

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4118 OF 1996

Devraj Nandlal Punjabi.	]	... Petitioner
Versus		
Shashikant G. Savant.	]	... Respondent

Mr. Anil Kumar Patil for Petitioner.
Mr. V. B. Dhawan for Respondent.

WITH

WRIT PETITION NO.2425 OF 1997

Shyam Maruti Sawant.	]	... Petitioner
Versus		
1. Devraj N. Punjabi,	]	
2. Mrs. J. S. Kalyanpur,	]	
3. Mr. S. S. Pagare.	]	... Respondents

Mr. S. G. Deshmukh i/b Mr. G. T. Kanchanpurkar for Petitioner.
Mr. Anil Kumar Patil for Respondent No.1.

WITH

WRIT PETITION NO.2308 OF 2013

Cosmir A. D'Costa (Deceased)	]	
Eliza Cosmir D'Costa, being widow and	]	
legal heir.	]	... Petitioner
Versus		
Devraj Nandlal Punjabi.	]	... Respondent

Mr. Kamalakar L. Koli a/w Ms. Vaishali P. Bendre for Petitioner.
Mr. Anil Kumar Patil for Respondent.

CORAM :- M. S. SONAK, J.

Judgment Reserved on :- AUGUST 07, 2015.
Judgment Pronounced on :- AUGUST 11, 2015.

JUDGMENT :-

1. The learned Counsel for parties have agreed that these three Writ Petitions can be disposed with a common Judgment and Order, since the issue involved is the same.

2. The common issue involved in all these three Writ Petitions is whether the suit premises, in respect of which eviction was applied for by Devraj Nandlal Punjabi ('Punjabi'), are located in 'slum area' under The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ('Slum Act'). In case the suit premises are located in notified slum area, then the provisions of Section 22 of the Slum Act will apply. In terms of Section 22 of the Slum Act, without the previous written permission of the competent authority, no person can institute any suit or proceeding for obtaining eviction decree from any building or land in a slum area. Further, any decree or order for eviction cannot be put to execution except that the previous written permission of the competent authority. This Court, in the case of *Yamunabai Dattoba Taware Vs. Nana Bhikoba Nagade*¹, in the context of Section 22 of the Slum Act, has held as under :-

“On a plain reading of clauses (a) and (b) of Section 22(1) of the said Act it will be revealed that section

¹ 2006(6) Bom.C.R. 31

22(1)(a) prohibits the institution of any suit or proceeding for obtaining any decree or order for eviction of an occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier, or for both, except with the previous permission in writing of the competent authority. Section 22(1)(b) provides that no person shall except with the previous permission in writing of the competent authority when any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of an occupier from any building or land in such area or for recovery of any arrears of rent or compensation from such occupier, or for both, execute such decree or order. Thus, by subsection (1)(a) of section 22 the institution of the suit after the commencement of the said Act is prohibited. The premises come under the Act as a result of the declaration under section 4 of the said Act, and therefore, from the date of declaration, institution of suit is prohibited. However, in the present matter, admittedly the suit was instituted when the Act was not applicable. Therefore, the suit as filed was competent and decree could have been passed in the said suit. The combined reading of subsections (1)(a) and (1)(b) of Section 22 of the said Act is that after the commencement of the Act the suit cannot be instituted. However, decrees which are passed prior to

the commencement of the Act and the decrees which were obtained in suits which were pending on the date of commencement of this Act cannot be executed unless the previous permission in writing is obtained from the competent authority. Therefore, the decree which could have been passed in the present matter would not have been executed unless the permission in writing is obtained from the competent authority. It was an error on the part of the Appellate Court to hold under these circumstances that the suit cannot continue unless the permission from the competent authority is obtained. In fact, suits which were filed before the commencement of the Act can be decided and the decree can be passed by the Civil Court, but the said decree cannot be executed unless the permission is obtained from the competent authority. Therefore the reasoning adopted by the District Judge is erroneous one."

3. In all these three Writ Petitions, Punjabi is the landlord, who had instituted proceedings seeking eviction of the occupiers from the suit premises. The description of the suit premises is quite vague, inasmuch as, they are described to be located in property surveyed under CTS No.351/Part. In Writ Petition No.4118 of 1996 which is instituted by Punjabi, the Trial Court as well as the Appeal Court, by relying upon the notification dated 30/04/1979, have held that the property surveyed under CTS No.351/1 to 111 is 'slum area' and

consequently, the suit premises are located in property which has been duly notified as a slum area under the Slum Act. On this ground, the suit instituted by Punjabi came to be dismissed, as admittedly no prior permission from the competent authority was obtained for the institution of the suit. In Writ Petition No.2425 of 1997, the Trial Court dismissed Punjabi's suit for the same reason. However, the Appeal Court has held that the burden of establishing that the suit premises are located in the slum area is upon the tenant and since this burden has not been discharged, decree of eviction was made. Accordingly, Writ Petition No.2425 of 1997 has been instituted by the tenant.

