

Sudhir Rane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2760 OF 2016**

Rajan Save
and 7 others.

... Petitioners

Versus

State of Maharashtra
and 15 others.

... Respondents

....

Mr. Altaf Khan i/b. Anjali Awasthi for Petitioners.

Mr. Asif Patel, Addl. Govt. Pleader for Respondent Nos. 1 and 2.

Mr. Satyen N. Vaishnawa a/w. Ms. Nupur Mukharjee i/b. M/s.
N.N.Vaishnawa & Co. for Respondent Nos. 4 to 7, 10, 11 & 14.

Mr. G.G. Ketkar, Ist Assistant to Court Receiver present.

....

**CORAM : V.M. KANADE AND
P.R.BORA, JJ.**

DATE : 24th February, 2017

P.C. :

1) Heard the learned Counsel for the respective parties.

Petitioners have filed the present petition seeking the following relief.

“A) That, this Hon'ble Court be pleased to issue Writ of Mandamus and/or any other appropriate Writ, Order exercising powers under Article 226 of the Constitution of India, 1950 directing the State Government to frame the Rules u/s 3Y(1) of the Slum Act, 1971 (as amended w.e.f. 18.05.2001) in a

reasonable time bound manner and this Hon'ble Court may be further pleased to direct the State Government to decide the Applications dated 15.10.2015 of the Petitioners and their entitlement of protection in respect of their corresponding "suit premises" vis-a-vis judgment and decree dated 15.04.1997 passed by Ld. Civil Court in S.C. Suit No.1173 of 1971 in a reasonable time bound manner;

2) The petitioners claimed themselves to be the bonafide occupants of their corresponding premises allegedly situated over the land bearing CTS No.442 of Village Pahadi, Taluka Borivili, Mumbai Suburban District. It is the further contention of the petitioners that the aforesaid land Survey No.442 has been declared as 'Slum area' under the provisions of the Maharashtra Slum Areas (I.C. & R.) Act, 1971 as per the notifications published on 2nd March, 1989, 19th December, 1991 and 20th January, 1994. It is the further contention of the petitioners that the competent authority has also carried out a survey of the respective premises, which the petitioners claimed to be the commercial premises of the petitioners' and has included their names in list of Annexure – II. In these circumstances, the petitioners contend that they are 'protected occupiers' as per the provisions of law. It is the further contention of the petitioners that on 4th July, 2013 when the respondent Nos. 4 to 15 had come to execute the decree against the petitioners, the

petitioners, for the first time, learnt about the judgment and decree dated 15th April, 1997 passed in Suit No.1173 of 1991 filed in the Bombay City Civil Court and the subsequent execution order dated 19th September, 2000 passed in execution of the decree in the aforesaid suit. It is the further contention of the petitioners that opposing the execution of the decree passed in Suit No.1173 of 1971, the petitioners had filed the Chamber Summons taking a ground that the petitioners were not heard prior to passing of the said judgment and decree. The Chamber Summons was rejected by the City Civil Court by an order passed on 7th September, 2015. Review applications were filed by the petitioners seeking review of the order passed by the City Civil Court, but the said applications also were rejected by the City Civil Court on 7th November, 2015. The petitioners thereafter filed the Writ Petition (L) No.3087 of 2015 before the High Court, challenging the legality and validity of the order dated 7th November, 2015 passed by the City Civil Court. The Writ Petition was withdrawn by the petitioners on 24th November, 2015 with liberty for filing appropriate proceedings. Meanwhile, the petitioners filed the individual applications on 15th October, 2015 before the State Government for determination of their entitlement and protection and for issuance of photo passes

under the provisions of Section 3Y(1) of the Slum Act, 1971.

3) Learned Counsel appearing for the petitioners submitted that, the Government has not decided the aforesaid applications till date. Learned Counsel further submitted that the petitioners have ample evidence with them in order to prove the contentions raised by them, that they are the occupants of the premises of which the respondent Nos. 4 to 15 are trying to take forcible possession on the basis of the orders passed by the Courts in their favour. Learned Counsel further submitted that the petitioners were intentionally not made a party to any of the proceedings in respect of the said premises, and as such, they did not get any opportunity to put forth their case before the respective authorities / Courts. Learned Counsel submitted that, the directions need to be issued against the State Government and the Slum Authorities to take decision on their applications dated 15th October, 2015 and till then the respondent Nos. 4 to 14 need to be restrained from taking any coercive action against the petitioners of taking forcible possession of the premises in their occupation.

4) The respondent Nos. 4 to 14 have strongly resisted the contentions raised on behalf of the petitioners. The learned

Counsel appearing for them submitted that after having failed in getting any relief from any Court, the petitioners have attempted to delay the execution of the decree of possession passed in favour of respondent Nos. 4 to 14 by filing the present petition. The learned Counsel submitted that the petitioners do not have any vested right in suit premises and they don't deserve to be granted any relief as prayed by them in the present petition. Narrating the checkered history of the Chamber Summons, Suits, Review Applications, Writ Petition before the High Court and the Special Leave Petition before the Apex Court filed by present petitioners and their failure in securing any relief from any of the Courts, the learned Counsel for the respondents submitted that the petitioners have throughout failed in bringing on record any material to establish nexus with the structures referred to in Annexure – II and the suit structures covered under the decree dated 15th April, 1997 passed by the City Civil Court, Mumbai. The respondents, therefore, prayed for dismissal of the petition.

5) After having heard the learned Counsel appearing for the respective parties and on perusal of the material on record, apparently, we do not see any merit in the petition so filed. Material on record reveals that respondent Nos. 4, 5 and 6 had filed

Suit No.1173 of 1971 against Dayashankar Mishra, Tarachand Mishra and others for declaration that the suit plot No.92 Hissa No.4 part, Survey No.118 Hissa No.1 part and Survey No.120 Hissa No. 3, 4 and 5 at village Pahadi, Taluka Borivali corresponding to CTS No.442/A/3 belong to them and consequential prayer for possession was made against the original defendant Nos. 1 and 2 i.e. Dayashankar Mishra and Tarachand Mishra. The said suit was decreed on 15th April, 1997. The said judgment and decree was confirmed till Supreme Court. Pursuant to that, Chamber Summons No.397 of 1999 was taken out by the original plaintiffs i.e. decree holders against the original defendant Nos.1 and 2 for possession. The said Chamber Summons was allowed. The said order was also challenged up to the Hon'ble Supreme Court, however no interference was caused and the City Civil Court's order was maintained. The execution proceedings were therefore filed by the decree holders pursuant to the decree confirmed by the Supreme Court. The present petitioners moved the Chamber Summonses as the obstructionist claiming that the decree is not executable against them. All the Chamber Summonses were rejected by the City Civil Court, Mumbai by order dated 7th September, 2015.

6) The petitioners thereafter filed Review Applications

before the City Civil Court, seeking Review of the order dated 7th September, 2015. The said Review Applications were rejected by the City Civil Court. The petitioner thereafter filed Writ Petition (Stamp) No.30871 of 2015, challenging the order of review, the Judgment and decree passed in Suit No.1173 of 1971 and the order passed in the execution proceeding. The said Writ Petition was allowed to be withdrawn with a liberty to take out an appropriate proceeding to challenge order dated 7th September, 2015. There were in all 34 obstructionists. All had taken out the chamber summonses. All the said 34 obstructionists filed identical affidavits claiming that defendant No.2 in the subject suit namely Taraprasad Mishra was their landlord and they were the tenants of said Taraprasad Mishra. Out of the aforesaid 34 obstructionists, 18 filed the First Appeal in this Court, which was dismissed, vide order dated 24th February, 2016 (Coram : Mrs. Mrudula Bhatkar, J.). Aggrieved by the said order, the said 18 obstructionists filed the Special Leave Petition before the Hon'ble Supreme Court, wherein the issue was also raised that the subject property was declared as slum and consequently the petitioner had acquired the status of slum dwellers and therefore, the decree cannot be executed against them. As was submitted by the learned Counsel for the

Respondent, during course of arguments in the Special Leave Petition, it was pointed out to the Hon'ble Apex Court that though the petitioners have throughout failed in establishing their right in the suit property, they may again adopt some other proceedings under Slum Act or otherwise and delay the execution. The Hon'ble Apex Court while dismissing the Special Leave Petition therefore, directed the petitioners in those Special Leave Petition to vacate and handover the peaceful possession of the premises on or before 31st July, 2016.

7) The record further reveals that 3 other obstructionists had also filed First Appeal, which came up before Dr. (Smt.) Justice Shalini Phansalkar-Joshi and the said Appeal was also dismissed by order dated 5th October, 2016.

8) The First Appeals filed by the present petitioners being First Appeal No.327 of 2016 with the connected First Appeals have been dismissed by this Court (Coram : M.S. Sonak, J.) vide a common order passed on 10th February, 2017. We deem it appropriate to reproduce herein below, the observations made and the conclusions recorded by the learned Single Judge while dismissing the aforesaid appeals which are thus :

“12] The ground that the decree is a nullity because it was obtained by fraud, is quite a frivolous ground, in the facts and circumstances of the present case. Admittedly, the trial court permitted amendment of the plaint and the introduction of a plan/map so as to cover the structures located in property surveyed under No.118/Hissa NO.2 as well. Mere circumstance that such property was not included in the suit as originally framed, but the same was introduced by way of amendment, does not render the eventual decree, a product of fraud or a nullity. Further, it is to be noted that this ground was not even raised before learned trial Judge and has now perhaps been raised only to urge that there is some difference in 21 appeals already disposed of and the present set of appeals. This is impermissible and there is no merit in the ground raised.

13] The ground based upon section 22 of the Slum Act has been considered and rejected in the order dated 7 September 2015. Such ground was raised and rejected in 21 appeals disposed of by judgments and orders dated 24 February 2016 and 5 October 2016. As against, the judgments and orders dated 24 February 2016, even the special leave petitions, in almost 17 cases have been dismissed. Accordingly, there is no case made to take any different view in these said appeals.

14] The contention that names of the appellants in the two appeals were not included in Annexure-II and therefore, there is a distinction in these appeals, is also not well founded. The appellants, in the course of cross-examination were specifically asked to indicate whether there is any material to link the structures referred to in Annexure-II with the suit structures. The appellants failed to furnish any clear response to such query. There is, accordingly, no material on record to establish nexus with the structures referred to in Annexure-II and the suit structures covered under the decree dated 15 April 1997.

The appellants were required to place cogent material in this regard, which they have failed. In such circumstances, the contention based upon the provisions of section 22 of the Slum Act were rightly rejected even in the case of present appellants.

15] The ground that the trial Judge lacked jurisdiction is completely misconceived. The impugned order decides whether the obstructionists have made out any case to obstruct the execution of decree. The circumstance that the appellants themselves filed chamber summons and pursued them for the last four to five years and on the basis of the same continued to resist the decree, does not in any way render trial court as a court having not inherent jurisdiction to decide the matter. In fact, such a submission, which was never raised earlier, is quite misconceived and aimed at protracting the execution proceedings without reasonable cause. Accordingly, this ground is also rejected.”

9) The present petition was filed before decision of the aforesaid appeals raising a plea that the petitioners are all bonafide occupants of their corresponding premises situated over the land bearing CTS No.442 of village Pahadi, Taluka Borivili, Mumbai Suburban District and further that since the aforesaid land is declared as slum area under the provisions of the Maharashtra Slum Act, the judgment and decree passed on 15th April, 1997 in Suit No.1173 of 1971 cannot over ride the subsequent amendment under the Slum Act, viz. Section 3Y (w.e.f. 18.05.2001) conferring civil right to the petitioner in respect of their corresponding

commercial premises. It is the further contention of the petitioner that, they are entitled for statutory protection and the same is required to be determined by framing rules under Section 3Y of the Slum Act 1971.

10) The contentions so raised by the petitioners are liable to be rejected, firstly for the reason that petitioners do not appear to have set up any independent right in themselves. The petitioners are claiming through Tarachand Mishra who was defendant No.2 in Civil Suit No.1173 of 1971 decided on 15th April, 1997. In absence of any independent right, the petitioners cannot resist execution of the decree which is binding against original defendant No.2 in the suit viz. Tarachand Mishra. As has been observed in First Appeal No.1190 of 2015 with the other connected First Appeals decided on 24th February, 2016 (Coram : Mrs. Mridula Bhatkar, J.), the petitioners were brought on the suit land by defendant No.2 after decision of Civil Suit No.1173 of 1971. The aforesaid judgment dated 24th February, 2016 has been confirmed by the Hon'ble Supreme Court.

11) Secondly, as has been observed by the learned Single Judge in First Appeal No.327 of 2016 with the other

connected appeals, the petitioners have failed in bringing on record any material to establish nexus with the structures referred to in Annexure-II and the suit structures covered under the decree dated 15th April, 1997. The Petitioners did not file any document either before the lower Court or in the appeal before this Court to show that the said premises are affected by slum or fall in the slum area. Even in the present petition, no such evidence / document is placed on record by the petitioners.

12) After having considered the entire material on record, it does not appear to us that any case is made out by the petitioners for grant of any of the relief as claimed in the present petition.

11) For the reasons stated above, the petition is rejected, however, without any order as to the costs.

(P.R.BORA)
JUDGE

(V.M. KANADE)
JUDGE