

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

CIVIL REVISION APPLICATION NO.750 OF 2014

Shri. Suresh Bhikaji Bhuvad and others .. Applicants

Versus

Shri. Ramji Dalip (Now deceased)

Shri. K. R. Singh (Now deceased)

Smt. Champubai d/o Kaluram Singh and others .. Respondents

Mr. Y. M. Kanchan, for the Applicants.

Mr. P. D. Pandey, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 3rd MARCH 2016

PC.

1. The revisionary jurisdiction of this Court is invoked against the order dated 05.05.2014 passed by the Appellate Bench of the Small Causes Court, by which order the Appeal filed by the Applicant being Execution Appeal No.2 of 2012 came to be dismissed and resultantly, the order dated 31.10.2012 passed by the Trial Court making the Obstructionist Notice No.80 of 2004 absolute came to be confirmed.

2. The obstructionist notice was filed by the Decree Holder i.e. the Respondent No.1 herein who has a decree for eviction in his favour passed in RAE & R Suit No.105/224 of 1992. The suit property is Room No.25, K. R. Singh Estate, Vidya Niwas, Bhattipada Cross Road, Bhandup, Mumbai-400 078. The said RAE & R Suit No.105/224 of 1992 came to be decreed on 18.07.2003. The Plaintiffs put the said decree in execution and in view of the obstruction of the Petitioner that they filed the said Obstructionist Notice No.80 of 2004 for removal of the obstruction.

3. At this stage, it would be relevant to note that the original Defendant one Vallabhdas Pandya had raised a defence that the suit was not maintainable in view of the fact that the land on which the suit premises was located was declared as a slum. A issue was also framed in that regard which was issue No.4 before the Trial Court. However, before the Trial Court the Defendant fairly accepted the position that the notification declaring the property as slum was set aside and therefore the Defendant would not press the said issue of the maintainability of the suit.

4. The Applicant herein who is the obstructionist has raised the obstruction on the ground that the land is covered by the notification issued under the Slum Act. The Executing Court did not countenance the said ground as the Executing Court was of the view that it was for the

obstructionist i.e. the Applicant to prove that he has an independent right in the suit premises. The Executing Court thereafter ventured to consider whether the obstructionist had an independent right vis-a-vis the suit premises. The Executing Court adverted to the fact that the obstructionist had filed written statement on behalf of the Defendant as his Power of Attorney. The Executing Court also adverted to the fact that the obstructionist was very well aware of the pendency of the proceedings i.e. the suit filed by the Respondent herein for eviction of the Defendant. The Executing Court on the ground that the obstructionist is claiming through the Defendant held that the obstructionist had failed to demonstrate that he has any independent right in respect of the suit premises. The Executing Court accordingly made the obstructionist notice filed by the Decree Holder absolute and directed the obstructionist to hand over possession.

5. The obstructionist carried the matter by way of Appeal being Appeal No.2 of 2012. The Lower Appellate Court reiterated the finding of the Trial Court in so far as on the aspect as to whether the obstructionist has any independent right is concerned. The Appellate Bench of the Small Causes Court observed that the obstructionist having been brought in the Court to depose on behalf of the Defendants in the suit, there was a collusion between the parties and the obstructionist was asked to put a

obstruction merely to deny the Decree Holders the fruits of the decree. The Lower Appellate Court observed that if the obstructionist had any independent right, title and interest in the suit premises, he would have averred in the written statement to the said effect as he had filed a written statement as the Constituted Attorney of the Defendant. The Appellate Bench of the Small Causes Court therefore did not deem it appropriate to interfere with the order passed by the Executing Court and accordingly dismissed the Appeal by the impugned judgment and order dated 05.05.2014.

6. The Learned Counsel for the Applicants Mr. Y. M. Kanchan would once again urge the contention that the land on which the suit premises are located has been declared as a slum. In support of the said contention, the Learned Counsel sought to place reliance on a letter dated 22.05.2014 issued by the Deputy Collector, Slum Rehabilitation Authority addressed to the District Superintendent of Land Records, Slum Rehabilitation Authority. It was the submission of the Learned Counsel that the notification declaring the property as slum is of the year 1976, and that the said notification is not the subject matter of the judgment of the Slum Tribunal, by which the declaration was set aside.

7. Per contra, the Learned Counsel appearing for the

Respondents Mr. P D. Pandey would contend that the notification which was issued declaring the land as slum is dated 18.01.1980 and published in the Government Gazette dated 21.02.1980 in respect of the lands owned by the Respondents which included the land on which the suit premises are situated. The said notification was set aside by the Slum Tribunal in the Appeal filed by the father as a Constituted Attorney of the Grandfather of the Respondents being Appeal No.82 of 1982 by judgment and order dated 13.09.1983. It was the submission of the Learned Counsel Mr. P. D. Pandey that the obstructionist as a Constituted Attorney of the Defendant had filed the written statement accepting the fact that the land in question was notified as a slum vide notification dated 21.02.1980, but is now seeking to contend that the the notification is of the year 1976 for obvious reasons.

8. In my view, it is not possible to accept the contentions urged on behalf of the Applicant i.e. the obstructionist. The defining aspect in so far as obstructionist is concerned is whether he has any independent right in the suit premises. In the instant case, both the Executing Court as well as the Appellate Court have recorded a finding that the obstructionist does not have any independent right. As indicated above, the obstructionist was a participant in the original proceedings in as much as he has filed the written statement on behalf of the Defendant as his Constituted Attorney.

Hence, there can be no dispute about the fact that the obstructionist was claiming through the Defendant. Once the obstructionist is not able to prove that he has any independent right, then obviously he has no legs to stand on to protect his possession.

9. Even considering the case of the obstructionist that the land in question has notified as a slum, the same also does not stand to scrutiny in as much as not a single document by way of notification has been produced by the obstructionist to fortify the said claim. In fact, as indicated above, on behalf of the Respondent a judgment of the Slum Tribunal setting aside the notification declaring the land in question as a slum was produced. Reliance placed on the letter dated 22.05.2014 is misplaced as the letter only mentions that the land covered by the said letter are part of the lands on which a slum rehabilitation scheme is to be implemented. However, the said letter cannot be construed to mean that there was a declaration of slum. In my view, the stand now sought to be taken by the obstructionist can only be said to be the last straw on the camels back to protect his possession. Hence, no case for inference in the revisionary jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

10. At this stage, the Learned Counsel for the Applicants

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prays for continuation of the ad-interim order which is operating in the above Petition so as to enable the Applicants to take appropriate recourse. In the facts and circumstances of the case, if the execution proceedings are filed they may go on but possession not be taken for a period of six weeks from date.

[R.M. SAVANT, J]