

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 474 OF 2009
WITH
CIVIL REVISION APPLICATION NO. 387 OF 2010
AND
CIVIL APPLICATION NO. 417 OF 2015
WITH
CIVIL REVISION APPLICATION NO. 387 OF 2010

Vasudeo @ Sharadchandra
Vallabhadas Newaskar .. Applicant
vs.
Mahendra Amrutlal Mehta & Anr. .. Respondents

Mr. R. D. Soni with Mr. M. S. Lagu for Applicant.
Mr. A. B. Avhad for Respondent.

CORAM : M. S. SONAK, J.
DATE: 29 OCTOBER 2015

P.C. :-

1] These two Civil Revision Applications as well as Civil Application No. 417 of 2015 in CRA No. 387 of 2010 can be disposed of by a common order.

2] In CRA No. 474 of 2009 the challenge is to judgment and order dated 4 July 2008 made by the District Judge, Pune setting aside the judgment and decree dated 28 September 2004 made by the Civil Judge, Pune in Civil Suit No. 50 of 2004. Mr. Soni, the learned counsel for the Applicant on basis of instructions from the Applicant, has made a statement that the Applicant does not wish to press this Revision Application. Accordingly Civil Revision Application No. 474 of 2009 is disposed of as not pressed.

2] By judgment and decree dated 28 September 2004 in Civil Suit No. 50 of 2004, the Respondents – tenants were ordered to be evicted from the suit premises. The judgment and decree dated 28 September 2004 was set aside by the Appeal Court by order dated 4 July 2008, primarily on the ground that the decree was obtained against a dead person, and consequently the same was a nullity.

3] The record indicates that even before the Appeal Court could make the order dated 4 July 2008, the Applicant in execution of the judgment and decree dated 28 September 2004 evicted the Respondents – tenants from the suit premises. Therefore, the Respondents, consequent upon setting aside of decree dated 28 September 2004 applied to the Trial Court for restitution. The Trial Court by order dated 4 August 2009 directed restitution. The Applicant's appeal against the order dated 4 August 2009 was dismissed by the Appeal Court on 27 October 2009. The challenge in CRA No. 387 of 2010 is to the orders dated 4 August 2009 and 27 October 2009 directing the restitution. During the pendency of Revision Application, the Applicant demolished the building in which the suit premises were located. This Court, in its order dated 13 September 2010 made a *prima facie* observation that the demolition was carried out during the pendency of the Revision

Application only with the object of defeating the order of restitution. Therefore, the Trial Court was directed to appoint a fit and proper person as Court Receiver to take over the formal possession of the suit property without disturbing possession or occupation of any person. It now transpires that the Respondents took no steps in the matter and consequently neither was Court Receiver actually appointed nor did such Court Receiver take even formal possession of the suit property. However, the Applicant has proceeded on the basis that there is an order for appointment of the Court Receiver in respect of the suit property.

4] In Civil Application No. 417 of 2015, the Applicant seeks the following relief :

“(a) That the order dated 13th September 2010 passed in Civil Revision Application No. 387 of 2010 appointing the Court Receiver as Receiver in respect of the suit property as passed by this Hon'ble Court be vacated and the Applicant be permitted to construct a new building and/or redevelop the suit property wherein the Applicant is ready and willing to reserve a tenement for the Respondents of the same size equivalent to the one they were holding as tenant prior to demolition.”

5] In the aforesaid situation, it is only proper that Civil Application No. 417 of 2015 is taken up and disposed along with Civil Revision Application No. 387 of 2010. Now that the Applicant has not pressed the challenge to judgment and decree dated 4 July 2008, the said judgment and decree attains finality. The Civil Suit

No. 50 of 2004 instituted by the Applicant stands dismissed, the decree dated 28 September 2004 made therein, being a nullity. As a corollary therefore, no jurisdictional error as such can be found in making the orders dated 4 August 2009 and 27 October 2009, which have been impugned in Civil Revision Application No. 387 of 2010. However, in view of changed circumstances, it is necessary to modify the relief granted therein.

6] Mr. Avhad, the learned counsel for the Respondents – tenants has submitted that the conduct of the Applicant itself disentitles the Applicant to any equitable relief or indulgence. The learned counsel with reference to the judgment and decree dated 4 July 2008 made by the Appeal Court, as well as the orders of restitution made by the Trial Court and the Appeal Court pointed out that the Applicant had obtained decree against the predecessor-in-title of the tenants, despite full knowledge that said predecessor was dead at the time when the decree was made. That apart, the learned counsel by placing reliance on the observations in the order dated 13 September 2010 pointed out that the Applicant deliberately demolished the suit premises, with a view to render the execution of restitution order difficult. Finally, and without prejudice, the learned counsel submitted that the suit premises admeasured 1200 sq. ft. and therefore, if the Applicant is to be granted leave to

redevelop the suit property, the Applicant must be directed to restore to the Respondents – tenants possession of premises admeasuring 1200 sq. ft. at the site.

7] Mr. Soni, the learned counsel for the Applicant, on the other hand submitted in the first place that there was no justification in making restitution orders. Secondly, the material on record establishes that the suit premises admeasured 500 sq. ft. and therefore, consistent with the prayer in the Civil Application, the Applicant can be directed to reserve a tenement of 500 sq. ft. for occupation by the Respondents.

