

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 4077 OF 1995**

|                                 |    |             |
|---------------------------------|----|-------------|
| Devnath Robai Mourya            | .. | Petitioner  |
| vs.                             |    |             |
| Mrs. Shankri B. Ajimal and anr. | .. | Respondents |

**WITH**

**WRIT PETITION NO. 4078 OF 1995**

|                                 |    |             |
|---------------------------------|----|-------------|
| Raj Dev Dube                    | .. | Petitioner  |
| vs.                             |    |             |
| Mrs. Shankri B. Ajimal and anr. | .. | Respondents |

**WITH**

**WRIT PETITION NO. 4080 OF 1995**

|                                  |    |             |
|----------------------------------|----|-------------|
| Mrs. Satyavaty Pandurang Marathe | .. | Petitioner  |
| vs.                              |    |             |
| Mrs. Shankri B. Ajimal and anr.  | .. | Respondents |

**WITH**

**WRIT PETITION NO. 4081 OF 1995**

|                                                                                |    |             |
|--------------------------------------------------------------------------------|----|-------------|
| S.R. Chavan (since deceased<br>represented through LR<br>Mr. Paresh S. Chavan) | .. | Petitioner  |
| vs.                                                                            |    |             |
| Mrs. Shankri B. Ajimal and anr.                                                | .. | Respondents |

**WITH**

**WRIT PETITION NO. 4082 OF 1995**

|                                 |    |             |
|---------------------------------|----|-------------|
| Shanti R. Giri & anr.           | .. | Petitioners |
| vs.                             |    |             |
| Mrs. Shankri B. Ajimal and anr. | .. | Respondents |

**WITH**

**WRIT PETITION NO. 4083 OF 1995**

|                                 |    |             |
|---------------------------------|----|-------------|
| Mr. S.R. Bhonsale               | .. | Petitioner  |
| vs.                             |    |             |
| Mrs. Shankri B. Ajimal and anr. | .. | Respondents |

**WITH****WRIT PETITION NO. 4084 OF 1995**

|                                         |    |             |
|-----------------------------------------|----|-------------|
| Mr. Narendra @ Naresh Kishorebhai Patel | .. | Petitioner  |
| vs.                                     |    |             |
| Mrs. Shankri B. Ajimal and anr.         | .. | Respondents |

**WITH****WRIT PETITION NO. 4085 OF 1995**

|                                                                                                        |    |             |
|--------------------------------------------------------------------------------------------------------|----|-------------|
| Mr. Subhabhai Purshottambhai @<br>Somabhai Purshottambhai (since<br>deceased represented through Lrs.) | .. | Petitioners |
| vs.                                                                                                    |    |             |
| Mrs. Shankri B. Ajimal and anr.                                                                        | .. | Respondents |

**WITH****WRIT PETITION NO. 4086 OF 1995**

|                                                                   |    |             |
|-------------------------------------------------------------------|----|-------------|
| Mr. Rawjibhai Patel (since deceased,<br>represented through Lrs.) | .. | Petitioners |
| vs.                                                               |    |             |
| Mrs. Shankri B. Ajimal and anr.                                   | .. | Respondents |

**WITH****WRIT PETITION NO. 4087 OF 1995**

|                                 |    |             |
|---------------------------------|----|-------------|
| Mithulal Biharilal              | .. | Petitioner  |
| vs.                             |    |             |
| Mrs. Shankri B. Ajimal and anr. | .. | Respondents |

Mr. S.B. Shetye for the Petitioners.

Mr. Harbhajan Singh B. Ajimal, Respondent No.2 in person.

**CORAM : M. S. SONAK, J.**

Date of Reserving the Judgment : 21 September 2015.

Date of Pronouncing the Judgment : 28 September 2015.

**JUDGMENT :-**

1. The learned counsel for the Petitioners and Mr. Harbhajan Singh B. Ajimal, Respondent No.2, have agreed that these batch of petitions can be disposed of by common judgment and order. Even

otherwise, the issues of law and fact which arise in these batch of petitions are substantially same. In fact, all these petitions challenge the common judgment and order dated 16 February 1995, disposing of the various appeals instituted by the Petitioners herein. For all these reasons, it is appropriate that these batch of petitions are disposed of by common judgment and order.

