

JPP

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

WRIT PETITION NO. 3064 OF 1994

Ramesh Ramavad Shukla (deleted since deceased)

1. Udayraj s/o. Ramagya Shukla, adult
2. Smt. Shyam Kumari Wd/o. Ramagya Shukla, adult
3. Mr. Griharaj s/o. Ramagya Shukla, adult

all Indian Inhabitants, legal heirs and legal
representatives of the deceased of the Petitioner/
Plaintiff residing at Abdul Karim Chawl,
Ibrahim Hussein Compound, Quarry Road,
Cross Kedarmal Road, Malad (E),
Mumbai – 400 064, through their C.A.
Mr. Udayraj Ramagya Shukla, the Applicant No.1.

2. Hausala Ramavad Shukla (since deceased)
through Legal heirs and representatives

(2a) Smt. Premadevi wd/o. Hausala
Prasad Shukla, age 65 years,
Occupation – Housewife

(2b) Mr. Shobhnath Hausala Prasad Shukla,
age 42 years, Occupation – Service,

(2c) Mr. Rakesh Hausala Prasad Shukla,
age 33 years, Occupation – Service,

(2d) Mr. Sajesh Hausala Prasad Shukla,
age 30 years, Occupation – Service

(2e) Mr. Brijesh Hausala Prasad Shukla,
age 28 years, Occupation – Service.

(2f) Mr. Rajesh Hausala Prasad Shukla,
age 23 years, Occupation – Service.

All Indian Inhabitants, at present residing
at 761-1/1, Dr. Ambedkar Chawl, Narsipada,
Hanuman Nagar, Akurli Road, Kandivali (E),
Mumbai – 400 101.

... Petitioners.

V/s.

(1) Smt. Azizabai wd/o. Abdul Karim,
Indian inhabitant residing at Abdul
Karim Chawl, Ibrahim Hussein
Compound, Quarry Road,
Cross Kedarmal Road, Malad (East),
Bombay – 400 064.

(2) Radha Group of Companies
Mandarshi Developers
Having Office at 102/103, Devikrupa
Apt., Behind Eastern Mall, Daftary Road,
Malad (E), Mumbai – 400 097.

.... Respondents.

Mr. J.N. Jayale a/w. Shailesh Yadav for the Petitioners.
Mr. Sandeep Mahadik i/b. Manoj Upadhyay for Respondent 2.

CORAM : N.M. Jamdar, J.

08 December, 2016.

Oral Judgment :-

By this Petition, the Petitioners have challenge the judgment and order passed by the Appellate Bench of Small Causes Court, Mumbai dated 11 March 1994 allowing the Appeal filed by the Respondent No.1 – landlady directing the Petitioners to hand over the possession of the suit premises. The Appellate Bench by the impugned order set aside the order passed by the learned Small Causes Court Judge, Mumbai, the learned Small Causes Court Judge had dismissed the suit filed by the Respondent for possession of the premises.

2. The Respondent No.1 filed RAE Suit No. 5564 of 1982 against the Petitioners for recovery of the suit premises on the ground that the Petitioners were in arrears of rent. Non user of the premises, sub-letting and that the premises are required for a reasonable and bonafide use of the Respondent No.1. The learned Small Causes Court Judge by the judgment and order dated 14 January 1985 dismissed the suit. Thereafter, the Respondent No. 1 filed an Appeal bearing No. 256 of 1986 before the Appellate Bench of Small Causes Court. The Appellate Bench confirmed the findings of the Small Causes Court that the Petitioners were not in arrears of sub-letting or that there was any sub-letting but accepted the case of Respondent No. 1 that the Petitioners have not used the premises for

more than six months preceding the institution of the suit without any reasonable cause and that the premises were reasonably and bonafide required for the personal use of the Respondent No.1. Accordingly, by judgment and order dated 11 March 1994 the Appellate Bench allowed the Appeal. This order has been challenged in this Petition.

