

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

**APPEAL FROM ORDER (ST.) NO. 23237 OF 2018
ALONG WITH
CIVIL APPLICATION (ST.) NO. 23238 OF 2018**

Vikas Gajanan Kamble	]	
Adult Age about 30 years,	]	
Occ. Business, Having address at	]	
Room No.8, Shantaram Sapkal Chawl,	]	
1 st Floor, Hanuman Pada, Malad (East),	]	
Mumbai - 400 097.	]	<u>... Appellant</u>

Versus

- | | | | |
|----|--|---|--|
| 1. | Slum Rehabilitation Authority |] | |
| | Having address at SRA Building, |] | |
| | Anant Kanekar Marg, Bandra (East), |] | |
| | Mumbai - 400 051. |] | |
| 2. | Dy. Collector (ENC) |] | |
| | Having address at Siddharth Nagar, |] | |
| | S.V. Road, Goregaon (West), |] | |
| | Mumbai - 400 063. |] | |
| 3. | Gajanan Mahadev Kamble |] | |
| | Adult Age about 55 years, |] | |
| | Occ. Business, Indian Inhabitant of |] | |
| | Mumbai having Address at Room No.8, |] | |
| | Shantaram Sakpal Chawl, 1 st Floor, |] | |
| | Hanuman Pada, Malad (East), |] | |
| | Mumbai - 400 097. |] | |
| 4. | Kalpana Gajanan Kamble |] | |
| | Adult Age about 48 years, |] | |
| | Occ. Housewife, Indian Inhabitant of |] | |
| | Mumbai having Address at Room No.8, |] | |
| | Shantaram Sakpal Chawl, 1 st Floor, |] | |
| | Hanuman Pada, Malad (East), |] | |
| | Mumbai - 400 097. |] | |
| 5. | Mangesh Gajanan Kamble |] | |
| | Adult Age 27 years, Occ. Business, |] | |
| | Indian Inhabitant of Mumbai having |] | |

- Address at Room No.8, Shantaram]
 Sakpal Chawl, 1st Floor, Hanuman Pada,]
 Malad (East), Mumbai – 400 097.]
6. M/s. Shah Housecon Pvt. Ltd.]
 Having address at 8th Floor,]
 Shah Trade Center Rani Sati Marg,]
 W/E Highway, Malad (East),]
 Mumbai – 400 097.]
7. Gaurav Padamshi Khirani]
 Director of M/s.Shah Housecon Pvt. Ltd.]
 Having address at 8th Floor,]
 Shah Trade Center Rani Sati Marg,]
 W/E Highway, Malad (East),]
 Mumbai – 400 097.] **... Respondents.**

- Mr.D.S. Sakhalkar a/w. Mr.Shailesh Pal i/b. Mr.Manoj Kumar Upadhyay for the Appellants.
- Mr.Abhijit Desai i/b. Desai Legal for Respondent No.1 (SRA).
- Mr.Pravin Samdani, Senior Advocate a/w. Mr.Mayur Khandeparkar, Mr.Nilesh Ranavat, Ms.Disha Shetty and Mr.Akash Lodha i/b. Wadia Gandy & Co. for Respondent Nos. 6 and 7.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 29th AUGUST, 2018.

PRONOUNCED ON : 4th SEPTEMBER, 2018.

JUDGMENT. :

1] This Appeal takes an exception to the common order dated 30th July, 2018, passed by City Civil Court-8, Dindoshi, Mumbai in Notice of Motion No.2460 of 2018 in Notice of Motion No.518 of 2017 in L.C. Suit No.2958 of 2016.

2] The said Notice of Motion No.518 of 2017 was moved by by the present Appellant for interim injunction restraining the Respondents from taking any action of evicting or removing him from possession of the suit premises; whereas the Notice of Motion No.2460 of 2018 was moved by him for appointment of an Architect to measure and demarcate the land on the plot of the suit premises, in order to find out whether the Appellant's suit structure is on the slum plot or non slum plot.