2. These petitions relate to rooms (suit premises) at Ajimal Chawl (previously known as Dayaram Gurucharan Yadav Chawl), Kurar Village, Daftary Road, Malad (East), Bombay – 400 097. The Respondents – Ajimals claiming to be landlords of the suit premises issued demand notices towards arrears of rent to the Petitioners (tenants) and instituted suits for recovery of possession of the suit premises invoking the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Rent Act).

3. The Petitioners filed written statements contending that Ajimals were not the owners of suit premises and consequently not the landlords. In any case, the Petitioners submitted that there was a dispute with regard to ownership of the suit premises and some of the Petitioners had in fact paid the rents to Dayaram G. Yadav, the

owner of the suit premises. Some of the Petitioners raised the defence that the rents remained to be unpaid on account of confusion with regard to the ownership of the suit premises and that they were ready and willing to pay the rents, after the dispute with regard to ownership is resolved and standard rent is determined. At a later stage, the Petitioners amended their written statements to take up the plea that the area in which the suit premises are situated has been declared as '*Slum area*' under the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act). Therefore, the suits as instituted were infirm and the Small Causes Court lacked jurisdiction to either entertain or proceed with the same.

4. The Small Causes Court (Trial Court) in each of the suits concerning the Petitioners (except the Petitioner in Writ Petition No. 4087 of 1995) has held that default in the matter of payment of rents has been established. The Trial Court also held that there was no merit in the objection based upon Section 22 of the Slum Act. The Trial Court, however, dismissed the suits by observing that though Ajimals would be said to be '*landlord*' for the purposes of collection of rents, the Ajimals could not be regarded as '*landlord*' for

the purposes of seeking recovery of possession of the suit premises. In support of such reasoning, the Trial Court made reference to certain documents/agreements between the Ajimals and Dayaram G. Yadav and held that the documents/agreement may entitle the Ajimals to recover rents in respect of suit premises, but based upon such documents/agreements, Ajimals cannot claim '*ownership*' of the suit premises. Ajimals appealed against the judgments and decrees made by the Trial Court.

5. The Division Bench of the Small Causes Court (Appeal Court) by common judgment and decree dated 16 February 1995 has reversed the judgments and decrees made by the Trial court. The Appeal Court has held that the issues of title *per se* need not be gone into in the proceedings under the Rent Act. As long as the Ajimals were qualified to be '*landlord*' within meaning assigned to this term under Section 5(3) of the Rent Act, the Ajimals were entitled to secure eviction of the Petitioners, upon proving that the ground for eviction as contemplated by Section 12 of the Rent Act was duly made out. The Petitioners have therefore, instituted present batch of petitions impugning the common judgment and decree dated 16 February 1995.

6. During pendency of the present batch of petitions, this Court by its order dated 3 May 2011 remanded the matters to the Appeal Court for the purposes of recording a clear finding on the issue as to whether the area in which suit premises are located has indeed been declared as a '*slum area*' for the purposes of Slum Act. In pursuance of such remand, the Appeal Court, by common order dated 2 November 2011 has returned the following findings:

- a] That the area in which suit premises are located has not been declared as '*slum area*'; and
- b] Even if it were, since the suits were instituted in the year 1972, i.e., prior to allege declaration of slum in the year 1979, the suits were not hit by the provisions of Section 22 of the Slum Act.

7. The Petitioners have duly amended the writ petitions in order to challenge the order dated 2 November 2011 made by the Appeal Court.

8. Mr. S.B. Shetye, learned counsel for the Petitioners in each of these petitions, has made the following submissions in support of the petitions:

A] That in the facts and circumstances of the present case, Ajimals could never have been regarded as '*landlord*' within meaning assigned to this term under Section 5(3) of the Rent Act. Accordingly, Ajimals lacked *locus standi* to even institute suit seeking recovery of possession of the suit premises;

B] In the alternate, the Ajimals were mere '*rent collectors*' in respect of suit premises. In such capacity, the Ajimals were not at all entitled to seek recovery of possession of the suit premises;

C] In terms of agreement/documents between the predecessor-in-title of the Respondents, such predecessor-in-title was constituted '*rent collector*' by Dayaram G. Yadav in respect of suit premises. Consequent upon demise of Dayaram G. Yadav, the authority of predecessor-in-title of Respondents ceased. In any case, upon demise of predecessor-in-title of Respondents, the right to sue did not devolve of the Respondents. Inasmuch as such jurisdictional issues have been ignored by the Appeal Court, the impugned judgment and decree dated 16 February 1995 is required to be set aside;

D] The Appeal Court, has clearly misconstrued the provisions of Section 22 of the Slum Act. In the first place, the

provision has retrospective operation. Secondly and in any case, even if the suit instituted prior to a property being declared as '*slum area*' may be maintainable, the execution of any decree made therein is barred, unless the same is preceded by prior written permission from the competent authority;

E] Ajimals had admitted that the property surveyed under No.351/part is declared as slum area. In such circumstances, the onus was upon Ajimals to establish that the suit premises were not located in the property surveyed under No. 351/part. The Appeal Court, by incorrectly placing the burden upon the Petitioners, has concluded the suit premises were not located in the area declared as '*slum area*'. This is a jurisdictional error , which vitiates the order dated 2 November 2011 made by the Appeal Court; and

F] The Trial Court, in the judgment and decree dated 19 April 1989, made in R.A.E. & R. Suit No. 1314 of 1972 instituted against the petitioner in Writ Petition No. 4087 of 1995, has recorded a finding of fact that the Petitioner was not in arrears of rent for the period between 1 April 1971 to 31 December 1971 at the time of sending a quit notice to him.



The Appeal Court, without any discussion, has reversed this finding. There are no reasons for such reversal. The Writ Petition No. 4087 of 1995, therefore deserves to be allowed and the judgment of the Appeal Court is set aside qua the Petitioner in Writ Petition No. 4087 of 1995.

9. Mr. Harbhajan Singh B. Ajimal, Respondent No.2, who appeared in person for self and on behalf of Respondent No.1, submitted that even the Trial Court has accepted the position that Ajimals were '*landlords*' for purposes of Section 5(3) of the Rent Act. This finding was not even challenged by the Petitioners either by filing cross-objections to the Appeal Court or otherwise. Mr. Harbhajan Singh submitted that '*landlord*' as defined under Section 5(3) of the Rent Act is entitled in law to seek recovery of possession of the suit premises, once default in payment of rent is established. The judgment and decree made by the Appeal Court, therefore, warrants no interference.

10. Mr. Harbhajan Singh B. Ajimal pointed out that several of the Petitioners had themselves instituted applications for determination of standard rent, by styling Ajimals as landlords. Several of the Petitioners at some point or other admitted having paid rents to

Ajimals. There are documents which establish that tenancies were attorned to Bakshi Singh Bantasingh Ajimal, the predecessor-in-title of the Respondents. In view of all such documentary evidence, upon which reliance has been placed by both the Trial Court as well as the Appeal Court, there was no substance in the contentions that Ajimals were not '*landlords*' in respect of suit premises or were otherwise prevented from seeking recovery of possession of the suit premises.

11. On the aspect of declaration as slum area, Mr. Harbhajan Singh B. Ajimal submitted that the Petitioners had, in their written statements, come up with a specific case that the suit premises were located in properties surveyed under CTS No. 354/1 to 101. However, the Petitioners failed to establish this position. The alternate plea by some of the Petitioners that the suit premises fall in the property surveyed under CTS No. 351/1 to 111, was also not established by such Petitioners. In any case, the Notification dated 30 April 1979 in respect of properties surveyed under CTS No. 351/1 to 111 has been set aside by the Slum Tribunal in Appeal No. 30 of 2004 decided on 20 October 2005. Therefore, there is no basis whatsoever to suggest that the suit premises are located at property declared as slum area.

12. For all the aforesaid reasons, Mr. Harbhajan Singh B. Ajimal submitted that the eviction decrees be not interfered with, particularly since the Respondents have been pursuing such matters from the year 1972.

13. The rival contentions now fall for my determination.

14. At the outset, it needs to be noted that Ajimals had instituted the suits seeking recovery of possession based upon several grounds as contemplated by Sections 12 and 13 of the Rent Act. However, it appears that the only ground of default in payment of rent as contemplated by Section 12 of the Rent Act was seriously pressed or pursued. As such, there is no necessity to advert to any other grounds. In fact, neither the learned counsel for the Petitioners nor Mr. Harbhajan Singh Ajimal made reference to any other grounds, in support of eviction decrees.

