

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2588 OF 2019

Gauri Pannalal Prajapati ... Petitioner
Vs.
Harishankar Dudhnath Yadav ... Respondent

WITH
WRIT PETITION (ST.) NO.3335 OF 2019

Gauri Pannalal Prajapati ... Petitioner
Vs.
Harishankar Dudhnath Yadav ... Respondent

WITH
WRIT PETITION NO.2610 OF 2019

Gauri Pannalal Prajapati ... Petitioner
Vs.
Maraprasad Ramjas Yadav ... Respondent

WITH
WRIT PETITION NO.2628 OF 2019

Gauri Pannalal Prajapati ... Petitioner
Vs.
Omprakash Pandey ... Respondent

WITH
WRIT PETITION NO.2633 OF 2019

Gauri Pannalal Prajapati ... Petitioner
Vs.
Dhanraj B. Yadav ... Respondent

WITH
WRIT PETITION NO.2637 OF 2019

Gauri Pannalal Prajapati ... Petitioner
Vs.
Satyaram Jaiju Yadav ... Respondent

WITH
WRIT PETITION NO.2649 OF 2019

Gauri Pannalal Prajapati ... Petitioner

Vs.
Kedar K. Yadav ... Respondent

WITH
WRIT PETITION NO.2657 OF 2019

Gauri Pannalal Prajapati ... Petitioner
Vs.
Sankatha Prasad Shyamraj Rajbhar ... Respondent

Mr. R. B. Singh i/b. R. B. Singh & Asso. for Petitioner in all the Petitions.
Mr. H. P. Panday for Respondents in all the Petitions.

CORAM : R. G. KETKAR, J.
DATE : JULY 25, 2019

P.C. :

Heard Mr. Singh, learned Counsel for petitioner and Mr. Pandey, learned Counsel for respondents in all the Petitions at length.

2. These Petitions are directed against the orders dated 29.11.2018 passed by the Appellate Bench of the Small Causes Court in Revision Applications filed by the respondents. By these orders, the Appellate Court allowed the Revision Applications preferred by the respondents and set aside the orders dated 25.09.2018 passed by the learned trial Judge.

3. Rule. Mr. Panday waives service for the respondents. Having regard to the narrow controversy raised in these Petitions, Rule is made returnable forthwith and the Petitions are taken up for final hearing.

4. The relevant and material facts giving rise to filing of these Petitions, briefly stated, are as follows:

5. The petitioner-plaintiff has instituted Suits against the respondent-defendant for recovery of possession of rooms in Gauri Pannalal

Prajapati Chawl situate at Pandey Nagar, Shiv Vallabh Road, Dahisar (East), Mumbai 400 068 (for short 'suit premises') on the ground that defendant is a willful defaulter. By order dated 06.05.2014, the learned trial Judge decreed the Suit. Aggrieved by that decision, defendants preferred appeal. The plaintiff filed cross-appeals. By order dated 06.05.2017, the Appellate Court dismissed the appeals and allowed the cross-appeals. The condition imposed by the learned trial Judge requiring the plaintiff to obtain previous permission of the Competent Authority under Section 22(1)(b) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Slum Act') was set aside. Against these orders, defendants had instituted Civil Revision Applications in this Court. By order dated 06.03.2018, Civil Revision Applications were dismissed.

6. It is common ground between the parties that the defendants did not challenge order passed by this Court on 06.03.2018 and thus, had attained finality. The plaintiff thereafter filed execution proceedings. In the execution proceedings, defendants filed applications inter alia praying for issuing direction to the plaintiff to obtain necessary permission as required under Section 22(1)(b) of the Act before executing the decree of eviction and prayed for staying the execution of the decree till the final disposal of the applications. By orders dated 25.09.2018, the learned trial Judge rejected the applications. By the impugned orders, the Appellate Court allowed the Revision Applications.

7. In support of these Petitions, Mr. Singh has invited my attention to paragraph 29 of the order dated 06.03.2018 passed by this Court, which is to the following effect:

“29.Now, I will consider the other contention viz; the suit property is situated in the slum area. A perusal of Notification

