

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE SIDE JURISDICTION**  
**CIVIL REVISION APPLICATION NO.664 OF 2016**

Laxman Rambhau Kadam ] Applicant

vs.

Subhadra Munshi Dayashankarlal ]

& Ors. ] Respondents

.....

Mr. Ganesh S. Bhat, for the applicant.

Mr. R.D. Mishra, for the respondent.

.....

**CORAM : R.G. KETKAR, J.**

**DATE : 16TH APRIL, 2018.**

**P.C.**

Heard Mr. Bhat, learned Counsel for the applicant and Mr. Mishra, learned Counsel for respondents No.1 to 4 and 6 and 8 at length.

2. By this application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C'), the applicant, hereinafter referred to as "defendant" has challenged the judgment and decree dated 6th October, 2017 passed by the learned Judge, Court Room No.7 of the Court of Small Causes at Mumbai in R.A.E & R Suit No.1777 of 2002 as also the judgment and decree dated 16th August, 2016 passed by the Appellate Bench of the Court of Small Causes, Mumbai in Appeal No.8 of 2008. By these orders, the Courts below decreed the suit instituted by the respondents, hereinafter referred to as "plaintiffs" for recovery of possession of Room No.6 situate in Munshi Chawl (Old Raghuvir Patel Chawl) situate at CTS No.278, Pt. 1302/1-6, S.No. 85, Hissa No.1, Village Kanjur, Taluka. Kurla, Mumbai 400 078 (for short "suit

premises”) under sections 15 & 16 (1) (b) of the Maharashtra Rent Control Act, 1999 (for short 'Act').

3. The learned trial Judge apart from framing issues under section 15 and 16 (1) (b) also framed Issue No.4 as to whether the defendant proves that suit instituted by the plaintiffs is not maintainable in view of the provisions of Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (for short “Slum Act”) without permission of the Competent Authority and answered that issue in the negative.

4. As far as the Appellate Court is concerned, the Appellate Court has framed Point No.1 to the effect as to whether the defendant proves that the suit is not maintainable for want of permission under Section 22 of the Slum Act and answered it in the negative.

5. In support of this application, Mr. Bhat submitted that in the year 1978 area where the suit premises is situate was declared as slum area by issuing Notification under Section 4 of the Slum Act. In the year 1997, the Tribunal constituted under the Slum Act, set aside the declaration. The matter was carried to this Court and by order dated 9th January, 2006, the order of Slum Tribunal was set aside and the matter was remitted for a fresh hearing. By order dated 23rd April, 2007, the Tribunal set aside the declaration on the technical ground that no show cause notice was issued to the predecessors in title of the plaintiff. The matter was carried to this Court. By order dated 1st April, 2008, this Court directed the Competent Authority to issue fresh notice for deciding whether the property is slum area or not. On 28th August, 2008, the property where the suit premises is situate is declared as a slum area.

6. Mr. Bhat submitted that he is not challenging findings recorded by

the Courts below in respect of grounds under Section 15 and 16 (1) (b) of the Act. He is restricting his challenge only in respect of maintainability of the suit. As on 28th August, 2008, area where the suit premises is situate was declared as slum area, suit was not maintainable.

7. Mr. Bhat submitted invited my attention to the order dated 19th October, 2001 passed by this Court (Coram: S.J. Vazifdar, as a learned Chief Justice then). In that order, the learned Single Judge referred to the decision in the case of **Abdul Basu Vs. Teresa Rozario and others, 1986 (1) All India Rent Control Journal, 154** where the learned Single Judge (Coram: B.C. Gadgil, J.) held that bar under section 22 of the Slum Act would not apply to a suit filed after a declaration of an area as a slum under Section 4 of the Slum Act and when subsequently, declaration is set aside. In the case of **Hasira w/o Mohammed Gouse Vs. Safiah d/o A.R.J. Fitwala & Others, 1986 Mah. R.C.J. 527**, the learned Single Judge (Coram: R.R. Jahagirdar. J.) took the contrary view. The decision rendered by Hon'ble Mr. Justice B.C. Gadgil was not cited before the Hon'ble Mr. Justice R.R. Jahagirdar. In view thereof, the matter was referred to the larger Bench. Mr. Bhat submitted that several Petitions raising this issue are admitted. He, therefore, submitted that this application requires consideration.