15. The Trial Court as well as the Appeal Court have recorded concurrent findings of fact as to default in payment of rents. However, in respect of the Petitioner in Writ Petition No. 4087 of 1995, the finding recorded is that there was no default. Therefore,

the Writ Petition No. 4087 of 1995 is dealt with separately. Both the Trial Court as well as the Appeal Court, upon reference to both oral as well as documentary evidence have concluded that there were defaults on the part of the Petitioners in payment of rents. In respect of such defaults, the statutory notices as contemplated by Section 12(2) of the Rent Act were duly served upon the Petitioners. The Petitioners, despite receipt of statutory notices, failed to make good the default. Some of the Petitioners, though not within the prescribed period, applied for determination of standard rent. However, even after disposal of such applications, mainly for want of prosecution, failed and neglected to deposit the rents. The two Courts have also taken into consideration the justification pleaded by some of the Petitioners for failure to pay rents, but concluded that the justification was neither valid nor constituted any permissible excuse for non-payment of rents. The Petitioners failed to avail the opportunity of deposit of rents in the Court within prescribed period, as contemplated by the provisions contained in Section 12 of the Rent Act. On all such basis, both the Trial Court as well as the Appeal Court have held that the ground of default in payment of rent was made out. There is really no perversity in the record of such

concurrent findings of fact. Such findings of fact was not even seriously challenged in the present batch of petitions.

16. This Court, while exercising jurisdiction under Article 227 of the Constitution of India, does not exercise appellate powers. Therefore, unless it is established that the findings of fact concurrently recorded by the two Courts are vitiated by perversity or is totally contrary to the weight of evidence on record, there is no scope to interfere with such concurrent findings of fact. Applying such principles, it is clear that the ground of default in payment of rents stand established.

17. Mr. Shetye has, however, contended that the documents/agreements on record do not establish that Ajimals were owners in respect of suit premises. In this regard, Mr. Shetye submitted that the agreement dated 21 February 1971 styled as '*Agreement of Conditional Sale*' and declaration dated 22 February 1971, can never be regarded as documents of title. In the first place, such documents were not even registered and secondly such documents did not evidence any transfer of title. Mr. Shetye contended that in absence of title, Ajimals were incompetent to maintain a suit seeking recovery of possession of the suit premises.

18. Mr. Shetye based upon aforesaid documents, in the alternate, contended that the documents at the highest constituted Ajimals as 'rent collector' and not 'landlord' for purposes of Section 5(3) of the Rent Act. Consequent upon demise of Dayaram G. Yadav, even the authority to collect rents stood revoked. In any case, the authority to collect rent was conferred only upon the predecessor in title of the Respondents, i.e., Shri. Bakshi Singh Bantasingh Ajimal. Upon his demise, right to sue neither devolved nor survived to the Respondents herein. In this regard, reliance was placed by Mr. Shetye on the decision of learned Single Judge of this Court in case of *Kamruddin Masjit Trust by its Mutawali Trustee Shaikh Bashir Ismail Vs. Abdul Rahiman Fakiruddin*<sup>1</sup>.

19. The Appeal Court has rightly rejected the aforesaid contention raised by and on behalf of the Petitioners. Section 5(3) of the Rent Act defines the expression 'landlord' to mean as under:

*Section 5(3) - "Landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf of, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant, and includes any person not being a tenant who from time to time derives title under a landlord and further includes in respect of his sub-tenant, a*

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1 1986 (2) Bom.C.R.121

*tenant who has sub-let any premises; (and also includes in respect of a licensee deemed to be a tenant by S.15A, the licensor who has given such licence;)"*

20. The aforesaid statutory definition of the expression '*landlord*' confers a meaning upon this expression wider than that stated in a dictionary<sup>2</sup>. The definition is so wide that expression '*landlord*' is not limited to the owner, freeholder or head landlord and includes an agent receiving rent on behalf of the owner.<sup>3</sup> Even a person with possessory title may be a '*landlord*' within a meaning assigned to this expression under Section 5(3) of the Rent Act. <sup>4</sup>

21. In case of ***Kanta Goel vs. B.P. Pathak & ors.***<sup>5</sup>, the Apex Court, in the context of rent control law, has observed thus:

6. *Nor do we set much store by the submission that the 1st respondent is not a landlord, being only a co-heir and the will in his favour having been disputed. Equally without force in our view is the plea that one co-lessor cannot sue for eviction even if the other co-lessors have no objection. Section 2(e) of the Act defines 'landlord' thus:*

*"2(e) 'Landlord' means a person who, for the time being is receiving, or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of, or for the benefit of, any other person or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent, if the premises were let to a tenant."*

2 Mohommad Nurul Huda vs. Kikabhoy – AIR (1953) Nag. 251

3 Jagdishrai S. Hora Vs. Prabhakar Mahanubhav – 2000 (4) Bom.C.R. 778

4 Kesheoraj Deo Sansthan Vs. Bapurao – 66 Bom.L.R. 519

5 (1977) 2 SCC 814

*'Tenant', by definition [Section 2(1)] means any person by whom or on whose account or behalf the rent of any premises is payable. Read in the context of the Rent Control law, the simple sense of the situation is that there should be a building which is let. There must be a landlord who collects rent and a tenant who pays it to the one whom he recognizes as landlord. The complications of estoppel or even the concepts of the Transfer of Property Act need not necessarily or inflexibly be imported into the proceedings under the Rent Control law, tried by special Tribunals under a special statute. In this case, rent was being paid to the late Dass who had let out to the appellant, on the death of the former, the rent was being paid by the 1st respondent who signed his name and added that it was on behalf of the estate of the deceased Dass. At a later stage the rent was being paid to and the receipts issued by the first respondent in his own name. Not that the little change made in the later receipts makes much of a difference, but the fact remains that the tenant in this case had been paying the rent to the 1st respondent. Therefore, the latter fell within the definition of 'landlord' for the purposes of the Act. We are not impressed with the investigation into the law of real property and estoppel between landlord and tenant, Shri Nariman invited us to make. A fair understanding of the relationship between the parties leaves little room for doubt that the appellant was the tenant of the premises. The 1st respondent, together with the other respondents, constituted the body of landlords and, by consent, implicit or otherwise, of the plurality of landlords, one of them representing them all, was collecting rent. In short, he functioned, for all practical purposes as the landlord, and was therefore entitled to institute proceedings qua landlord.*

*(emphasis supplied)*

22. In case of **Jagdishrai Shivnathrai Hora vs. Prabhakar B. Mahanubhav**,<sup>6</sup> the learned Single Judge of this Court, in the context of definition of expression 'landlord' under Section 5(3) of the Rent

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<sup>6</sup> 2000 (4) Bom.C.R. 778



Act has observed thus:

10. Having considered the rival submissions, I would first proceed to deal with the objection raised by the petitioner with regard to the entitlement of the respondent to maintain the suit for eviction against the petitioner. No doubt the petitioner's Counsel has referred to various documents which would show that a trust has been created and the property, prima facie, vest in the said Trust. However, on careful examination of the said aspect I am inclined to reject the said objection mainly on the basis of the pleadings and the admission of the petitioner before the trial Court. It is material to point out that in the plaint the respondent has averred in para 2 of the plaint that he was the owner in respect of the said premises. The petitioner has not replied to the said averment, which has the effect of admitting the same. Moreover, in para 6 of the written statement, only a vague assertion has been made by the petitioner that the plaintiff alone is not the owner and hence he alone cannot file the suit. In my view, such an averment is of no avail at all. Besides the above pleadings, even during the evidence, the petitioner has admitted in so many words that the respondent plaintiff was collecting the rent in respect of the suit premises from him and further that he had no objection if the respondent continued to recover the rent thereof as owner. In view of the said admission and the above pleadings, nothing more was required to be examined by the rent Court. The definition of "landlord" under the Bombay Rent Act, as provided under section 5(3) would clearly cover this situation. Although the respondent cannot be strictly said to be the owner of the property, as claimed in the plaint, however, he was definitely the landlord within the meaning of section 5(3) of the Bombay Rent Act, thus competent to maintain the suit against the petitioner. We are in no way concerned with the issue of title in respect of the suit property and it is enough for this Court to record a finding that the respondent was the landlord within the meaning of the Act and for which reason he was competent to maintain the suit for eviction against the petitioner tenant. In my view, the decision of the Apex Court relied upon by the learned Counsel for the respondent reported in 1999 (7) S.C.C. Page 474, squarely applies on all fours to the present case. It is thus

