

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

WRIT PETITION NO. 11552 OF 2014

Gangaram N. Amberkar (since deceased)

1. Sunanda Gangaram Ambekar & Ors. .. Petitioners

Vs.

1. Shri Ganpat Laxman Salunkhe & Anr. .. Respondents

WITH

WRIT PETITION NO. 6274 OF 2014

1. Sunanda Gangaram Ambekar & Ors. .. Petitioners

Vs.

1. Shri Ganpat Laxman Salunkhe &

2. State of Maharashtra .. Respondents

Mr.V.S. Kapse i/b S.G. Walam, Advocate for petitioners.

Mrs.Mukta R. Singh Gobse, Advocate for respondent no.1.

CORAM : K.R.SHRIRAM, J.

DATED : 30TH JANUARY, 2015

P.C.

1 The petitioners herein are the legal heirs of one Gangaram N. Amberkar who was the tenant in respect of the premises which is the subject matter of these petitions.

2 The first respondent an 85 years old man is the plaintiff in the original R.A.E.Suit No.953 of 1994. The suit filed was for eviction on the grounds of non-payment of rent. Post filing of the suit, the suit property was declared as slum as per the provisions of the Maharashtra Slum Areas (Improvement,

Clearance And Redevelopment) Act, 1971 (for brevity 'the Slum Act'). The Trial Court decreed the suit on 22nd November 2005 in favour of the respondent and directed that the respondent was entitled to execute the decree after obtaining necessary permission from the competent authority under Section 22(1) of the Slum Act. This order has not been challenged by both the parties.

3 The respondent filed an application before the competent authority for permission to execute the decree and in July 2009, the competent authority granted permission for execution of the decree. The petitioner, the original defendant in the suit, preferred an appeal against the said order and in May 2011, the appellate authority set aside the order passed by the competent authority and remanded the matter back for *de novo* hearing. In February 2012, the competent authority once again granted permission for execution of decree of the Small Causes Court, Bandra. The petitioner once again preferred an appeal against the order of the competent authority. The appellate authority in August 2012 set aside the order of the competent authority and remanded the matter back for *de novo* hearing.

4 In October 2013, the respondent no.1 namely the original plaintiff filed an execution application bearing No.83 of 2012 before the Small

Causes Court, Bandra for execution of the decree against the petitioners herein, viz., the legal heirs and legal representatives of the deceased original tenant who had by then expired. By an order dated 20th January 2014, the Small Causes Court, Bandra passed an order for permission to execute the decree against the legal heirs of the original defendant namely the petitioners herein.

5 In the meanwhile, by an order dated 26th November 2013, the competent authority once again granted permission to execute the decree. Against the said order, the petitioners herein preferred an Appeal before the appellate authority in February 2014 and the said Appeal was finally heard and rejected confirming the order of the competent authority on 3rd July 2014. This is the background of the matter.

6 A suit for eviction filed in 1994 which fructified by virtue of a decree in favour of the plaintiff in 2005 for 9 years went back and forth between the competent authority and appellate authority under the Slum Act and finally culminated in the order dated 3rd July 2014. Against this order and against the order of the Small Causes Court granting permission to execute the decree against the legal heirs, the petitioners have preferred two writ petitions bearing Nos.1152 of 2014 and 6274 of 2014, respectively.

7 The main thrust by the counsel for the petitioners in both the petitions is that the competent authority/appellate authority did not consider the requirements of Section 22(4) of the Slum Act while granting permission to the respondents to execute the decree. The counsel for the petitioners relied on two judgments of this Court one by a Division Bench and the other by a Single Judge. These two judgments are in the matter of ***Chanchalben Amritlal Patel Vs. Deputy Collector (Enc.) & Competent Authority & Ors.***¹ and in the matter of ***Kalawatibai Wd/o Lokumal Sindhi & Ors. Vs. Gopala Ganpati Bhanarkar & Ors.***² respectively. The judgment in the matter of ***Kalawatibai*** (supra) has been considered by the Division bench. The Division Bench has gone into the scheme of the Slum Act and while considering Section 22(4) of the Slum Act has observed that the Act being a part of the beneficial and welfare legislation enacted from time to time to ensure to the persons in slum areas a chance of decent shelter and life free of demands of the local Slumlords and neglectful landlords. The Act is a welfare Act to protect the downtrodden or the under-privileged or those who live in slums not itself of choice but due to economic and circumstantial compulsion. It is this category of persons who require protection. That is why, the Single Judge in Kalawatibai's judgment has also concluded that it is the duty of the competent authority to take into account the factors

1 [2005(3) Mh.L.J. 834

2 [1984 Mh.L.J.] 261

mentioned in Section 22(4) of the Slum Act. Section 22(4) provides the factors which the competent authority must take into consideration.

