

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

WRIT PETITION NO.1243 OF 1996
WITH
CIVIL APPLICATION NO.76 OF 2013

Shri Bhaskar Ravaji Jagpta

.. Petitioner/
Applicant.

V/s

Namdeo Bhiku Kumbhar and ors.

.. Respondents.

Mr. B.K. Raje for the Petitioner/Applicant.

Mr. H.V. More for Respondent Nos.1 and 3.

CORAM : M.S. SONAK, J.
DATED : 21 SEPTEMBER 2015

P.C. :

. In this petition, the challenge is to the orders dated 10 February 1995 and 20 January 1996 made by the Court of Small Causes (Trial Court) and the Division Bench of the Court of Small Causes (Appellate Court) by which the respondents' Misc. Notice No.272 of 1985 was made absolute and the restitution was ordered. The Petitioner had instituted R.A.E. & R. Suit No.1642 of 1985 seeking eviction of the Respondents. The suit was decreed ex-parte on 4 November 1987. The decree was executed sometime on 5 July 1993. On 9 July, 1993, respondents instituted Misc. Notice No. 272 of 1993, seeking interalia for setting aside the ex-parte decree dated

4 November 1987 and restitution. The same was granted by the Trial Court by its order dated 10 February 1995 and such order was confirmed by the Appellate Court dated 20 January 1996. Hence, the present petition.

2 During pendency of the present petition, the Petitioner took out the Civil Application No.76 of 2013 in order to place reliance upon a communication dated 21 August 1997, in which there is a reference to the Appeal No.24 of 1976, which was decided on 31 October 1977 and in terms of such decision, it is case of the Petitioner that on investigation by which the suit premises was declared to be a slum, was set aside.

3 Mr Raje, the learned Counsel for the Petitioner submits that one of the main reasons for making the impugned orders dated 10 February 1995 and 20 January 1996 was that suit property, wherein the suit premises are located has been declared to be a slum area under the provisions of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act). In terms of Section 22 of the Slum Act, permission from the Competent Authority is necessary and this having not been taken, a decree was

held to be nullity and restitution was ordered. The learned Counsel for the Petitioner submits that since the declaration of the suit property as slum has been set aside, the impugned orders are required to be set aside and necessary declaration issued that the decree was nullity. Pursuance to leave being granted this Court, the learned Counsel for the Petitioner also produced on record judgment and order dated 31 October 1977 in Appeal No.24 of 1976, to which a reference has been made in the communication dated 21 August 1997, the appended Civil Application No.76 of 2013.

4 Having heard the learned Counsel for the parties, it is not possible to set aside the impugned orders dated 10 February 1995 and 20 January 1996. In both orders, there is a reference to material which establishes that the suit property had indeed been declared as slum area.

5 Section 22 of the Slum Act which has been held as mandatory provides that “no person shall, except with the previous permission in writing of Competent Authority institute any suit or proceedings for obtaining any decree or order for the eviction of any occupier from any building or land in a slum area.” Two orders also

record that the Petitioner herein had instituted an Appeal No.92 of 1990 before the Slum Tribunal for setting aside the declaration of the suit property as slum area. However, the said appeal was dismissed for default on 9 December 1994.

6 Admittedly, it is not case of the Petitioner that any proceedings were taken for revival of Appeal No.92 of 1990. Instead the Petitioner at this belated stage seeks to place reliance upon communication dated 21 August 1997 and judgment and order dated 31 October 1977 in Appeal No.24 of 1976 to contend that a declaration of the suit property as slum has been set aside by the Tribunal. For the reasons referred hereinafter, such contention is not accepted.

7 In the first place, suit property in the present case is surveyed under No.328 (Part). The judgment and order dated 31 October 1977 makes reference to Survey No.328. There is some ambiguity as to whether two properties are one and the same. However, there is no ambiguity whatsoever in the order dated 31 October 1977, when it orders that :-

“The impugned declaration of the Competent

Authority so far as it pertains to the lands involved in all these two hundred thirty nine appeals is set aside.”

8 There is Annexure to the order dated 31 October 1977 which lists up names and certain details of the properties involved in the 239 appeals. Obviously, the suit property of the Petitioner in this petition cannot be said to be the subject matter of the Appeal No.24 of 1976 and the connected appeals which came be disposed of by order dated 31 October 1977. This could not be, because despite order dated 31 October 1977, the Petitioner himself chose to institute an Appeal No.92 of 1990, which was since dismissed for default on 9 December 1994. In these circumstances, it is quite clear that neither a communication dated 21 August 1997 nor the judgment and order dated 31 October 1977 have any nexus with the suit property. Therefore, on the basis of such materials, it cannot be said that the impugned orders dated 10 February 1995 and 20 January 1996 are required to be set aside.

9 The two courts have concurrently held that the suit property has been declared as slum area. The legal position is quite clear in as much as provisions of Section 22 of the Slum Act are

mandatory and no suit could have been instituted without the previous written permission of the Competent Authority. In any case, even the execution of any decree was not competent without the previous written permission of the Competent Authority. The two Courts have concurrently and rightly appreciated this position. There is no jurisdictional error. Accordingly, there is no reason to interfere with the impugned orders.

10 The Writ Petition is dismissed. The Civil application is disposed of accordingly.

11 There shall be no order as to costs.

12 At this stage, the learned Counsel for the Petitioner seeks return of the certified copy of the judgment and order dated 31 October 1977 in Appeal No.24 of 1976 and undertakes that a xerox copy of such judgment and order will be placed on record. In view of undertaking, which will be complied with today itself, the certified copy of the judgment and order dated 31 October 1977 is hereby returned to the learned Counsel for the Petitioner.

(M.S. SONAK, J.)

C E R T I F I C A T E

Certified to be true and correct copy of the original signed order.