*held that the suit as presented by the respondent is maintainable in law.*

*(emphasis supplied)*

23. Besides on the basis of material on record, it cannot be said that Ajimals were mere rent collectors in respect of suit premises. The issues of title *inter se*, if any, between Ajimals and Dayaram Yadav, are really not relevant for the purposes of determining whether Ajimals were landlords within meaning assigned to this expression under Section 5(3) of the Rent Act. The issue as to whether or not Ajimals had fulfilled the conditions, subject to which the suit premises were allegedly sold by Dayaram Yadav to Ajimals, was alien to the proceedings under Rent Act. On basis of material on record, however, the two Courts were justified in returning a finding that the Ajimals were landlords within meaning assigned to the expression under Section 5(3) of the Rent Act. For this purpose, both the Courts have rightly relied upon certain documents by which the actual relationship of tenancy came into existence between the Petitioners in Writ Petition Nos. 4077, 4080 and 4081 of 1995. Similarly, the Petitioners in Writ Petition Nos. 4078, 4082, 4083, 4084, 4085 and 4086 of 1995, had themselves instituted proceedings against Ajimals for determination of standard rent, thereby accepting Ajimals as landlords *qua* the suit premises. The

Petitioners in Writ Petition Nos. 4077, 4078, 4080, 4081, 4082, 4083, 4084, 4085 and 4086 of 1995 specifically admitted to the payment of rents in respect of suit premises to Ajimals. There are documents with regard to attornment of tenancies, in the form of letters addressed by Dayaram Yadav to some of the Petitioners requesting them to commence payment of rents in respect of suit premises to Ajimals. All these materials are more than sufficient to return the finding that though Ajimals may not have perfected their title of the suit premises, they were landlords within meaning assigned to this expression under Section 5(3) of the Rent Act and therefore, competent to institute suits for eviction against the Petitioners.

24. There is really no basis to hold that Ajimals were landlords for the purposes of collection of rent, but not the landlords for the purposes of recovering possession under Sections 12 and 13 of the Rent Act. Such reasoning is neither justified in fact nor in law. The Appeal Court rightly interfered with the reasoning of the Trial Court on this aspect. The decision in case of *Kamruddin Masjid Trust (supra)*, is based upon the decision of the Full Bench of Gujrat High Court in case of *Nandlal Girdharlal vs. Gulamnabi J. Motorwala*<sup>7</sup>.

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<sup>7</sup> AIR 1973 Guj. 131

The Hon'ble Apex Court, in case of *Narpatchand A. Bhandari vs. Shantilal M. Jani*<sup>8</sup>, has held that the decision of the Full Bench of the Gujrat High Court in case of *Nandlal Girdharlal (supra)*, cannot be held to be good law because of the decision of nine Judges Bench in case of *V. Dhanapal Chettiar vs. Yesodai Ammal*<sup>9</sup>. In case of *Narpatchand (supra)*, the Hon'ble Apex Court, at paragraph '8', has observed thus:

8. The decision in *Nandlal Girdharlal and Anr. v. Gulamnabi Jamalbhai Motorwala and Ors.* (AIR 1973 Guj 131 (FB), relied upon by learned counsel for the appellant in support of the first contention, does not lend such support. One of the questions with which the Gujarat High Court was concerned in that decision was whether one out of several co-owners was entitled to maintain a suit for eviction against the tenant under the Act. In considering that question the Court took the view that the landlord referred to in S.12 and S.13 (1) of the Act was not a landlord as defined in S.5(3) but was a landlord who was entitled to possession of the premises on a determination of the tenancy under the ordinary law of landlord and tenant, that is, under S.106 of the T.P. Act. It is this view which was sought to be made use of by learned counsel for the appellant to contend that the landlord under S.13(1) of the Act cannot be an usufructuary mortgagee. But, the said view of the High Court that a landlord referred to under Ss. 12 and 13(1) of the Act is a landlord who is entitled to possession of premises on determination of the tenancy under S.106 of the T.P. Act, itself cannot now be good law because of the nine-Judges Bench decision of this Court in V. Dhanapal Chettiar vs. Yesodai Ammal AIR 1979 SC 1745, where the scope of the provisions of Ss. 5, 12 and 13 of the Act in the context of S.106 of the T.P. Act is considered and held otherwise, thus (at p. 1749):