3. Perusal of farad-sheet would show that the Petition has appeared on board for final hearing on numerous occasions. On many occasions the Respondents have sought time. In this Petition a Civil Application No.2677 of 2015 was filed by the Petitioners to join the Respondent No.2 – developer as a party Respondent. It was asserted in the Application that the area is declared as a slum and Respondent No.2 has undertaken a Slum Rehabilitation Scheme and the Respondent No.1 has no longer a landlady of the suit premises. It was stated that the part possession of the suit property was also forcibly taken and certain demolitions have been taken out. After hearing the learned Counsel for Respondent No.1, notice was issued to the Respondent No.2 and the Civil Application was granted. Whenever the matter had appeared after 26 November 2015, none has appeared for Respondent No.1. On 21 November 2016 parties were put to notice that the matter shall be proceeded with irrespective of the appearance of the parties. The matter was partly heard on the earlier occasion and the learned Counsel for the

Petitioners were directed to inform the learned Counsel for the Respondents. None appears for the Respondent No.1. The learned Counsel holding for Respondent No.2 has accepted the position that the Slum Rehabilitation Scheme is in process and has also stated that the Petitioners and Respondent No.2 are in process of settling the dispute wherein certain accommodation in the scheme would be offered. The learned Counsel for the Petitioners states that even the consent terms are signed which clearly indicates that Respondent No.2 promised to hand over certain premises in the scheme. Be that as it may, it appears that in view of these developments, the Respondent No.1 has lost interest in contesting this Petition.

6. The Appellate Bench of the Small Causes Court had allowed the Appeal filed by the Respondent No.1 on the ground of bonafide requirement and on the ground of non-user. As far as the requirement for personal use is concerned, as stated earlier, subsequent events have transpired whereby the Respondent No.1 has stepped out of the picture and the property is being developed by Respondent No.2 – the developer. The learned Counsel for the Petitioners submitted that the Petitioners have now in possession of a notification which demonstrates that the area was notified as slum even prior to institution of the suit. However, the learned Small Causes Court Judge has held that no such material was placed on record. Going by the averments in the Civil Application by which

Respondent No.2 was added as a party Respondent and which averments have gone un-controverted, it appears that in any case as on date a Slum Rehabilitation Scheme is being implemented by Respondent No.2. These subsequent developments will have to be taken note of while determining the need of the Respondent No.1. By virtue of the Respondent No.1 assigning the rights to Respondent No.2 for development of the suit property under the Slum Rehabilitation Scheme, the claim of the Respondent No.1 now that the premises are required for personal bonafide use, does not survive.

7. The next ground on which the decree has been passed against the Petitioners is on the ground of non-user of the premises. In the plaint the Respondent No.1 has only stated in one line that the premises are not being used by the Petitioners. In the Written Statement the Petitioners have asserted that the premises are currently in use. In the evidence that has been led by the parties the Respondent No.1 has only reiterated a single line statement that the Petitioners are not occupying the premises. The Petitioners on the other hand had produced the documentary evidence on record. The Petitioners have asserted in the cross-examination that they have an electricity bill, ration card and the documents would be produced. However, the Appellate Bench straight away drew a conclusion that the premises were not being used for period of six months. The Appellate Bench ought to have considered that merely inserting one

line in the plaint that too in a vague manner “the premises are not being used by the Petitioner”. The entire burden could not have been placed on the Petitioners to prove with absolute certainty that the premises were used for period of six months preceding filing of the suit. Such assertion cannot be a mere mechanical statement in the plaint. In the present case documents such as electricity bill and other correspondence was produced. Therefore, the Appellate Bench has placed no responsibility on the Respondent – landlady except to make a single line assertion, while placing the entire responsibility on the Petitioners – tenant to strictly prove their occupation for six months, without considering the evidence produced by the Petitioners. The evidence produced by the Petitioners ought to have been considered in its proper perspective, which has not been done and therefore, the ground of non-user as held against the Petitioners also cannot be sustained.

8. In the circumstances, the case is made out for interference under Article 227 of the Constitution of India. The impugned judgment and order passed by the Appellate Bench of Small Causes Court, Mumbai will have to be quashed and set aside and accordingly quashed and set aside. Rule is made absolute in the above terms. No order as to costs.

9. It is open to the Petitioners and Respondent No.2 to enter into such arrangement as may be permissible. Further since the Slum Rehabilitation Scheme is in process, it is open to the Petitioners to make such application as may be advised, to the Slum Redevelopment Authority on the basis of this order whereby the decree of eviction against the Petitioners has been set aside.

(N.M. Jamdar, J.)