4. Writ Petition No.2308 of 2013 has also been instituted by the tenant objecting to the execution of decree in R.A.E. Suit No.2727 of 1979 by Punjabi and impugning the order dated 30/01/2013, by which the tenant's objection under Section 47 of the CPC came to be dismissed. The execution of the decree is objected to, on the ground that the suit premises are located in a slum area and without compliance with the mandatory provisions of Section 22 of the Slum Act, neither could the eviction decree have been made nor can the execution of any such decree be continued. Again, in these proceedings as well, Punjabi had described the suit premises as located in property surveyed under CTS No.351/Part.

5. From the aforesaid, it is clear that the main issue involved in these three Writ Petitions is whether the property in which the suit

premises are located, is at all declared as a 'slum area' under the provisions of the Slum Act. In this regard, it will be useful to refer to notification no.1784 – SAA/Malad/58(II) dated 30/04/1979, issued by the Deputy Collector (ENC), Borivali, under Section 4 (i) of the Slum Act, declaring the areas described in '*Schedule of Areas*' appended to the notification as 'slum areas'. There is clear reference to CTS No.351 pt. 351-1 to 111 totally admeasuring 14,749.9 square meters. Punjabi, it appears, had instituted Appeal Desk-Slum-1/87 before the Commissioner, Konkan Division, under Section 35 of the Slum Act questioning the Deputy Collector's letters dated 10/11/1986 informing Punjabi that certain lands referred to therein have been included in the slum area notified under no.SAA/Malad/58 dated 30/04/1979. The appeal came to be dismissed by the Commissioner, Konkan Division, by order dated 04/08/1988. Incidentally, Mr. S. G. Savant, who was impleaded as Respondent No.3 in Punjabi's Appeal No.1 of 1987, is the Respondent in Writ Petition No.4118 of 1996 instituted by Punjabi, questioning the dismissal of the eviction suit against Mr. S. G. Savant, *inter alia*, on the grounds of non-compliance with Section 22 of the Slum Act.

6. There is no case whatsoever made out by Punjabi to interfere with the Judgments and Orders dated 27/08/1987 and 11/09/1995 made by the Trial Court and the Appeal Court in proceedings which commenced with the institution of R.A.E. Suit No.2725 of 1979 by Punjabi. In the said suit, Punjabi had described the suit premises as Room No.13B/2, Chawl No.6 in Devraj Nandlal

Punjabi Chawl, Malad. The two Courts, on the basis of material on record, have held that this chawl is located in the property bearing CTS No.351 (pt.) 1 to 111. There is no perversity whatsoever in the record of this finding of fact. In fact, such finding is backed by the documentary evidence on record. The circumstance that Punjabi instituted Appeal No.1 of 1987 questioning the inclusion of Room No.13, Chawl No.B2, occupied by Mr. S. G. Savant in the slum area, is virtually a clincher. Mr. Anil Kumar Patil, learned Counsel for Punjabi, did not place any material on record or contend that any further proceedings were undertaken against the order dated 04/08/1988 made by the Commissioner, Konkan Division, dismissing Punjabi's Appeal No.1 of 1987. For all these reasons, Writ Petition No.4118 of 1996 is dismissed.

7. Writ Petition No.2425 of 1997 arises out of the orders dated 15th/16th November 1994 and 06/02/1997 made by the Trial Court and the Appeal Court in R.A.E. Suit No.2728 of 1979 instituted by Punjabi against the Petitioner Shyam Maruti Sawant. In the civil suit, the suit premises were described as Room No.9/B/2, Chawl No.6, Devraj Nandlal Punjabi Chawl, Malad, Mumbai. There is material on record that the chawl is situated in property bearing CTS No.351 (Part) and bears Survey No.25 (Part). Punjabi also concedes that the chawl is situated in property bearing CTS No.351, but urges that there is difference between property bearing CTS No.351 and property bearing CTS No.351 (Part) 1 to 111. On such slender basis, Punjabi contends that the suit premises forming the subject matter of Writ

Petition No.2425 of 1997 is not included in the notification dated 30/04/1979 declaring the property as slum area.

8. The Trial Court, in its order dated 15th/16th November 1994 has quite rightly rejected Punjabi's contention and, based upon the material on record, held that the suit premises are located in slum area. The Appeal Court, however, by its order dated 06/02/1997, reversed the Trial Court by purporting to cast the entire onus upon the tenant Mr. Shyam Maruti Sawant. Further, in doing so, the Appeal Court has virtually ignored the material on record in the form of oral as well as documentary evidence, which clearly establishes that the suit premises are located in slum area. In fact, the finding of the Appeal Court is totally contrary to the weight of evidence on record. The notification dated 20/40/1979, as noted earlier, clearly includes the property surveyed under CTS No.351(pt.) and 351/1 to 111 in its sweep. Punjabi has chosen to describe the location of the suit premises rather ambiguously. Punjabi is bent upon taking advantage of such ambiguous description. Punjabi, however, concedes that the suit premises are located in property surveyed under CTS No.351. If indeed, Punjabi was serious in his contention that the property surveyed under CTS No.351 is different and distinct from the property bearing CTS No.351(pt.) 1 to 111, then it was for Punjabi to bear the burden and make good such contention. Punjabi has done nothing of this sort and yet, the Appeal Court has chosen to entire shift the burden upon the tenant Mr. Shyam Maruti Sawant to hold that the suit premises are not located in the property covered by the

notification dated 30/04/1979. The Appeal Court has even failed to take note of the photo-pass and other documents which are issued to occupants in slum area. These documents corroborate both oral as well as other documentary evidence on record that the suit premises are indeed located in slum area. There is evidence on record that on the property bearing CTS No.351(pt.) 1 to 111, there are several chawls known as Devraj Punjabi Chawl at Kura, Malad, Mumbai. If Punjabi is indeed serious in his contention that some of the chawl buildings, or for that matter, some of the premises in the chawl are not covered by the notification dated 30/04/1979, then it was for Punjabi to establish this by leading cogent evidence. The onus, if any, upon the tenants, was very well discharged, upon their producing on record the notification dated 30/04/1979, documents indicating the survey number in which the suit premises located, as also documents like photo-pass, identity card etc. which are normally issued to the occupants in slum area by the competent authority. For all these reasons, order dated 06/02/1997 made by the Appeal Court is clearly in excess of jurisdiction and in any case, vitiated by perversity, thereby occasioning manifest injustice. The Appeal Court order dated 06/02/1997 is accordingly set aside and the order dated 15th/16th November 1994 made by the Trial Court in R.A.E. Suit No.2728 of 1979 is restored.

9. Writ Petition No.2308 of 2013 arises out of the decree made by the Trial Court on 03/07/1996 and confirmed by the Appeal Court on 27/03/1997 in R.A.E. Suit No.2727 of 1979 which was

instituted on 11/06/1979. The suit premises, in this case, have been described as Room No.1/B, Chawl No.7, Devraj Nandlal Punjabi Chawl, Malad, Mumbai. The material on record establishes that the suit premises are located in property bearing CTS No.351(pt.) 1 to 111. In fact, Punjabi concedes that the suit premises are in property bearing CTS No.351, but, as in Writ Petition No.2425 of 1997, contends that the property bearing CTS No.351 is different and distinct from the property bearing CTS No.351(pt.) 1 to 111. The two Courts, by ignoring the vital documents like photo-pass etc. and by placing the entire burden of proof upon the tenant Mr. Cosmir A. D'Costa (since deceased), have held that the tenant has not been able to establish that the suit premises were located in the slum area. In fact, the Trial Court, in its order dated 2nd/3rd July 1996 in R.A.E. Suit No.2727 of 1979 has gone to the extent of observing that the Slum Act has since been abolished as it was *ultra-vires* and unconstitutional and therefore, the defence under the Slum Act is unavailable to the tenant. As noted earlier, there is clear perversity in imposing the entire burden of proof upon the tenant. In any case, the tenant, upon production of the notification dated 30/04/1979 and the photo-pass, has amply discharged the onus. Punjabi has produced no material whatsoever to discharge the onus upon him to establish that the property bearing CTS No.351 is different and distinct or in any case, not included in the property bearing CTS No.351(pt.) 1 to 111 which has been admittedly declared as slum area in the notification dated 30/04/1979. Since R.A.E. Suit No.2727 of 1979 was instituted on or about 11/06/1979 i.e. after the declaration of the property in which

the suit premises are located as a slum area by notification dated 30/04/1979, the suit itself was not maintainable for failure to comply with the predicates of Section 22 of the Slum Act. The decrees made therein are therefore nullity. Even assuming that the suits were maintainable and the decrees made therein need not be interfered with, nevertheless, Section 22 of the Slum Act bars the execution of such decrees unless previous written permission from the competent authority is obtained. There is no dispute whatsoever that the predicates of Section 22 of the Slum Act were not complied with by Punjabi. Accordingly, the objections raised by the tenant under Section 47 of the CPC deserve to be allowed and execution proceedings for the execution of decrees in R.A.E. Suit No.2727 of 1979 are liable to be dismissed.

10. Thus, it is clear that the suit premises involved in each of the petitions are located in the property declared as 'slum area' under Section 4(i) of the Slum Act vide notification dated 30/04/1979. There is no dispute that Punjabi had not obtained any prior written permission from the competent authority under Section 22 of the Slum Act before the institution of the suit seeking the eviction of the tenants. The provisions contained in Section 22 of the Slum Act are mandatory and any suit which is instituted without the prior written permission of the competent authority, *inter alia*, seeking eviction of any occupier of the slum area, is not competent. The Hon'ble Apex Court, in the case of ***Laxmi Ram Pawar Vs. Sitabai Balu Dhotre and***

*Another*², has held that the protection of the Slum Act is available even to a trespasser, who is included in the definition of 'occupier' in Section 2(e)(v) of the Slum Act. Further, in the same decision, the Hon'ble Apex Court has held that the provisions of Section 22 of the Slum Act are mandatory in nature. The relevant observations in paras 19, 20 and 21 read as under :-

“19. Once it is held that a trespasser is included in the definition of 'occupier' in Section 2(e)(v) of the 1971 Act, what necessarily follows is that before initiation of any suit or proceeding for eviction of such trespasser, the previous written permission of the competent authority is required as mandated by Section 22(1). Section 22(1) starts with non obstante clause and it is clear from the provision contained in Clause (a) thereof that no person shall institute any suit or proceeding for obtaining any decree or order for eviction of the occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier or for both without the previous written permission of the Competent Authority. The use of words 'no' and 'shall' in sub-section (1) of Section 22 makes it abundantly clear that prior written permission of the competent authority for an action under clause (a) thereof is a must.

² (2011) 1 Supreme Court Cases 356

20. *The role of the Competent Authority under the 1971 Act is extremely important as the legislature has conferred power on it to carry out execution of works in improvement of the slum. Sub-section (2) of Section 22 requires the person desiring to obtain the permission to make an application in writing to the competent authority. As per sub-section (3) on receipt of such application, the competent authority by an order in writing may either grant or refuse to grant such permission after giving an opportunity to the parties of being heard and after making such summary enquiries into the circumstances of the case as it thinks fit. Sub-section (4) of Section 22 requires the competent authority to take into account the factors set out therein for granting or refusing the permission. These provisions contained in Section are salutary in light of the scheme of 1971 Act and have to be followed. It has to be held, therefore, that for eviction of a trespasser who is 'occupier' within the meaning of Section 2(e)(v) of 1971 Act from the land or building or any part thereof in a declared slum area, the written permission of the competent authority under Section 22(1)(a) is mandatorily required.*

21. *Insofar as present case is concerned, the first respondent set up the case in the plaint that the appellant was a trespasser in the subject room. The first*

appellate court has also recorded a categorical finding, which has not been disturbed by the High Court, that the appellant was occupying the subject room as trespasser. In the circumstances, the suit was clearly not maintainable for want of written permission from the competent authority and was rightly dismissed by the trial court.”

11. For all the aforesaid reasons, these three Writ Petitions are disposed of with the following order :-

- (a) Writ Petition No.4118 of 1996 is dismissed and the Rule made therein is discharged.
- (b) Writ Petition No.2425 of 1997 is allowed. The Judgment and Order dated 06/02/1997 made by the Appeal Court in Appeal No.96 of 1995 is quashed and set aside. The Rule is made absolute in terms of prayer clause (a).
- (c) Writ Petition No.2308 of 2013 is allowed. The order dated 30/01/2013 made by the executing Court in the matter of execution of decree in R.A.E. Suit No.2727 of 1979 is set aside. The application for execution of decree in R.A.E. Suit No.2727 of 1979 is dismissed.
- (d) In each of these Writ Petitions, there shall be no order as to costs.

(M. S. SONAK, J.)