

Suresh Bhikaji Bhuvad and others	...	Petitioners
Vs.		
Ramji Dalip (decd) through his C.A.		
K. R. Singh (decd) through Champabai K. Singh		
and others	...	Respondents

CORAM : R. G. KETKAR, J.
DATE : MARCH 16, 2018

Heard Mr. Pawar, learned Counsel for petitioners at length.

3. R.A.E.&R. Suit No.105/224 of 1992 was instituted by the respondents, hereinafter referred to as 'decree-holders', for

recovery of possession of room No.25, K. R. Singh Estate, Vidya Niwas, Bhattipada Cross Road, Bhandup, Bombay 400 078 (for short 'suit premises'). The Suit was decreed on 18.07.2003. The appeal preferred by the obstructionists was dismissed by the appellate Bench of the Small Causes Court on 05.05.2014. Aggrieved by these decisions, obstructionists preferred C.R.A.No.750 of 2014, which was summarily dismissed by this Court on 03.03.2016. In paragraph 9, this Court dealt with the contention raised on behalf of the obstructionist that the land in question was notified as a slum area. In support of that contention, no notification was produced by the obstructionist. On behalf of the decree-holder, a decision of the Slum Tribunal setting aside the notification declaring the land in question as a slum area was produced. This Court also dealt with the letter dated 22.05.2014 relied by the obstructionist. That letter only mentioned that the lands covered by that letter are part of the lands on which a slum rehabilitation scheme is to be implemented. This Court observed that the said letter cannot be construed to mean that there was a declaration of slum area.

4. Aggrieved by the decision of this Court, obstructionist preferred S.L.P. (Civil) No.15535 of 2016. By order dated 22.07.2016, S.L.P. was dismissed and time of three months to vacate the suit premises subject to filing usual undertaking in the Registry within a period of one week stating that the petitioner shall not create any third party right and will clear all the rent / dues and the occupational charges, if any, in the meanwhile and will peacefully vacate the premises concerned at the end of three months positively was granted. In pursuance thereof, obstructionist No.1 - Suresh Bhikaji Bhuvad filed undertaking

dated 27.07.2016 before the Apex Court. When the decree holder obtained warrant of possession, at that stage, obstructionists filed application exhibit-23 for staying execution of warrant of possession. By the impugned orders, the Courts below have rejected the application. It is against these orders, obstructionists have instituted the present Petition.

5. In support of this Petition, Mr. Pawar relied upon the notification dated 07.05.2016 issued by the Chief Executive Officer, Slum Rehabilitation Authority declaring certain properties as a slum rehabilitation area under Section 3-C of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Slum Act'). He submitted that as the suit property is situate in the properties, which are declared as 'slum rehabilitation area', the decree cannot be executed by the decree-holders unless prior permission under Section 22(1)(b) of the Slum Act of the Competent Authority is obtained. He submitted that this issue goes to the root of the matter and the Courts below were not justified in rejecting the application exhibit-23.

6. He submitted that the matter was taken up in the production Board yesterday when the Court suggested appointment of Court Receiver and obstructionists' handing over possession of the suit premises to the decree-holders as an agent of the Court Receiver. Accordingly, he has filed affidavit of obstructionist No.1. In the affidavit, he has given undertaking to handover possession of the suit premises to the decree-holders within 8 weeks from today as also in pursuance of the undertaking dated 27.07.2016 given to the Apex Court in S.L.P.

No.15535 of 2016 and any further order and direction in respect of the first floor constructed on the existing tenement from his own earnings and savings. It is further stated that his name is shown as a slum dweller at Sr. No.68 in Annexure-II certified by the Deputy Collector & Competent Authority. The project for the slum rehabilitation has been submitted to the S.R.A. by Puro Construction, the developer.

7. Mr. Pawar submitted that as the suggestion given by the Court is acceptable to the obstructionists, they may be permitted to handover possession of the suit premises within a period of 8 weeks and the first floor constructed by him from his own earnings and savings on the suit premises may be protected.

8. It is not possible to accept any of the submissions made by Mr. Pawar . It is material to note that the S.L.P. was dismissed by the Apex Court on 22.07.2016. The reliance placed on the notification dated 07.05.2016 is misplaced for more than one reason. In the first place, the obstructionist could have invited the Apex Court's attention to the said notification at the time of hearing of S.L.P. Notification was issued on 07.05.2016 and the S.L.P. was dismissed on 22.07.2016. No such plea was, therefore, taken before the Apex Court based on the said Notification. Secondly, by that Notification, certain properties are declared as a 'slum rehabilitation area'. Section 2(ga) and Section 2(h-b) of the Slum Act define the expressions 'slum area' and 'slum rehabilitation area' respectively, which read thus,

“2. Definitions.

In this Act unless the context otherwise requires,-

(ga) “slum area” means any area declared as such by

the Competent Authority under sub-section (1) of section 4; and includes any area deemed to be a Slum area under Section 4A.

(h-b) “Slum Rehabilitation Area” means a slum rehabilitation area, declared as such under sub-section (1) of section 3C by the Competent Authority in pursuance of the Slum Rehabilitation scheme notified under section 3B.”

9. Section 4 of the Slum Act provides for declaration of slum area. Section 4-A lays down that certain slum improvement areas shall be deemed to be slum area. In the present case, obstructionists have not produced any declaration made either under Section 4 or Section 4-A of the Slum Act. Section 22 of the Slum Act lays down that proceedings for eviction of occupiers or for issue of distress warrant cannot be taken without permission of the Competent Authority. Section 22(1) reads thus,

“22. Proceedings for eviction of occupiers or for issue of distress warrants not to be taken without permission of competent Authority- (1) Notwithstanding anything contained in any other law for the time being in force, no person shall except with the previous permission in writing of the Competent Authority, -

(a) institute, after commencement of the Maharashtra Slum Areas (Improvement, Clearance and redevelopment) Act, 1971, any suit or proceeding for obtaining any decree or order for the eviction of any occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier, or for both; or

(b) when any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of an occupier from any building or land in such area or for recovery of any arrears of rent or compensation from such occupier, or for both execute such decree or order;

(c) apply to any Judge or the Registrar of the Small Cause Court under Chapter VIII of the Presidency Small Cause Courts Act, 1882, in its application to the State of Maharashtra, or to any Court of Small Causes under Chapter IV-A of the provincial Small Cause Courts Act, 1887, in its application to the State of Maharashtra, for a distress warrant

for arrears of rent against any occupier of a house or premises in a slum area.”

10. A perusal of the above provision and in particular clause (a) shows that except with the previous permission in writing of the Competent Authority, no person can institute any suit or proceeding for obtaining any decree or order for the eviction of any occupier from any building or land **in a slum area**. Clause (b) thereof provides that where any decree or order is obtained in any suit or proceeding for the eviction of an occupier from any building or land **in such area**, no person can execute the decree without obtaining previous permission in writing of the Competent Authority.

11. In short, embargo under Section 22 is applicable only in respect of any area, which is declared as a slum area under the provisions of the Slum Act. In the present case, admittedly, obstructionists have relied upon the Notification dated 07.05.2016, which declares certain lands as 'slum rehabilitation area' under Section 3-C of the Slum Act and not as a 'slum area' as contemplated by Sections 4 and 4A of the Slum Act. The learned trial Judge has considered this aspect in great details from paragraphs 13 to 19 and 24. The appellate Court has considered this aspect from paragraphs 6 to 10. In view thereof, I do not find that the Courts below committed any error in rejecting the application exhibit-23. The matter was taken up yesterday in the production Board when it was suggested that the the Court Receiver may be appointed in respect of the suit premises and obstructionists will handover possession of the suit premises to the decree-holders within one week from today as an agent of the Court Receiver.

12. I have also perused the affidavit dated 16.03.2018 filed by the obstructionist No.1. In paragraph 1 of the affidavit, obstructionist No.1 has referred to the original structure shown in the photograph at Sr. No.1. It is stated that he has constructed first floor to the extent of 14 ft., which is permissible under the circular issued by the authority under the Slum Act. He has enclosed photograph at Sr.No.2 showing the present status of the suit premises. In paragraph 2, it is stated that he will handover possession of the suit premises to the decree-holders within 8 weeks from the date of the order. In the same paragraph, obstructionist has sought protection in respect of the first floor constructed on the existing suit premises on the ground that he has carried out the construction from his own savings and earnings. Thus as per the suggestion, obstructionists were asked to handover possession within one week. However, now, obstructionists seek 8 weeks time for handing over possession. That apart, when the matter was heard, it was not pointed out that obstructionists have constructed first floor above the suit premises. It is, therefore, not possible to accede to the request made by the obstructionist in the affidavit. I have already held that the Courts below have not committed any error, it is not possible to accede to the request made in the affidavit. In fact, in my opinion, the present Petition is nothing but abuse of process of the Court as also abuse of process of law. Any assistance given to the obstructionists will be a misplaced sympathy. Though the obstructionists have lost upto the Apex Court and have given undertaking as far as back on 27.07.2016 that they will handover possession to the decree-holders within 3 months, till date, they have retained possession of the suit premises. Not

only that, reliance is placed on the Notification dated 07.05.2016 which was not relied before the Apex Court while disposing of the S.L.P. Even that Notification is also irrelevant as by that Notification, area is declared as 'slum rehabilitation area' and not 'slum area'. Hence, Petition fails and the same is dismissed.

13. At this stage, Mr. Pawar seeks 8 weeks time to vacate the suit premises. He states that obstructionists and all adult family members namely, (i) Suresh Bhikaji Bhuvad, (ii) Sushma Suresh Bhuvad, (iii) Swapnil Suresh Bhuvad, (iv) Sanit Suresh Bhuvad, (v) Shruti Swapnil Bhuvad and (vi) Siddhi Sanit Bhuvad, will file usual undertaking in this Court within two weeks from today, incorporating therein that,

- (i) they are in possession of the suit premises and nobody else is in possession;
- (ii) they have neither created any third party interest nor parted with possession;
- (iii) they will hereafter neither create third party interest nor part with possession;
- (iv) that they will pay arrears of rent, if any, within 2 weeks from today to the respondents-decree holders;
- (v) they will not apply for further extension of time;
- (vi) they will vacate and handover vacant and peaceful possession of the suit premises to the decree-holders within a period of 8 weeks from today.

14. In view thereof, notwithstanding dismissal of the Petition, obstructionists are given 8 weeks time to vacate the suit premises and handover possession to the decree-holders. In case the obstructionists do not file undertaking within the stipulated period, the decree-holders will be at liberty to execute the decree with

police assistance, if required. If the undertaking is filed within the stipulated period and if the obstructionists are unable to obtain suitable orders from the higher Court and do not handover possession within 8 weeks from today, decree-holders will be at liberty to execute the decree with police assistance, if required.

15. List the Petition for 'reporting compliance' on 04.04.2018.

(R. G. KETKAR, J.)

Minal Parab