

Sequeira

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

***CIVIL REVISION APPLICATION (St.) NO. 17282 OF
2016***

***Along with
CIVIL APPLICATION NO. 440 OF 2016***

***Along with
WRIT PETITION NO. 7552 OF 2016***

Smt.Savita Jalamchand Dhalawat & ors. .. Applicants

Vs

Mr.Pandurang Gajanan Mokashi .. Respondent

Mr.Vishal Kanade a/w Sandeep Bhimekar, Dinesh Parmar, Pranab Chalke and Indrajeet Bhosale, for Applicants in both Applications / Petitioners.

Mr.S.S.Kanetkar, for the Respondent in both Applications / Writ Petition.

***CORAM : N.M.Jamdar, J.
Wednesday, 30 November 2016.***

Oral Order :

The Civil Revision Application (Stamp) No.17282 of 2016 challenges the concurrent Judgment and orders passed by the District Judge Pune in Civil Appeal No. 300 of 2012 and the Judgment and order passed by the Additional Small Causes Court Judge, Pune in Regular Civil Suit No.292 of 2011. By these orders the Applicants are directed to hand over possession of the suit premises to Respondent-landlord.

2. By way of the Writ Petition, the Petitioner has challenged the order passed by the learned District Judge, Pune rejecting the Review Petition No.9 of 2016 in Appeal No.300 of 2012.

3 The learned counsel for the parties have argued these two matters together and they are disposed of by this common order.

4. The Respondent-landlord filed a Suit bearing No.292 of 2011 seeking possession of the suit property from the Applicants on the ground that the premises are required for the immediate purpose of demolition by the local authority. The premises are situated at Kasba Peth, Pune. The suit property is more than 100 years old. In the plaint, it was stated that the building constructed is a load bearing structure with ground plus two upper floors and constructed with brick masonry walls in mud mortar. It was stated that the building has become ruinous and dilapidated though it was maintained from time to time. It was stated that on 8 May 2011 part of the wall on northern side fell and Municipal Corporation of City of Pune issued notice on 12 May 2011 to the Respondent and Applicants asking them to vacate as the property was required for the purpose of demolition as it had become dangerous to reside there. It is stated that in spite of the notice, Applicants refused and therefore, suit had to be filed. The Respondent-landlord relied upon the notice issued by the Municipal Corporation. Both the parties led their oral evidence

and cross-examination was conducted. The learned Small Causes Court Judge, Pune found that the case was made out by the Respondent-landlord under section 16(1)(k) of the Maharashtra Rent Control Act, 1999 in view of the notice issued by the Municipal Corporation and decreed the suit by judgment on 22 March 2012.

5. The Applicants thereafter filed an appeal. In the appeal contentions were raised regarding admissibility of the notice and collusion on the part of the Respondent-landlord and the Municipal Corporation. The learned District Judge held that having admitted the notice, Applicants were precluded from contending that it was not validly issued that there was no such collusion between the Respondent and the Municipal Corporation. Accordingly by Judgment and order dated 4 March 2015, the appeal was dismissed. These orders are subject matter of the Revision application.

6. The Applicant-Petitioner thereafter filed a Review Petition bearing No.9 of 2016 wherein it was contended that in another suit relating to other portion of the property the District Court had taken a view that the notice needs to be proved by the Municipal officers and the proceedings were remanded to the trial Court. On the basis of this decision of remanding proceedings review of the order dated 4 March 2015 was sought which the learned District Judge rejected by order dated 27 April 2016. This order is subject matter of the Writ Petition.

7. The learned counsel for Applicants submitted that the notice issued by the Municipal Corporation was not duly proved as author of the written notice has never stepped in the witness box. He submitted that merely because the notice was exhibited without the Applicant raising any objection does not mean that the contents thereof are proved. He submitted that as per the provisions of section 16(1)(k) of the Act satisfaction of the Court that the premises are required for immediate purpose of demolition is paramount and unless such satisfaction is recorded no decree can be passed. In furtherance of his contention, he relied upon the decision in the case of *Vasant Mahadeo Gujar Vs. Baitulla Ismail Shaikh & anr.* - 2015(5) Bom.C.R.243 and *Malay Kumar Ganguly Vs.Dr.Sukumar Mukherjee and ors.* - (2009) 9 Supreme Court Cases 221. The learned counsel for Respondent on the other hand submitted that the notice needs to be proved by the officer of the Municipal Corporation was never taken before both the Courts. It was also contended that the argument that the Court must independently record its satisfaction that the premises are required for immediate purpose of demolition was also not taken. The learned counsel relied upon the decision of the learned Single Judge of this Court in the case of *Sharadchandra Vasant Chitnis Vs Mrs.Neela Ashok Kore and anr.* -2008 (6) Bom.C.R 676.

8. As far as the contention of the learned counsel for Applicants

that the Municipal officer ought to step into witness box to prove the case is admittedly, not urged in both the Courts. Therefore this requirement is sought to be pressed in service at the time of argument of the Revision application. Had this argument in this form taken earlier, the Respondent-landlord could have taken corrected steps. As far as the propositions of law canvassed by the learned counsel for Applicants are concerned, before applying them, the factual matrix of the present case and the evidence led by the parties needs to be looked into. The Respondent-landlord has produced notice issued by Municipal Corporation on record. This notice clearly states that the building has become dangerous and it is likely to collapse at any time and therefore, it is necessary to demolish the same immediately. Once the landlord relied upon this notice and sought decree on the ground that the Municipal Corporation requires the premises for immediate demolition, it was incumbent upon the Respondents to prove that either the notice was not issued or was issued with collusion with Municipal officer or that the premises were not required for immediate purpose of demolition. As held by the learned Single Judge of this Court in the case of *Vasant M. Gujar* relied upon by the learned counsel for the Applicants that the satisfaction of the Court is not a substitute for the satisfaction of the local authority and nor it is contemplated that the Court must itself enquire into the position whether the premises are in ruinous condition and whether they are required to be immediately pulled down. The learned Single Judge has held that the area of enquiry is left with the Court is if on

consideration of any subsequent events it transpires that the premises are not required for the purpose of demolition. It is held that it is only in such overriding circumstances bonafide exercise of power by local authority can be superseded. In this context the evidence of the Respondent will have to be seen.

9. As far as the cross-examination of the Respondent-landlord is concerned it is only in one paragraph. There is hardly any suggestion of collusion nor any case is put up that the building is in sound condition and does not require demolition and that notice of the Municipal authorities is either malafide or non-existing. Therefore absolutely no foundation is laid by the Applicants. With such absence of evidence, both the Courts had no contra material to override the satisfaction recorded by the local authority. In view of this position and that the notice was duly produced by the Respondent-landlord and that nothing was elicited from the witness of the Respondent-landlord by way of cross-examination, there was no reason for both the Courts not to accept the fact that the notice came to be issued to the Respondent-landlord by the Municipal authorities and that the satisfaction of the authority recorded in the notice was correct.

10. Decision of the Apex Court in the case of *Malay Kumar Ganguly* relied upon by the learned counsel for Applicants, it was a case that arose from provisions of Consumer Protection Act, 1986 and in that context the Apex Court held that the document becomes

inadmissible in evidence unless author thereof is examined however, in the same paragraph the Apex Court also held that ordinarily if a party does not object to a document being taken on record and same is marked as an exhibit, then he is estopped and precluded from questioning admissibility thereof and getting the same exhibited. In the present case, since Applicants did not specifically take a ground or object in specific terms that the mode of proving the document through the Respondent is not correct and it should be through the author of the document, that is officers of the Municipal Corporation, I am not inclined to accept the argument at this stage of the proceedings. The notice received by the Respondent-landlord was exhibited. The factum of receipt of notice was not seriously contested. The notice contains the necessary recital and there was no error in accepting the recital of immediate requirement of demolition, in absence of any contrary material by producing by Applicants.

11. As far as the Review Petition is concerned, the review that was sought was on the grounds which have been urged in the Review application which grounds I have already dealt as above. In the circumstances, both, the Revision application and the Writ Petition cannot be entertained and are rejected. No order as to costs.

12. At this stage, the learned counsel for Applicants-Petitioners seeks continuation of the ad-interim relief granted in Writ Petition No.7552 of 2016. Considering the facts and circumstances, I am

inclined to grant six weeks time however, since it will take some time to get the copy of the order, the ad-interim granted is continued for a period of eight weeks on the same terms and conditions as earlier.

(N.M.Jamdar, J.)