

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

**APPEAL FROM ORDER NO. 118 OF 2010
WITH
CIVIL APPLICATION NO. 455 OF 2010**

- | | | | |
|----|-----------------------------------|---|-------------------------------|
| 1. | Malkit S/o. Mohan Singh |] | |
| | Adult of Mumbai Indian Inhabitant |] | |
| | Having address at Uma Chawl, |] | |
| | Technical Area, Pipe Line, |] | |
| | Andheri (E.), |] | |
| | Mumbai 400 069 |] | |
| | |] | |
| 2. | Harban S/o. Mohan Singh |] | |
| | Adult of Mumbai Indian Inhabitant |] | |
| | Having address at Uma Chawl, |] | |
| | Technical Area, Pipe Line, |] | |
| | Andheri (E.), |] | |
| | Mumbai 400 069 |] | <u>... Appellants.</u> |

Versus

- | | | | |
|----|-------------------------------------|---|--------------------------------|
| 1. | M/s. Goyenka Builders |] | |
| | A Builder and Developer |] | |
| | Having its Office at Dynamic House, |] | |
| | General A.K. Vaidya Marg, |] | |
| | Goregaon (East), |] | |
| | Mumbai 400 063. |] | |
| | |] | |
| 2. | The Municipal Corporation of |] | |
| | Greater Bombay, A body |] | |
| | incorporated under the Bombay |] | |
| | Municipal Corporation Act, 1888 |] | |
| | having their Office at Mahapalika |] | |
| | Bhavan, Mahapalika Marg, Fort, |] | |
| | Bombay 400 001. |] | <u>... Respondents.</u> |

- Mr.Abhijeet Singh i/b. Mr.Anil R. Mishra for the Appellant.
- Ms.Sonu Bhasi i/b. M/s.Negandhi, Shah and Himayatulla for Responden No.1.
- Mrs.Madhuri More for Respondent No.2-MCGM.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 18th JANUARY, 2019.

PRONOUNCED ON : 05th FEBRUARY, 2019.

JUDGMENT :-

1] Heard Mr.Singh, learned counsel for the Appellant, Ms.Bhasi, learned counsel for Respondent No.1 and Mrs.More, learned counsel for Respondent No.2-Corporation.

2] This Appeal is directed against the order dated 02/09/2009 passed by the City Civil Court, Dindoshi, Mumbai, thereby directing the return of the plaint to the Appellants-Plaintiffs on the count that it has no jurisdiction to entertain the suit in view of the provisions of Section 42 of *The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971* [for short, "*Slum Act*"].

3] The law is no more res-integra that the jurisdiction of the Civil Court has to be decided on the basis of the averments in the plaint. The averments in the plaint clearly goes to show that the suit is filed by the Appellant only to exercise his alleged civil right in respect of suit premises which according to him consists of piece and parcel of the land admeasuring 220 sq. mtrs, out of Survey No.5 corresponding C.T.S. No.31 of Village-Bapnala, Taluka-Andheri. The suit is filed for restraining both the Respondents from dispossessing the Appellants without due process of law and for consequential declaration about the constructions made thereon.

4] The trial Court has held that it has no jurisdiction to entertain the suit, only on the count that in the plaint, at some places, a vague averment is made that the suit land is falling within the slum area. On this sole ground the trial Court has held that if the suit land is falling within the slum area in respect of which the Slum Rehabilitation Scheme has been approved, then in view of Section 42 of the Slum Act, the Civil Court cannot have jurisdiction to entertain the suit. It was held that as, Respondent No.1 has obtained the letter of intent from Slum Rehabilitation Authority and development of property is in progress, considering that C.T.S. No.31 and the land belong to Survey No.5 has been declared as the Slum area, the

Appropriate Authority under the said Act alone can have the jurisdiction to entertain the suit.

5] According to learned counsel for the Appellants however this finding recorded by the trial Court cannot be justified in any way. Mere fact that the land is declared as Slum Area is not sufficient to bar the jurisdiction to the Civil Court, in the light of Section 42 of the Slum Act.

6] Per contra, according to learned counsel for the Respondent No.1, in the light of the judgment of this Court in the case of *Abdul Sattar Vs. Archbishop of Bombay*¹ it has to be held that the suit is barred as the issue involved in the present case squarely is covered under Section 42 of the Slum Act.

7] However, in my considered opinion, this judgment cannot be of much help to learned counsel for the Respondent No.1, considering the judgment of the Full Bench of this Court in the case of *Tulsiwadi Navnirman Co-op. Hsg. Soc. Ltd. & Anr. Vs. State of Maharashtra & Ors.*² and in view of the judgment of Single Judges of this Court in the case *Manohar Dattatray Rajopadhye Vs. Vaibhav*

1 2016 (5) Mh.L.J.