8 The counsel for the petitioners raised questions on the status of 'landlord' accorded to respondent no.1. The petitioners cannot go into that in these petitions because the Small Causes Court, Bandra has proceeded on the basis that the respondent no.1 is the landlord and granted a decree in his favour. That decree has not been challenged by the petitioners herein. Therefore, that argument of the petitioners cannot be entertained. The appellate authority has also considered the factor as to whether the petitioners will have alternate accommodation. The appellate authority has come to a conclusion that the petitioners are financially well off and also have alternative accommodation. The appellate authority has recorded as under :

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It is also further contended that the appellants have suppressed the fact that they have separate accommodation. The copy of the Reliance Energy Bill of suit premises in the name of Gangaram Narayan Amberkar shows zero unit consumption. A duplicate copy of Reliance Energy Bill in the name of Ashok G. Amberkar, appellant no.2 is for residential premises having address at Ramsumer Chawl, Vakola Bridge, Dhobi Ghat, Santacruz (East), Mumbai 400 055 for the month of 2.2.2014 and also duplicate copy of Reliance Energy Bill in the name of Arun G. Amberkar, appellant no.3 in respect of residential premises at H3ex-207, 920 Sahakar Chawl, Sunder Galli, Vivekanand Nagar, Santacruz (East), Mumbai 400 055

for the month of Feb.2014. Annexure-II for Radhagram Sahakri Griha Nirman Sanstha, D'Mello Compound, Vakola Bridge, Santacruz (East), Mumbai 400 055 shows the name of Arun G. Amberkar at sr. no.547 and is shown as eligible occupant under slum rehabilitation scheme. Also the name of Ashok G. Amberkar is shown at sr.no.611 as eligible occupant in the same scheme. The annexure-II of the said Radhagram CHS shows the name of G.N.Amberkar (deceased) at sr.no.563 as eligible occupant under the slum rehabilitation scheme. Also voter list of 2014 shows the name of appellant no.3 at Salunkhe chawl, Vakola Bridge, Santacruz (East). The appellant nos.2 and 3 have their transportation business and own 2 commercial trucks. The appellants have not disclosed their good financial status and suppressed their status before this authority. They are in occupation and possession of not only one but more than one premises in various separate chawl. The tenanted premises against which the decree has been sought are not occupied by the appellant, which is kept under lock and not being used. The respondent is an old man of more than 85 years of age and fighting litigation since last 20 years and yet not got result of the decree. Cited judgment Khurshed Amangool Khan V/s. P.D. Patnikar, 1991, Mh.L.J. 490 and prayed that permission be granted to execute decree and dismiss the Appeal.

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6 In the present case it is seen that the suit for eviction was first filed before the Small Causes Court and after its order permission for execution of decree was granted by competent authority. However, ruling in above-mentioned Para is applicable in the present case. Competent Authority has followed the directions given by the earlier Appellate Authority while passing the impugned order. In the said order he has observed that alternate accommodation is available in vicinity of suit premises. The original tenant is no more and his heirs have filed this appeal, who have accommodation of their own as is seen from the record made available by advocate for respondent. The suit premises are not being used presently by anyone. Considering the above-mentioned facts, the order of competent authority granting permission for

execution of decree of Small Causes Court is proper and legal, hence needs no interference.

9 The petitioners preferred three rounds before the competent authority and appellate authority and in all the three rounds, the competent authority granted permission and in the final round, the appellate authority also confirmed the same.

10 Though in Section 22(4) of the Act, it is provided that the competent authority should also consider that the eviction is in the interest of the improvement and clearance of the slum, the appellate authority has considered and come to a conclusion that the petitioners have separate accommodation and they are financially well off. Therefore, in my view, this point of improvement and clearance of slum will not really be material. We must not forget the welfare and social thought that has gone behind the enactment of the Slum Act. It is to protect the downtrodden and underprivileged. It is to protect those who have economic compulsions. The competent authority and appellate authority have concurrently found that the applicants are financially well off and each of them have separate accommodation. The counsel for the petitioners stated that the petitioners were not given a chance to deal with the contentions of the respondents whereby documentary evidence to show that the respondents had alternate

accommodation and the fact that the premises which is the subject matter of the present petition remain unoccupied were submitted. The petitioners have also submitted the electricity bill for the suit premises which show zero unit consumption. In the roznama before the appellate authority for 19th March 2014, it is mentioned that the advocate for the respondents filed written submissions along with other papers. It is also mentioned that the advocate for appellant Mr. Walam who was present argued that the tenant has no other income and income of others cannot be considered and that arguments were completed and the matter closed for orders. If the appellants wanted time to consider the documents, the roznama would have reflected that. Therefore I am not inclined to accept the contention of the petitioners' counsel that they were not given a chance to deal with the documents.

11 The jurisdiction exercised under Article 227 is supervisory in nature. It is exercised when the subordinate court has assumed the jurisdiction which it did not have or has failed to exercise the jurisdiction though available in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby. The Court may also step in and exercise its supervisory jurisdiction if there is an error which is manifest and apparent on the face of the proceedings and grave injustice or gross failure of justice

has occasioned thereby. (*Surya Dev Rai Vs. Ram Chander Rai & Ors.*³).

12 When there are two concurrent findings, this Court will not go into the merits and findings in the petitions filed under Article 227 of the Constitution of India. The function of High Court under Article 227 of the Constitution is limited to see that subordinate Court or Tribunal functions within its limit or authority and not to see whether the order passed by the Trial Court or Tribunal was the correct order or not. The competent authority and the appellate authority under the Slum Act have ensured that the petitioners have alternate accommodation and also that they are financially, well off. I find no perversity or infirmity on this.

13 In these circumstances, both the writ petitions are dismissed with costs of Rs.10,000/- each to be paid to the advocate for the respondents within two weeks.

(K.R. SHRIRAM, J.)

14 At this stage, the counsel for the petitioners seeks stay of this order for a period of 8 weeks.

15 In view of the findings given by the competent authority and the

3 AIR 2003 SC 3044

appellate authority and since there has been no stay against the order passed by the trial court in R.A.E. Suit No.953 of 1994, I am not inclined to grant any stay. The application for stay is rejected.

(K.R. SHRIRAM, J.)