

Mr. Sunil C. Dubey for Petitioner.
Mr. K. D. Raorane, Master (Admn.), Representative of Court Receiver for
Respondent No.13.

3. Mr. Dubey strenuously contended that the said premises is not situate in C.T.S.No.449 but is in C.T.S.No.442 (part). He relied upon the communication dated 06.12.1983 addressed by the Deputy Collector (Encroachment) and Competent Authority, Andheri to the petitioner

herein. He further submitted that the said premises is situate in slum area, and therefore, the Court Receiver has no power to demolish the said premises. He has taken me through the report No.119 of 2013 dated 28.08.2013 of the Court Commissioner as also order dated 05.01.2012 passed by the Apex Court. He submitted that the petitioner had taken out the Chamber Summons for impleadment as defendant. Petitioner was impleaded as party defendant. However, in the Apex Court, consent terms were filed and the petitioner was not heard.

4. He, therefore, submitted that as the property is not situate in C.T.S.No.449, the learned trial Judge was not justified in ordering demolition of the said premises.

5. On the other hand, Mr. Raorane, representative of the Court Receiver, submitted that in the impugned order, the Court has recorded a categorical finding that the suit premises is illegally constructed. In pursuance of the order passed by the trial Court on 08.08.1980, the Court Receiver was appointed. Petitioner has carried out unauthorized construction of the said premises when the property was *custodia legis*. It was, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

6. I have considered the submission advanced at the Bar. Perusal of the communication dated 06.12.1983 shows that the land bearing C.T.S.No.442 (part) has been declared as vacant land by the Deputy Collector (Encroachment) and Competent Authority, Andheri under Section 2(f)(b) of the Maharashtra Vacant Lands (Prohibition of Unauthorized Occupation and Summary Eviction) Act, 1975 vide order dated 16.10.1976. Petitioner was directed to ascertain whether his house is located in C.T.S. No.442 (part) or not. During the course of hearing, I

called upon Mr. Dubey to place on record the steps taken by the petitioner for ascertaining whether his house is located in C.T.S.No.442 (part). However, petitioner was not in a position to throw light on this aspect as also produce any document to substantiate his claim that his house is located in C.T.S.No.442 (part). During the course of hearing, I also called upon Mr. Dubey to produce on record building permission given by the Competent Authority to construct the said premises. He was unable to produce any building permission. That apart, in the impugned order, the learned trial Judge has held that the said premises is unauthorizedly constructed. Apart from that, the trial Court had appointed Court Receiver on 08.08.1980. Perusal of the material on record does not show that the said premises were recorded by the Court Receiver. In other words, the said premises was constructed without the permission of the Court Receiver of the Competent Authority.

7. In view thereof, I do not find any merit in this Petition. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab