

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4717 OF 2013

Kunjan Unnikutty

..Petitioner

Vs.

The State of Maharashtra and Ors.

..Respondents

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Mr. Vijay Gharat, Advocate for Petitioner.

Mr. A.R. Metkari, AGP for Respondent No.1.

Mr. Vijay Patil, Advocate for Respondent No.2.

Mr. A.J. Rizvi, Advocate for Respondent Nos. 3 to 5.

Mr. Arun Panickar, Advocate for Respondent No.6.

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CORAM : N.M. JAMDAR, J.

DATED : 31 MARCH 2015

ORAL ORDER:

By this petition, the petitioner challenges the order dated 10 August 2012 passed by the Appeal Bench of the Small Causes Court, Mumbai rejecting the revision application filed by the petitioner against the Miscellaneous Notice taken out for execution by the respondent-original plaintiff.

2. The suit filed by the respondent-plaintiff was decreed by the Small Causes Court. Thereafter, the petitioner filed an appeal challenging the said decree which was not entertained on the ground of delay and application for condonation of delay was rejected. After the

dismissal of the appeal, the execution proceedings have been taken out which have been challenged by the petitioner.

3. The learned Counsel for the original plaintiff and the learned Counsel for the Respondent No.6 - the developer submitted that the premises were in census slum and Section 22 of the Maharashtra Slum (Clearance, Improvement and Redevelopment) Act, 1971 was not applicable to it and it being a census slum, the scheme of rehabilitation was implemented under 33(10) of Development Control Regulations. The learned Counsel pointed out that the premises are no longer in existence and stand demolished.

4. The learned Counsel for the petitioner submitted that the Slum Act being applicable, the Small Causes Court has no jurisdiction and this point can be taken even in execution proceedings. The Appeal Bench of the Small Causes Court has considered the evidence on record and has come to the conclusion that there is no notification under Section 4 of the Slum Act and therefore Section 22 of the Slum Act is not attracted. Nothing contrary is shown to set aside this finding.

5. The premises are no longer in existence. The scheme under Development Control Regulation 33(10) is implemented. The petitioner's entitlement to get permanent accommodation in the redeveloped property has been rejected by the competent authority. The

petitioner has remedy to challenge the order of the competent authority before the appropriate forum. The learned Counsel for the respondent-plaintiff also points out that the possession is taken pursuant to the execution order however that will not be of much importance as the scheme stands already implemented.

6. There is no merit in this petition. It is rejected. No costs.

[N.M. JAMDAR, J.]