

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.407 OF 2017

Devkrishnasingh Thakur and another ... Applicants
Vs.
Nanubhai Balubhai Patel ... Respondent

Mr. R. S. Maurya for Applicants.
Mr. Pradeep J. Thorat for Respondent.

CORAM : R. G. KETKAR, J.
DATE : APRIL 2, 2018

P.C. :

Heard Mr. Maurya, learned Counsel for the applicants and Mr. Thorat, learned Counsel for the respondent at length.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants, hereinafter referred to as 'defendants', have challenged the judgment and decree dated 07.12.2011 passed by the learned Judge, Court Room No.35, Court of Small Causes at Mumbai (Bandra Branch) in R.A.E.&R. Suit No.295/588 of 1997 as also the judgment and decree dated 02.05.2017 passed by the Appellate Bench of the Small Causes Court at Mumbai (Bandra) in Appeal No.4 of 2012. By order dated 07.12.2011, the learned trial Judge decreed the Suit under Sections 12 and 13(1)(e) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'Act') and declined to pass decree under Section 13(1)(g). The learned trial Judge held that room No.4 situate at Balubhai Chawl, Tanaji Nagar, Road No.3, Bandongari, Kurar Village, Malad (E), Mumbai 400 097 (for short 'suit premises') is not in a slum area as per the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Slum Act'). Aggrieved by that decision, defendants preferred

appeal. The Appellate Court decreed the Suit only under Section 13(1) (e) of the Act and declined to pass decree under Sections 12 and 13(1) (g). The Appellate court also held that the suit premises is not situate in a slum area. It is against these orders, defendants have instituted the present Application.

3. In support of this Application, Mr. Maurya strenuously contended that the Courts below committed serious error in holding that the suit premises is not situate in a slum area and consequently previous permission in writing of the Competent Authority under Section 22 of the Slum Act is not required. He has invited my attention the-

a. Maharashtra Government Gazette dated 20.03.1984, which was published on 12.04.1984. In the Schedule of Areas, it was set out as under:

Schedule of Areas		
Local name of the area and village - Shivaji Nagar, Malad		
Part-I		
C.T.S.	Area	
	Sq.	Mtrs.
16B	1675 .	1
16A/3 to 13	800 .	0
Total	2475 .	1
Part-II		
16A Part	3200 .	0
15, 15/1 to 88	41195 .	4
829, 829/1 to 4	323 .	0
Total	44718 .	5

Description of boundaries – As shown in this office Notification No.SAA/Malad/24, dated 31st October 1977, published in Maharashtra Government Gazette, Part-I, on 10th November 1977 at page 2130, 2131. ”

b. Communication dated 21.02.2008 addressed by Deputy Collector (Enc./Rem.) and Competent Authority, Malad addressed to the respondent whereunder it was informed to the respondent that the land

bearing Survey No.219 pt. Corresponding CTS No.829, 829/1 to 829/4 of Village Malad (E) is not declared as slum area under Section 4(1) of the Slum Act.

c. Communication dated 05.05.2010 addressed by Naib Tahsildar (Enc./Rem.), Malad to Smt. Manasi Dilip Parab resident of Babubhai Chawl stating therein that after perusing the record, it transpires that City Survey No.829/1 to 4, Kurar Village, Tanaji Nagar is declared as slum area under the provisions of the Slum Act and the Gazette is published on 12.04.1984.

4. Mr. Maurya submitted that the entire Shivaji Nagar area is declared as slum area in pursuance of Notification dated 12.04.1984. He submitted that plaintiff deliberately did not give proper description of the suit premises. He submitted that in the plaint, plaintiff did not disclose the City Survey Number where the suit premises namely room No.4 situate at Balubhai Chawl, Tanaji Nagar, Road No.3, Bandongari, Kurar Village, Malad (E), Mumbai 400 097, is situated. As against this, in the written statement, defendants specifically contended in paragraph 1 that suit premises is situate in slum area and that plaintiff before instituting the Suit has not obtained requisite permission from the Competent Authority. He, therefore, submitted that as the suit premises is situate in slum area and the plaintiff has not obtained previous permission of the Competent Authority as per Section 22 of the Slum Act, the Courts below were not justified in passing the eviction decree.

5. On merits, he submitted that the trial Court decreed the Suit under Sections 12 and 13(1)(e) of the Act. As against this, the Appellate Court decreed the Suit only under Section 13(1)(e). He submitted that the Courts below committed serious error in holding that the defendant No.1

tenant has unlawfully sublet the suit premises to the defendant No.2 without his consent. Defendant No.2 is his nephew and power of attorney holder. He was appointed as a caretaker to look after the suit premises as also his family members. He, therefore, submitted that the Application requires consideration.