2 2008(1) ALL MR 318

*Development Corporation & Ors.*³ and *Ghanshyam S. Sharma & Ors. Vs. SMGK Developers Pvt. Ltd.*⁴, wherein it was categorically held that when none of the authorities referred to in Section 42 of the Slum Act has either been impleaded, nor any relief is sought against the said authorities, nor the subject matter of the suit is in some manner connected or referred to in Section 42 of the Slum Act which could be decided by the said authorities, then there is no question of the bar under Section 42 of the Slum Act being attracted.

8] In both these judgments of the Single Judges referred above, the facts were similar that the suit was not to challenge any action, order or notice issued by the competent authority under the Slum Act. All that was stated in the plaint was that the suit was in respect of property which is declared as a slum. In that view of the matter, when the dispute between the parties is purely of a Civil nature and there was no challenge to the acquisition of property by invoking the provisions of Slum Act, then the bar under Section 42 of the Slum Act is not attracted at all. In this respect one can also place reliance on para No.11 and 12 of the said order.

“11. The main dispute in the present suit is between the Plaintiffs and Defendant No.1, on the one

3 First Appeal (St.) No.19108 of 2017 dated 12th September, 2017

4 Apepal From Order No. 32 of 2013 dated 5th January, 2017

hand, concerning the title of the suit property. This dispute is clearly out of bounds for the authorities under the Slum Act. It is for determination of private rights as between two rival claimants, which the authorities under the Act are not empowered to determine. On the other hand, the suit is also between the purported owner of the property and the acquiring authority, alleging fraud on the part of the latter. Even this dispute does not lie before any of the authorities named in Section 42.

12. Secondly, as this Court held in Lokhandwala Infrastructure, whether a particular relief, whether of permanent or temporary injunction, can or cannot be granted, does not reflect on the jurisdiction of the Court to entertain the suit as a whole. This Court may entertain the suit and yet not grant any particular relief amongst the many reliefs claimed in the suit on account of a legal bar, in this case under Section 42 of the Slum Act.”

9] Even in the judgment of *Tulsiwadi Navnirman Co-op. Hsg. Soc. Ltd. & Anr.* Full bench in terms has held that, “We do not wish to go into interpretation so also the ambit and scope of Section 42 of the

Slum Act". It was further observed that, "It is suffice to state that the doors of a Civil Court cannot be shut to a litigation unless the jurisdiction of a Civil Court is ousted by express provision or necessary implication". In para No.118, it was recorded that, "It is purely private dispute or those involving contractual rights, will have ordinarily resolve by recourse to Civil Suit and this proposition would apply even to petitions where the State, S.R.A., B.M.C., MHADA etc impleaded as parties".

10] The provisions of Section 42 of the Slum Act are also very clear to that effect. Same read as under :

"42. Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the Administer, Competent Authority or Tribunal is empowered by or under this Act, to determine, and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

11] Therefore, it contemplates 3 necessary conditions. First, there should be conferment of power by or under the Act. Secondly, the action is taken or to be taken in pursuance of that power. Only if both these conditions are satisfied, then only no injunction shall be

granted by the Court in respect of that action.

12] Here, in the case, none of the condition is satisfied. No relief is sought against the competent authority. No action of the competent authority under the Slum Act is challenged. The Appellant-Plaintiff is not seeking any relief against such authority and in that view of the matter, it can hardly be accepted that the Civil Court has no jurisdiction to entertain the suit.

13] As regards the judgment of *Qari Mohammed Zakir Hussain & Others Vs. Municipal Corporation of Greater Mumbai & Others*⁵, relied upon by learned counsel for Respondent No.1, it must be stated that in the said judgment the suit was filed with an allegation of collusion between the Defendant and the Competent Authority under the Slum Act. Despite that it was held that the Civil Court will have the jurisdiction to entertain such suit and it would be outside the purview of Section 42 of the Slum Act.

14] Here, in the case, when there is absolutely no relief claimed under the Slum Authority nor any averment to that effect is made, only on the basis of the contention of the Respondent-Defendant

5 2002 (2) Bom. C.R. 98

that the property falls in the slum area or the Appellants-Plaintiff not disputing the said fact, the trial Court has held that it has no jurisdiction to entertain the suit, though it was the dispute between two private parties and SRA is not party to the suit. It is totally a different matter, whether the Appellant will get the relief of interim injunction or the decree but the jurisdiction of the Civil Court to entertain such suit cannot be ousted.

15] In view thereof, the Appeal is allowed. The impugned order passed by the trial Court of returning the plaint to the Appellants is set-aside. The suit No.1782 of 2006 is restored to the file of the trial Court. The trial Court is directed to decide the same in accordance with law on its own merits. Parties to appear before the trial Court on 4th March, 2019 at 11.00 am.

16] In view of disposal of the Appeal, nothing survives in the Civil Application and hence, stand disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]