8. On the other hand, Mr. Mishra submitted that suit was instituted in the year 2002. At that time, area where the suit premises is situate was not declared as a slum area. That time no declaration issued either under Section 4 or 4(A) of the Slum Act was in force. The suit was decreed on 6th October, 2007. On 28th August, 2008, area where the suit premises is situate is declared as a slum area. He, therefore, submitted that it cannot be said that the suit was not maintainable for want of previous permission of the Competent authority. What the plaintiffs will now have to do is that they will have to

obtain permission under Section 22 (1) (b) of the Slum act before executing the decree.

9. I have considered the rival submissions of learned Counsel for the parties. I have also perused the material on record. As noted earlier, the defendant has not challenged the findings recorded by the Courts below under Section 15 and 16 (1) (b) of the Act. The only controversy is whether the suit instituted by the plaintiffs in the year 2002 was maintainable for want of previous permission of the Competent Authority.

Section 22 of the Slum Act reads thus:

**22. Proceedings for eviction of Occupiers [or for issue of distress warrant] 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 an 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; or]

[(c) apply to any Judge or the Registrar of the Small Causes Court under Chapter VIII of the Presidency Small Causes 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 Causes 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. It is no doubt true that in the year 1978, the property where the

suit premises is situate was declared as slum area. It is also not in dispute that declaration was set aside in the year 1997. The matter was carried to this Court. By order dated 9th January, 2006, the order of Tribunal was set aside and the matter was remitted for fresh hearing. On 23rd April, 2007, the Tribunal once again set aside the declaration. The suit was decreed on 6th October, 2007. The order of Tribunal dated 23rd April, 2007 was carried to this Court. On 1st April, 2008, this Court directed the Competent Authority to issue fresh notice for deciding whether the property where suit premises is situate is in slum area or not. On 28th August, 2008, the property where the suit premises was situate was once again declared as slum area. It is also not in dispute that the declaration was challenged by filing appeal before the Tribunal which was dismissed. Against that order, the matter was carried to this Court. This Court also dismissed the Petition and thereafter these orders were not carried further. In other words, declaration dated 28th August, 2008 is in force as on date.

11. As noted earlier, the suit was instituted in the year 2002 and at that time, the declaration under section 4 or section 4(A) was not in force. The suit was decreed on 6th October, 2007 and the declaration is made on 28th August, 2008. In view of section 22 extracted hereinabove, the plaintiffs will have to obtain permission of the Competent Authority as contemplated in section 22 (1) (b) of the Slum Act before executing the decree.

12. Mr. Bhat relied on order dated 19th October, 2001 passed by this Court in W.P. No.2926 of 2001, whereby the controversy is referred to the larger Bench. A perusal of that order shows that at the time of institution of the suit, there was a declaration under Section 4 of the Act and that was set aside after institution of the suit. In the case of **Abdul Basu** (supra), the learned Single Judge observed that bar under section 22 of the Act shall not apply to a

suit filed after a declaration of an area as a slum under Section 4 of the Slum Act, if subsequently declaration is set aside. Another learned Single Judge in the case of **Hasira w/o Mohd. Gouse** (supra) took the contrary view. In my opinion, controversy which is referred to the larger bench does not arise in the present case for the reasons already recorded hereinabove.

13. Even otherwise, if the matter is referred to larger Bench that itself is not ground for deferring hearing of this application. In the case of **Ashok Sadarangani Vs. Union of India (2012) 11 SCC 321** and in particular paragraph 19, the Apex Court has observed thus,

“19. As was indicated in Harbhajan Singh's case (supra), the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh's case (supra) need not, therefore detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field”.

In view of aforesaid discussion, no case is made out for interfering with the impugned order. Hence, no case is made out for invocation of powers under Section 115 of the C.P.C. Hence, the Petition fails and the same is dismissed. However, it is made clear that before executing the decree, the plaintiff shall obtain previous permission as contemplated in Section 22 (1) (b) of the Slum Act. Order accordingly.

[R.G. KETKAR, J.]