8] Although, *prima facie* observations have been made with regard to the conduct of the Applicant in the order dated 13 September 2010, no useful purpose will be served in investigating whether, the demolition of the suit premises was deliberate and with a view to frustrate the restitution orders. This is because the Applicant has produced on record a demolition notice from the Municipal Authorities and it is the case of the Applicant that the suit premises were in a dilapidated condition and the same were demolished in pursuance of notice from the Municipal Authorities. Besides, even after upholding the restitution orders, suitable directions will have to be issued to the Applicant to redevelop the

suit property and thereafter restore to the Respondents the tenanted premises. This is in fact substantially the relief applied for by the Applicant in his Civil Application No. 417 of 2015. Therefore, even though no case is made out to interfere with restitution orders, relief granted therein, will have to be modified in view of the variation in circumstances.

9] In so far as the area of the suit premises is concerned, the learned counsel for the Respondents has placed reliance upon the Municipal records which indicate that the suit premises were admeasuring '12 *khaan*'. The learned counsel for the Respondents submits that this corresponds to 1200 sq. ft. On the other hand, the suit premises were described in paragraph 1 of the plaint as admeasuring 500 sq. ft. In the Appeal instituted by the Respondents questioning the decree dated 28 September 2004 made in the said suit, the Respondents did not dispute the description of the suit premises or the area of the suit premises. That apart, after the decree dated 28 September 2004 was set aside, the Respondents, in their application seeking restitution specifically applied for restitution of the suit premises as described in paragraph 1 of the plaint. This means that the Respondents admitted that the description of the suit premises as contained in paragraph 1 of the plaint was correct. As noted earlier, paragraph 1

of the plaint had specifically indicated the area of the suit premises as being 500 sq. ft. The Respondents have produced no material on record to demonstrate as to how '12 *khaan*' corresponds to 1200 sq. ft. On the other hand, the Applicant has placed on record two certificates from two different Architects to the effect that 1 *khaan* corresponds to 50 sq. ft. and therefore, 12 *khaan* would correspond to 600 sq. ft. Mr. Soni has submitted that area should be determined on the basis of averment in the plaint as well as in the restitution application made by the Respondents themselves.

10] There is really no material on record to establish that the suit premises admeasured 1200 sq. ft. The material on record rather establishes that the suit premises may have admeasured 500 to 600 sq. ft. The plaint and application for restitution made by the Respondents themselves make reference to 500 sq. ft. by implication. The Municipal records does indicate the area of the suit premises being 12 *khaan*, which would also correspond to 600 sq. ft. Therefore, it would be appropriate if the Applicant is directed to restore to the Respondents tenement admeasuring 600 sq. ft. (carpet area).

11] If, as contended by the learned counsel for the Respondents, the conduct of the Applicant is taken into consideration, at the highest, the Applicant's Revision against orders of restitution shall

have to be dismissed. However, it would be neither in the interest of the Applicant nor the Respondents to restrain indefinitely any development upon the suit property. If no development takes place upon the suit property, there will be considerable difficulty in the matter of execution of the restitution orders, as the suit premises have since been demolished. In order to grant effective relief to the Respondents, directions will have to be issued to redevelop the suit property, construct suitable building thereon and thereafter restore possession of premises having equivalent area to the Respondents. By Civil Application No. 417 of 2015, the Applicant seeks substantially similar relief. Besides, on account of acts of the Applicant, the Applicant is now being required to allot to the Respondents area at least marginally in excess of 500 sq. ft. The restitution applications made by the Respondents had applied for restoration of the suit premises as described in paragraph 1 of the plaint. The restitution orders therefore mean and imply restoration of the suit premises admeasuring 500 sq. ft., because this was the description in paragraph 1 of the plaint. However, on the basis of the material on record and taking into consideration the conduct of the Applicant, it will be only proper that the Applicant is directed to restore to the Respondents tenement having carpet area of 600 sq. ft. in the new building to be constructed upon the suit property.

12] Accordingly, Civil Application No. 417 of 2015 as well as Civil

Revision Application No. 387 of 2010 are disposed of by directing the Applicant to redevelop the suit property by way of construction of a new building thereon and thereafter to allot and place the Respondents in possession of the tenement on the second floor of such building (road facing) having carpet area of 600 sq. ft. The impugned restitution orders shall stand modified to this extent. Rule is accordingly disposed of in Civil Revision Application No. 387 of 2010 and Civil Application No. 417 of 2015 to the said extent.

13] Mr. Soni, the learned counsel for the Applicant, on basis of instructions from the Applicant states that the plans for redevelopment and construction will be submitted to the Competent Authorities as expeditiously as possible and in any case within a period of two months from today. He further states that construction of the new building and allotment of tenement shall be made within a maximum period of twenty four months from the date of receipt of sanctions from the Competent Authorities. Mr. Soni, in fact tendered an undertaking with regard to reservation / allotment of tenement. However, since the undertaking does not incorporate all these aspects, the Applicant is directed to file a detailed undertaking incorporating all these aspects within a period of four weeks from today. Copy of such undertaking to be furnished to the learned counsel appearing for the Respondents, before the same is filed in the Registry. The Applicant, who is present in the Court, states that

such undertaking will be duly filed and complied with. This statement is accepted as an undertaking to the Court. It is further directed that until the tenement admeasuring 600 sq. ft. is actually allotted to the Respondents, the Applicant shall not, either himself enter into possession of the other apartments or put any other persons in possession of any other apartments in the building to be constructed upon the suit property.

14] Mr. Avhad, the learned counsel for the Respondents wishes this Court to record that the hearing in these matters have taken place and even the order is dictated in the presence of Mr. Jugalkishor Amrutlal Mehta, the Respondent No. 2. It is recorded accordingly.

15] Both the Civil Revision Application and the Civil Application are disposed of in the aforesaid terms. In the facts and circumstances of the case, there shall be no order as to costs.

16] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)