6. On the other hand, Mr. Thorat supported the impugned orders. He submitted that after considering the evidence on record, the Courts below have concurrently held that the defendants have not established that the suit premises is situate in a slum area. In so far as ground of unlawful subletting is concerned, he submitted that for the reasons recorded in paragraphs 13 to 16 of the Appellate Court's judgment, no case is made out for interfering with the impugned orders, more so when both the Courts have concurrently decreed the Suit under Section 13(1) (e) of the Act.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is the case of the defendants that the suit premises is situate in the slum area. The burden is essentially on the defendant to establish the said fact as plaintiff cannot establish negative thing namely, that the suit premises is not situate in the slum area. Defendants have produced Gazette Notification dated 12.04.1984 at exhibit-46. A perusal of the Notification shows that certain properties in Shivaji Nagar, Malad have been declared as a slum area. The details whereof are already reproduced in the earlier part of the order. Defendants will have to establish that Babubhai Chawl is situate in the properties which are declared as slum area. The reliance placed by Mr. Maurya on the communications dated 21.02.2008 and 05.05.2010 will not advance the case of the defendants unless they categorically and positively establish

that the chawl is situate in the slum area. Defendants did not examine any officer conversant with declaration of slum area vide notification dated 12.04.1984 to substantiate their claim that chawl is situate in the slum area. The Courts below, after appreciating the evidence on record, have concurrently held that the suit premises is not situate in the slum area. In view thereof, it is not possible to accept the submission of Mr. Maurya that the suit premises is situate in the slum area.

8. That brings me to the merits of the case. As noted earlier, the Courts below have decreed the Suit under Section 13(1)(e) of the Act. A perusal of the discussion of the Appellate Court, and in particular paragraphs 13 to 16 shows that the Appellate Court has considered the various circumstances as also the case of the defendants that defendant No.1 appointed defendant No.2 as power of attorney to take care of the suit premises as well as the family members. In paragraph 15, the Appellate Court observed that if it is a case of the defendant No.1 that defendant No.2 is a caretaker, defendant No.1 has not explained how the ration card shows name of the defendant No.2 and his address of the suit premises. They have also not explained how the electric meter was transferred in the name of the defendant No.2 by defendant No.1. The ration card, exhibit-54, bears names of the defendant No.2 and his family members. Name of defendant No.1 does not appear in the ration card. In the slum rehabilitation survey, defendant No.2 is found in possession of the suit premises. There is nothing to show that defendant No.1 is still in possession and has control over the suit premises as a lawful tenant. For the reasons recorded in paragraphs 14 and 15 of the Appellate Court order, I do not find that the Courts below committed any error in decreeing the Suit under Section 13(1)(e) of the Act. Defendants are not in a position to demonstrate that the findings recorded by the Courts below are perverse being based on no evidence

or that they are contrary to the evidence on record. The defendants are not in a position to demonstrate that on the basis of the evidence on record, no reasonable or prudent person would have reached conclusions arrived at by the Courts below. Merely because on the basis of evidence on record, another view is possible that by itself is no ground for exercising powers under Section 115 of the C.P.C. In the result, the Civil Revision Application fails and the same is dismissed.

9. At this stage, Mr. Maurya orally prays for stay of this order for a period of 8 weeks from today. He assures that the defendants and all the adult family members residing with them will file usual undertaking in this Court within three weeks from today, after giving advance copy to the other side incorporating therein that;

- (a) they are in possession and nobody else is in possession of the suit premises;
- (b) they have neither created third party interests nor parted with possession of the suit premises;
- (c) they will hereafter neither create third party interests nor part with possession of the suit premises;
- (d) they will deposit the entire arrears, if any, within three weeks from today in this Court under due intimation to the Advocate for the respondent;
- (e) in case they are unable to obtain suitable orders from the higher Court within eight weeks from today, they will hand over vacant and peaceful possession of the suit premises to the respondent;

10. Subject to the defendants filing the undertaking in the aforesaid terms within three weeks from today, this order shall remain stayed for the period of eight weeks from today. It is expressly made clear that in case the undertaking is not filed in the aforesaid terms within three

weeks from today and/or in case defendants commit breach of any of the conditions of the undertaking, respondent will be at liberty to proceed with the matter in accordance with law. In case, defendants are unable to obtain suitable orders from higher Court within a period of eight weeks and do not hand over possession of the suit premises to the plaintiffs, the plaintiffs will be at liberty to proceed with the matter in accordance with law. Order accordingly.

11. List the Application for reporting compliance after 4 weeks.

(R. G. KETKAR, J.)

Minal Parab