3] It is the contention of the Appellant that he is in use, occupation and possession of one part of the Room No.8. admeasuring about 420 square feets in Shantaram Sakpal Chawl, Quarry Road, Hanuman Pada, Malad (East), Mumbai, lying being and situated at CTS No. 396, 396/1 to 66, 397, 397/1 to 13 of village Malad (East), Taluka Borivali, Mumbai Suburban District. In the year 2014, a Slum Rehabilitation Scheme (*for short "SRA Scheme"*) was announced in the said area and the Developers formed the proposed Co-operative Society. The Developers called upon the Appellant and several other occupants to submit their documents for preparation of Annexure II. In the said Annexure II, the name of the Appellant was shown as "non-eligible" for providing alternate accommodation in lieu of his

occupancy over the suit premises. According to Appellant, his mother Mrs.Kalpana Gajanan Kamble is alone held eligible, though he has also occupying one part of the suit premises.

4] It is Appellant's contention that the suit premises is not situated on slum plot which is under redevelopment under the SRA Scheme. According to him, the letter of Intent issued for redevelopment of the Slum area under the Scheme shows that there is some portion of non slum plot. The suit premises of the Appellant is situate in the non slum plot and hence, the notice issued by the Slum Authorities under Section 33 and 38 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, for demolition of the suit structure is totally illegal. The Appellant called upon Respondent No.2 therefore to withdraw the said notice. However, as Respondent No.2 is bent upon in taking the action under the said notice, the Appellant is constrained to file this suit and Notice of Motion for injunction.

5] It is further contention of the Appellant that in order to ascertain whether the suit plot is falling in the slum area or non-slum area, demarcation of the area being necessary for that purpose the appointment of the Architect is necessary. This prayer is made in the

Notice of Motion No.2460 of 2018. According to him, the 'Letter of Intent' shows the area admeasuring 1022.10 square meters as non-slum area and his structure is on non-slum plot and touching to the boundaries of slum plot. According to him, therefore, this is a boundary dispute of slum and non-slum area and hence, for demarcation of the boundaries, the appointment of the Architect is essential, then only he can get the effective relief. The trial Court has, however, dismissed his both the Notice of Motions and therefore, he has approached this Court.

6] According to learned counsel for the Appellant, the real dispute between the parties can be decided only when the area of the slum and non-slum is demarcated as it will show that the suit structure of the Appellant is falling outside the slum area. To substantiate this submission learned counsel for Appellant has placed much reliance on the 'Letter of Intent', which depicts the non-slum area. According to him, the slum plot area considered for proposal is only 4372.70 square meters. Therefore, according to him, it is clear that entire plot admeasuring 5394.80 square meters is not the slum area. It is submitted that this fact has not been considered by the trial Court and therefore, the impugned order passed by the trial Court calls for interference at the hands of this Court. In this respect,

learned counsel for the Appellant has also placed reliance on the map drawn by SRA Authority.

7] However, in my considered opinion, this contention of learned counsel for the Appellant is devoid of any merits, as this aspect is property considered by the trial Court. It is undisputed that as per the 'Notification' dated 18th March, 1978, the entire CTS Nos.396, 396/1to 66 and 397, 397/1 to 13 of village Malad (East), Taluka Borivali, were declared as the slum area. The Notification to that effect dated 18th March, 1978 issued by the Competent Authority under Section 3 of The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, is also produced on record. Admittedly, as per the description of the suit structure as given by the Appellant in the plaint his structure is lying and situate in CTS Nos.396, 396/1to 66 and 397, 397/1 to 13, which are declared as slum area. Therefore, it can hardly be accepted that his suit structure is not forming the part of slum area.

8] Admittedly, the Appellant has also made a claim before Respondent No.1-S.R.A. for eligibility to get permanent alternate accommodation and his claim was rejected on 23rd January, 2014. The Annexure II is produced on record to prove that the Appellant is not

held eligible for getting such permanent alternate accommodation. The Appellant has neither challenged the said 'Notification' dated 18th March, 1978, declaring the said area as slum area nor he has challenged the Annexure II, which is prepared in the year 2014 itself. In view thereof, there hardly lies any substance in the contention of the Appellant that his suit structure is not lying in the slum area.