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8 1993 (3) SCC 351

9 AIR 1979 SC 1745

*"Adverting to the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 it would be found from the definition of S.5 that any person remaining in the building after the determination of the lease is a tenant within the meaning of clause (11). Section 12 of the Bombay Act says that the landlord shall not be entitled to the recovery of possession of any premises so as long as the conditions mentioned in sub-section (1) are fulfilled nor any suit for recovery of possession shall be instituted by a landlord against a tenant on the happening of the events mentioned in sub-section (2) until the expiration of one month next after the notice is served on the tenant in the manner provided in S.106 of the Transfer of Property Act, as required by the said sub-section. S.13 provides that a landlord may recover possession on certain grounds. Is it not plain then that on the happenings of the events or on the fulfilment of the conditions mentioned in Ss.12 and 13 etc. the landlord becomes entitled to recover possession from the tenant, otherwise not. It will bear repetition to say that under the [Transfer of Property Act](#) in order to entitle the landlord to recover possession determination of the lease is necessary as during its continuance he could not recover possession while under the State Rent Act the landlord becomes entitled to recover possession only on the fulfilment of the rigour of law provided therein. Otherwise not. He cannot recover possession merely by determination of tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy".*

*(emphasis supplied)*

25. In view of the aforesaid discussion, it is not possible to accept Mr. Shetye's contentions, as recorded at paragraphs 8A, 8B and 8C of this judgment and order.

26. So far as the contentions of Mr. Shetye based upon the provisions of Section 22 of Slum Act are concerned, there is really no clear material on record to establish that the suit premises are located upon the property declared as a slum area under Section 4 of the Slum Act. In the first place, most of the petitioners set up a specific plea that the suit premises are located in the property bearing CTS No. 354/1 to 101. However, the Petitioners were unable to establish this position. Later on realising that there is a Notification dated 30 April 1979, which had declared the properties surveyed under CTS No.351/1 to 111 as slum area, the Petitioners sought to contend that the suit premises are located in the property surveyed under CTS No. 351/1 to 111. Again, the Petitioners failed to establish this position. Mr. Harbhajan Singh Ajimals has placed on record judgment and order dated 20 October 2005 made by the Slum Tribunal, by which the Notification dated 30 April 1979 declaring the property surveyed under CTS No. 351/1 to 111 has been set aside. The issue of onus really fades into insignificance once both the parties have been offered opportunity to place the material on record and in pursuance of the same both parties have, placed material on record. Besides, both the Trial Court and the Appeal Court have basically recorded the concurrent findings of fact on the

aspect of whether the property where the suit premises are located has been declared as slum area. Mr. Shetye was unable to demonstrate any perversity in the record of such finding of fact. Accordingly, in the exercise of jurisdiction under Article 227 of the Constitution of India, it is not possible to interfere with such finding of fact.

27. Since, there is no material to establish that the suit premises are located upon property which has been declared to be a slum area, there is no necessity to advert to the issue as to whether or not interpretation by the Appeal Court upon the provisions of Section 22 of the Slum Act is correct. However, *prima facie*, the Appeal Court is not right when it says that the provisions of Section 22 of the Slum Act are not at all attracted since the suits were instituted in the year 1972 and so called declaration as to slum area was issued in the year 1979. Even if the 1979 declaration were to apply to the property whereon the suit premises are located, the suits as instituted might have been maintainable. However, in view of the provisions contained in Section 22 (1)(b) of the Slum Act any decree or order obtained in such a suit could have been executable only after obtaining previous permission in writing of the competent authority.

It is clarified that this is only a *prima-facie* observation, as the issue of interpretation of Section 22 of Slum Act does not really arise in the present batch of petitions, once the finding of fact that the suit premises are not located upon property declared to be a slum area is upheld. Accordingly, the contentions of Mr. Shetye as recorded in paragraphs 8D and 8E of this judgment and order cannot be accepted.

