architect, it was not open to the learned Chief Judge to consider the convenience of the tenants and to decide what under the circumstances of the case were 'reasonable facilities'. It was open to the learned Chief Judge to take the view that if all the tenants were asked to vacate in order to enable the landlords to carry out the repairs on the building as a whole, it would not be asking the tenants to give reasonable facilities, but the facilities directed to be given would be unreasonable. Therefore, if the learned Chief Judge took the view that the rear portion of the building should be repaired first so that it would not cause inconvenience to the tenants, and the front portion of the building should be repaired subsequently, it is not at all sure that the learned Judge independently of the report of the architect was not making an order within the ambit of s. 507 of the Act. Therefore, in our opinion, the learned Judge below was right in holding that the order passed by the learned Chief Judge was an order within his jurisdiction.

Rather an important question of practice arises in this case with which it is necessary to deal. When the petition was originally filed, the only respondent to the petition was M. D. Lalkaka, the Chief Judge of the Court of Small Causes. The learned Chief Judge filed an affidavit setting out all the facts; then on the application of the tenants they were made party respondents, and they are respondents Nos. 2 to 26. At the hearing both, the Chief Judge and the other respondents,

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appeared by Counsel; and when the petition was dismissed a question arose as to what order should be made with regard to the costs of the first respondent; and the order that the learned Judge made was that the first respondent should get from the petitioners only such costs as were incurred up to the date of the filing of the affidavit, including the costs of the affidavit.

The question that has been raised at the Bar is, what is the proper attitude that a Tribunal which is served with a rule in a petition filed should adopt and what is the proper order for costs that the Court should make. I think we should lay down the rule of practice, that whenever a writ is sought challenging the order of a Tribunal, the Tribunal must always be a necessary party to the petition. It is difficult to understand how under any circumstances the Tribunal would not be a necessary party when the petitioner wants the order of the Tribunal to be quashed or to be called in question. It is equally clear that all parties affected by that order should also be necessary parties to the petition. In this case the occupants of the building were vitally affected by the order of the learned Chief Judge; and it was not proper for the petitioners merely to have made the Tribunal a party to the petition, without making the occupants also parties to the petition. In England when a Tribunal is served with a rule issued by the Court of a petition, it is very rarely that the Tribunal shows cause; and this practice has grown up for obvious reasons. In a large majority of cases a Tribunal would not be concerned with the decision that the Court would give on the petition. The Tribunal has made an order; it has done its duty by deciding a particular case before it; and it would be for the Court to consider whether its decision was with jurisdiction or without jurisdiction, or whether the order, if made, was a competent order or an incompetent order. Under no circumstances would a Tribunal be interested in the decision of the matter; but there may be cases where a decision of the Tribunal may be challenged on the grounds which it would make necessary for the Tribunal to show cause against the rule issued and to contest the petition. For instance, it may be urged that the Tribunal did not give notice to the parties, or that the parties were not properly heard, or that the Tribunal was influenced by an improper motive in arriving at its decision. All these allegations would undoubtedly require a reply by the Tribunal; and in these

class of cases it would be perfectly proper for the Tribunal to show cause, to appear at the hearing and to contest the petition. If the Tribunal makes up its mind to show cause and to contest the petition, then it must take the risk as to any order that might be made with regard to costs. If the petition suceeds, the Tribunal would have to pay the costs of the petition. If the petition fails, the petitioner would have to pay the costs of the Tribunal. But we wish to discourage the practice which we are told is growing up for Tribunals merely to appear and to submit to the orders of the Court. Every citizen in that sense of the term has to submit to the orders of the Court, and there is no reason why a Tribunal should file its appearance in order to do something which it will have to do, whether it appeared or not.

In this case Mr. Rege has drawn our attention to the fact that the Chief Judge submitted to the orders of the Court and that he had appeared in order to make an affidavit to place all the relevant facts before the Court. Now if the Tribunal is not contesting the petition, we see no reason why it should merely appear to file an affidavit to place all the relevant and material facts before the Court. If the Court requires any facts or information, it is always open to the Court to direct the Tribunal to file the necessary affidavit, and this can be done without the Tribunal appearing and submitting to the orders of the Court. Therefore, in our opinion, as a matter of practice if the Tribunal merely appears in order to submit to the orders of the Court, ordinarily the Tribunal should not be given its costs. If the Tribunal wishes for any reason to be present in Court and not to take up a contentious attitute, then it must indulge in that luxury at its own costs.

Now, in this case as the practice was not clear, we do not think that the Tribunal should be deprived of the costs which have been awarded to it by the learned Judge.

The Tribunal has filed cross-objections; and Mr. Rege for the Chief Judge contends that having filed the affidavit, the Tribunal had to appear in Court in order to ask for its costs. If the Chief Judge had not appeared by Counsel before Mr. Justice Tendolkar no order in his favour would have been made for costs; and Mr. Rege says that if the Counsel's presence was not necessary, the Chief Judge should have been dismissed from the petition at any stage of the hearing after

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making proper provision for his costs. Further in this case there is this thing to be said in favour of the Chief Judge that when the petition was originally filed, he was the only respondent. But even so if we were to give effect to the practice which we have just laid down, as the Chief Judge did not take up a controvertial attitude and merely appeared and submitted to the orders of the Court, he would not be entitled to his costs at all. But, as we just said, as the practice was not certain, as the learned Judge himself points out that it is not still well settled whether the Tribunal is a necessary party to the petition challenging the order made by the Tribunal, we do not think that we should interfere with the order of costs made by the learned Judge. But we certainly do not propose to award to the Tribunal greater costs than what has been awarded by the learned Judge below. We have been told that it is very necessary that the Tribunals, which are in large numbers and which decide several cases and whose decisions are very often challenged in this Court, should know what is the correct attitude for them to take up when the rule in a petition is served upon them. We have therefore, though it necessary to lay down a practice which can be easily conformed to by the Tribunal.

Appeal dismissed, the appellants to pay the costs of respondents Nos. 2 to 26. Respondent No. 1 to bear his own costs of the appeal.

Cross-objections dismissed. No order as to costs of the cross-objections.

Attorneys for appellant: *Ambubhai & Diwanji.*

Attorneys for respondents: *Little & Co. & Benjamin & Co.*

Appeal dismissed.

P. M. P.