

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO.12 OF 2018
IN
CIVIL REVISION APPLICATION NO.121 OF 2015

Arun Janaji Jadhav ...Petitioner

vs.

Becham Vasudeo Chaurasia and Ors. ...Respondents

Mr. Kunal Kumbhat I/b. Ms. Sunanda Kumbhat, for the Petitioner
Mr. Nishant Mohite I/b. P.J. Thorat, for the Respondent.

CORAM : R. G. KETKAR, J.

DATE : AUGUST 02, 2019

P.C.:

. Mr. Kunal Kumbhat, learned counsel for the Petitioner and
Mr. Nishant Mohite, learned counsel for the Respondents at length.

2. By this Petition under Section 114 read with XLVII Rule 1 of Code of the Civil Procedure, 1908, the Petitioner- Respondent in Civil Revision Application has sought review of the order dated 4th July, 2018 passed by this Court. By that order the Civil Revision Application was admitted and rule was issued. Rule was returnable on 29th August, 2018. In the meantime, interim order as per clause (c) was granted.

3. In support of this Petition, Mr. Kumbhat submitted that by Notification dated 11th March, 1976 was issued under section 26(1) of the Maharashtra Slum Improvement Board Act, 1973 (for short “1973 Act”) declared CTS No. 139, 141, 377 and 378 admeasuring 65500 sq. mtr. as Slum Improvement Area. He invited my attention to section 4 and 4A of the Maharashtra Slum Areas (Improvement , Clearance and Redevelopment) Act, of 1971 (for short “1971 Act”) to contend that any declaration made under section 26 of the 1973 Act declaring any area to be slum improvement area on and from the said date be deemed to be declaration made under section 4 of the 1971 Act declaring the same area to be a slum area for the purpose of 1971 Act. He submitted that in paragraph 3 of the order dated 4th July, 2018 this Court observed that CTS No. 141 among other was not declared as a slum area as contemplated by section 2(a) of the 1971 Act. He submitted that this is an error apparent from the face of the record. Apart from that, the Notification dated 23rd May, 1985 applies to certain portion of CTS No. 141 and not the suit premises. He therefore, submitted that order under review deserves to be recalled.

4. On the other hand, Mr. Mohite supported the order under review.

5. I have considered the rival submissions made by the learned counsel for the parties and perused the material on record.

6. In paragraph 3 of the order dated 4th July, 2018 it was observed thus:

3. In support of this Application, Mr. Thorat invited my attention to the findings recorded by the Appellate Court. After considering Notification dated 11th March, 1976 Appellate Court observed that CTS No.141 admeasuring 6644.3 square meters was declared as a slum area along with C.T.S No.139, 377 and 378. By that declaration area admeasuring 65,500 square meters was declared as a slum area. He submitted that the said declaration is not issued either under Section 4 or 4A of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short '1971 Act') and the said declaration is issued under section 26 (1) of the Maharashtra Slum Improvement Board Act, 1973 (for short '1973 Act') declaring CTS No.139,141,377 and 378 admeasuring 65,500 square meter as "Slum Improvement Area". In other words, he submitted that by Notification dated 11th March, 1976 CTS No.141 among others was not declared as a slum area as contemplated by section 2(ga) of the Act of 1971. The Appellate Court did not consider whether Notification dated 11th March, 1976 was issued under section 4 or 4A of the Act of 1971. As the area of CTS No. 141 is not declared as slum area under Act of 1971, Section 22 is not applicable. Hesubmitted that in fact though the Appellate Court referred to Gazette dated 23rd May, 1985, no finding is recorded as regards effect of the said Notification. He submitted that the Appellate Court set aside the decree passed in the suit on the ground that the decree holder had obtained the decree by practicing fraud and, therefore, is a nullity. The Appellate Court was of this view on the ground that C.T.S No.141 is declared as slum area.

7. It is contended that any declaration made under section 26 of the 1973 Act declaring any area to be slum improvement area, and in force immediately before the date of commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Amendment) Act, 1976 (hereinafter in this section referred to as "the said date") shall, on and from the said date, be deemed to be a declaration made under section 4 of this Act declaring the same area to be a slum area for the purposes of this Act. That apart, the Court did not record any finding as regards the gazette dated 23rd May, 1985.

8. In view thereof, no case is made out for reviewing the order dated 4th July, 2018. Hence, Review Petition fails and the same is dismissed.

(R.G. KETKAR, J.)