28. Insofar as the contention of Mr. Shetye, as recorded in paragraph 8F of this judgment and order is concerned, the same will have to be accepted at least to a limited extent. This contention however, is applicable only to the Petitioner in Writ Petition No. 4087 of 1995. In Writ Petition No. 4087 of 1995, the challenge is to the judgment and decree dated 16 February 1995 made by the Appeal Court in Appeal No. 363 of 1989, which arose from R.A.E. & R. Suit No. 1314 of 1972. The Trial Court, in its judgment and decree dated 19 April 1989 in R.A.E. & R. Suit No. 1314 of 1972 has recorded a finding that the Petitioner in Writ Petition No. 4087 of 1995 was not in arrears of rent for the period between 1 April 1971 to 31 December 1971, at the time when the quit notice was served upon him. Accordingly, issue Nos. 1 and 7, in the context of default



in payment of rents were answered by the Trial Court against the landlords and in favour of the Petitioner in Writ Petition No. 4087 of 1995. The Appeal Court, in Appeal No. 363 of 1989 instituted by the landlords, has reversed the Trial Court's judgment and decree dated 19 April 1989. In doing so however, the Appeal Court does not appear to have adverted to this crucial issue of fact, as to whether or not the Petitioner in Writ Petition No. 4087 of 1995 had indeed committed any default in the matter of payment of rents. There is no discussion in the Appeal Court's order on this aspect. There are no reasons indicated by the Appeal Court as to why such finding of fact has been interfered with. In fact, perusal of the Appeal Court's order indicates that such issue was not even considered by the Appeal Court in its proper perspective. This is possibly because several appeals were taken up together and disposed of by common judgment and order. In the appeals accompanying the Appeal No. 363 of 1989, the finding of fact recorded was that the tenants were in arrears. Accordingly, the Appeal Court's judgment and decree dated 16 February 1995 made in Appeal No. 363 of 1989, will have to be set aside qua the Petitioner in Writ Petition No. 4087 of 1995. The same is, accordingly, set aside. Appeal No. 363 of 1989 is restored to the file of the Appeal Court and the Appeal Court is

directed to decide Appeal No. 363 of 1989 and determine whether the finding of fact that there was no default in payment of rent on the part of the Petitioner in Writ Petition No. 4087 of 1995 as recorded by the Trial Court, warrants interference. Insofar as the rest of the issues raised in Appeal No. 363 of 1989 are concerned, since the same are common with the other issues decided in this judgment and order, obviously, the Appeal Court, will have to abide by the observations in this judgment and order. However, the Appeal Court to decide Appeal No. 363 of 1989, in the context of determination as to whether the Petitioner in Writ Petition No. 4087 of 1995 has indeed defaulted in the payment of rents and whether the finding of the Trial Court that the Petitioner in Writ Petition No. 4087 of 1995 had not defaulted, warrants any interference. Rule is, therefore, made absolute to the said extent in Writ Petition No. 4087 of 1995.

29. Insofar as rest of the Writ Petitions are concerned, upon cumulative consideration of the aforesaid facts circumstances as well as the legal position, no case is made out for grant of any relief. Accordingly, all the Writ Petitions, except Writ Petition No. 4087 of 1995 are dismissed. Writ Petition No. 4087 of 1995 is allowed. The impugned judgment and decree dated 16 February 1995 made by the Appeal Court in Appeal No. 363 of 1989 is set aside qua the

Petitioner in Writ Petition No. 4087 of 1995. The Appeal No. 363 of 1989 is restored to the file of the Appeal Court and the Appeal Court is directed to dispose of said Appeal in accordance with the directions in this judgment and order, as expeditiously as possible and in any case, within a period of one year from the date of production of authenticated copy of this order.

30. There shall be no order as to costs in each of these petitions.

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

(M.S. SONAK, J.)

32. At this stage, Mr. Shetye, learned counsel for the Petitioners, states that the Petitioners in all Writ Petitions, except Writ Petition No. 4087 of 1995 would like to take recourse against this judgment and order before the Hon'ble Apex Court and for this purpose, Mr. Shetye prays that the decrees of eviction be not executed for a period of twelve weeks from today. The request is reasonable and therefore, subject to the Petitioners and all adult members in their family filing the usual Undertakings in this Court, within a period of two weeks from today, the eviction decrees shall not be executed for a period of twelve weeks from today. Copies of Undertakings to be furnished to Mr. Harbhajan Singh B. Hajimal, before the same are filed in the Registry. Mr. Harbhajan Singh B. Hajimal undertakes to furnish the address at which such undertakings should be furnished to him today itself.

(M. S. SONAK, J.)

**CERTIFICATE**

**“Certified to be true and correct copy of  
original signed Judgment/Order.”**