9] As to his contention that 'Letter of Intent' shows that there is some non-slum area admeasuring about 1022.10 square meters, it is clarified by Respondent No.2, the SRA Authority that this bifurcation of the area into slum and non-slum is solely for the purpose of calculation of the FSI. It was specifically made clear that the non-slum area shown in the LIO is in fact the open spaces, lanes in the slum area, which are not to be calculated for FSI. Its FSI cannot be considered as '3' as is applicable to the slum area. Hence, that area is called as non-slum area. That does not mean that the area where the suit structure is situated is a non-slum area.

10] It is pertinent to note that as per the Government Notification dated 6th April, 1978, the CTS No.396/1 to 66 and 397/1 to 13 were declared as slum area with other CTS numbers in the said area. Subsequently, the corrigendum was issued on 21st May, 2008,

correcting the schedule of areas and clarifying that the area of those CTS No.396 admeasuring 4098.1 square meters, 396/11 to 66 admeasuring 947.1 square meters, CTS No.397 admeasuring 187.8 square meters and CTS No.197/1 to 13 admeasuring 161.8 square meters was the slum area. This clarifies that the entire area under aforesaid CTS numbers was declared as slum area.

11] Thus, as rightly calculated by the trial Court, the total area of CTS No.396 and 396/1 to 66 comes to $4098.1 + 947.1 = 5045.2$ square meters, and the total area of CTS No.397 and 397/1 to 13 comes to $187.8 + 161.8 = 349.6$ square meters. The total area of both the CTS numbers and their parts if calculated in aggregate comes to $5045.2 + 349.6 = 5394.8$ square meters. If this area is tallied with the map drawn of this SRA Scheme, it shows the same area is covered and selected for the re-development under the scheme, except 934.9 square meters area from CTS No.396 and 396/1 to 66. The observation of the map shows that whatever area is shown as non-slum plot, namely, 1022.10 square meters is towards redevelopment of the lanes and pathways. It is not considered for the purpose of calculating FSI at the rate of '3' and only for that purpose, it is called as non-slum area. The Appellant cannot get benefit out of the same for contending that his suit structure is not falling in the slum area.

12] As a matter of fact, all the grievances and contentions raised by the Appellant are property considered by the trial Court in its detailed order and it was done despite the fact that the Civil Court's jurisdiction to challenge the action taken by the SRA under Section 33 and 38 of the said Act was expressly barred in view of Section 42 of the said Act and it is also despite the fact that the Appellant has not availed the proper remedy provided under the said Act to approach the Appellate Authority. As he has not done so, either when Annexure II was published or when he received the notice under Section 33 and 38 of the Slums Act, the trial Court has rightly dismissed his Notice of Motion. Nothing is brought on record to take any other view of the matter.

13] The Appeal therefore being without merits stands dismissed.

14] In view of dismissal of the Appeal, nothing survives in the Civil Application and hence, it stands disposed of.

15] At this stage, learned counsel for the Appellant seeks extension of the order of status-quo, which was operating till today for

further period of four weeks, so that the Appellant can approach the Hon'ble Supreme Court against the order passed by this Court.

16] Learned counsel for the Respondents submits that in the first place there is no reason to grant the extension, as the appeal is already dismissed and if this Court is inclined to grant the extension of the order of the status-quo, then it should be subject to the Appellant's filing the undertaking in the Court that after the expiration of the period of four weeks, he will handover peaceful and vacant possession of the suit premises to Respondent Nos.6 and 7, without further taking recourse to challenge of the orders passed under Section 33 and 38 of the Slums Act.

17] Mr.Vikas Kamble, the Appellant, who is present in-person submits that he wants to challenge the order passed under Section 33 and 38 of the Slums Act and therefore, he will not give any such undertaking.

18] In view thereof, there is no question of extending the order of status-quo. Therefore, request to that effect stands rejected.