dated 29th May, 2008 shows that CTS No.2482 (Part), admeasuring 2105.10 square meter was declared as slum area. A perusal of the cross-examination of the plaintiff in C.R.A. No.349 of 2017 shows that he stated that C.T.S No.2482 is admeasuring 3660 square meter. That apart, it is common ground between the parties that by order dated 7th April, 2016, Collector Bombay Suburban District corrected the area of CTS No. 2482 from 2105.10 to 3689 square meter. It, therefore, substantiates the claim of the plaintiff that the total area of CTS No.2482 is 3600 square meters. As against this, u/s 4(1) of the Slum Act area admeasuring 2105.10 square meters is declared as slum area. In other words, entire CTS No.2482 is not declared as a slum area. Mr. Godbole submitted that after the order dated 7th April, 2016 of the Collector correcting area, it is not necessary to issue fresh Notification u/s 4 of the Slum Act declaring entire CTS No.2482 admeasuring 3689 as a slum area. It is not possible to accept this submission. I have already extracted the Notification dated 29th May, 2008. By that Notification, only part of CTS No.2482 admeasuring 2105.10 square meters was declared as slum area. It is not in dispute that thereafter no fresh declaration in respect of CTS No.2482 admeasuring 3689 square meters was issued. That apart, as noted earlier, defendant clearly admitted in the cross-examination that he does not have any documentary evidence to substantiate that suit property is in a slum area. After perusal of the order passed by the trial Court, I am satisfied that the learned trial Judge was not justified in directing the plaintiff to obtain prior permission of the Competent Authority for executing the decree u/s 22 (1) (b) of the Slum Act. The Appellate Court, therefore, rightly interfered with that direction.”

8. He submitted that the defendants have raised the contention that the suit premises fall in the area declared as slum area. The said contention was specifically turned down. He submitted that defendants are raising once again the same contention. The learned trial Judge rightly rejected the applications. As against this, the Appellate Court, without satisfying itself about whether in fact the suit premises are falling in the slum area or not, has directed the plaintiffs to obtain previous permission of the Competent Authority under Section 22(1)(b) of the Slum Act. He, therefore, submitted that impugned orders are

liable to be set aside.

9. On the other hand, Mr. Panday relied upon the order dated 06.07.2018 passed by the Deputy Collector (Enc/Rem) and Competent Authority, Borivali-2 (for short 'Competent Authority') as also Notification dated 06.07.2018 issued by the Competent Authority published in the Maharashtra Government Gazette on 26.07.2018. He submitted that the plaintiff's Advocate appeared before the Competent Authority and after hearing the parties and considering the documents on record, the Competent Authority declared area admeasuring 494.40 sq.mtrs.out of City Survey No.2482B (Part) as a slum area. He, therefore, submitted that as the suit properties are situate in the area declared as slum area, the Appellate Court was justified in directing the plaintiff to obtain previous permission of the Competent Authority under Section 22(1)(b) of the Act before executing the decree. He, therefore, submitted that no case is made out for interfering with the impugned orders.

10. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. I have already extracted paragraph 29 of the order dated 06.03.2018 passed by this Court in various C.R.As. filed by the defendants. The defendants did not carry the matter further. The plaintiff proceeded to file execution proceedings. Defendants have come with the case that during the pendency of the execution proceedings, the Competent Authority has declared the area admeasuring 494.40 sq.mtrs. out of 2482B (part) as a slum area. A perusal of paragraph 29, extracted hereinabove, shows that the total area of C.T.S.No.2482 is 3689 sq.mtrs. Earlier, by notification dated 29.05.2008, area admeasuring 2105.10 sq.mtrs. of C.T.S. No.2482 (part) was declared as a slum area. The moot

question is whether by virtue of notification dated 06.07.2018 declaring area of 494.40 sq.mtrs. as slum area, the plaintiff is required to obtain permission under Section 22(1)(b) of the Slum Act or not. The question can be answered only upon permitting parties to adduce evidence to substantiate their rival contentions. On one hand, plaintiff contends that suit properties are not covered by the area of 494.40 sq.mtrs. declared as a slum area. On the other, defendants contend that suit properties are covered by the area declared as a slum area.

11. Section 47 of C.P.C. lays down that all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate Suit. In view thereof, whether the suit properties fall in an area of 494.40 sq.mtrs. declared as a slum area on 06.07.2018 cannot be decided in the absence evidence. In my opinion, the Appellate Court committed serious error in straightway assuming that the suit properties are falling in the area declared as slum area. The Appellate Court should have permitted the parties to adduce evidence before the executing Court to substantiate their rival contentions. In view thereof, impugned orders are liable to be set aside in the following terms:

- a. Impugned orders dated 29.11.2018 are set aside and applications exhibit-7 are restored to their original position;
- b. The parties are permitted to adduce evidence before the executing Court to substantiate their rival contentions as to whether the suit properties are falling in the area admeasuring 494.40 sq.mtrs. out of C.T.S. No.2482B (part);
- c. If the issue is answered in the affirmative, it is only then the plaintiff will be required to obtain permission under Section 22(1)(b) of the Slum Act;

- d. The learned Counsel for the parties submit that the next date of hearing before the executing Court is 22.08.2019. The executing Court will permit the parties to adduce evidence and till such time the issue is concluded, the decree shall not be executed;
 - e. Rule is made absolute accordingly with no order as to costs.
12. All parties, including the executing Court, to act upon the authenticated copy of this order.
13. Petitioner shall pay deficit Court fees within two weeks from today. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab