

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

WRIT PETITION NO. 10553 OF 2014

Mrs. Kulsumbai R. Chitalwala & Ors. ...Petitioners

Versus

The Board of Trustees of The Port of ...Respondents
Bombay Statutory Corporation & Ors.

Ms. Nidhi Salian i/b M/s Apex Law Partners - Advocate for the
petitioner.

Talsania i/b Motiwala – Advocate for the respondent - 1.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 9th AUGUST 2019.

P.C. :

The petitioners have been found in possession of property belonging to the respondent Port Trust, though they were not the tenants. The petitioners' obstruction to the Trust's recovering the property has led to the entire litigation.

2. To trace the genesis of the litigation, I may note that in 1978, the Port Trust filed L.E. & C. Suit No. 240/328 of 1978 against the second and third respondents in this Writ petition. Admittedly, they were the original tenants and the defendants in the Suit. On 11.07.1988, the Court of the Small Cause decreed the suit *ex parte* though. In 1996, the Port Trust initiated

execution proceedings and secured warrant of possession.

3. But on 13.08.1996, the Court's bailiff along with the Port Trust Senior Inspector went to the property to secure possession. There they found the petitioners and the respondent Nos. 4 to 9 in possession. As a result, the Port Trust filed obstruction Notice No. 36 of 1996.

4. The petitioners and the respondents Nos. 4 to 9 contested the obstruction notice. Eventually, on merits, the Small Cause Court rejected the obstructers' objections, through its order dated 19.03.2003. Aggrieved, five of the 10 obstructers, that is the petitioners in the writ petition, filed Appeal No. 839 of 2003, before the Appellate Bench of the Small Cause Court.

5. In the course of time, the petitioners informed the Appellate Bench that they had compromised the matter with the Port Trust. They wanted to withdraw the appeal with liberty to re-agitate the matter if necessary. Then the Port Trust, it seems, denied any compromise. As a result, the Appellate Bench of the Small Cause Court refused to grant leave to the Petitioners. Instead, it proceeded with the Appeal on merits. Eventually, on 25.08.2014, the Appellate Bench dismissed the Appeal No. 839 of 2003. Under those circumstances, the petitioners filed this Writ Petition.

6. Ms. Nidhi, the learned counsel for the petitioners, has contended that initially the petitioners were not parties to the eviction proceedings. Only when they were sought to be dispossessed, did they obstruct and object. And that has led to

further litigation. But pending those eviction proceedings, the Port Trust, according to her, compromised the matter with the petitioners, besides many other similarly placed persons. In fact, one such settlement has occasioned a judgment from the Supreme Court in *Jamshed Wadia Vs. BPT*¹.

7. To elaborate, Ms. Nidhi submits that though the Port Trust in principle has agreed to allow the petitioners to be its tenants, the compromise could not fructify only because of some technical hurdles. According to her, as part of the compromise terms, the Port Trust wanted the petitioners to deposit the entire arrears of rent, besides surrendering a part of the property for road widening. She maintains that the petitioners have never shied away from their commitment to paying the arrears of rent. But about surrendering a part of the land, the very acquisition proceedings were cancelled. Therefore, she insists that notwithstanding the adverse order the petitioners suffered, in view of later developments, this Court ought to allow the Writ petition. Plaintiff put, she has urged the Court to protect the petitioners' possession treating them to be legitimate tenants in view of the Port Trust's in-principle stand on that score.

8. Shri Talsania, the learned Standing Counsel, holding the brief for Shri Motiwala, submits that this Court under Article 227 of the Constitution of India exercising its supervisory jurisdiction will not consider the issue as if it were an appeal. According to him, the petitioners suffered concurrent findings.

¹ 2004 (2) SCC 214

This Court will only consider jurisdictional errors.

9. Shri Talsania has taken me through the record, read out portions of the petitioners' testimony in the obstruction petition, and asserted that the petitioners themselves admitted that they were inducted by the original defendants-tenants. But those original tenants never contested the eviction. Therefore, the decree against the original tenants will bind the petitioners, who can at best be treated as *lis pendens* inductees. Thus, the learned counsel has urged this Court to dismiss the Writ Petition.

10. About the alleged subsequent developments, the learned Standing Counsel has contended that even before the Appellate Bench of the Small Cause Court, the Port Trust has consistently maintained that it had never entered into any compromise with the petitioners. Even if there were any attempts, according to him, they did not fructify. Thus, this Court may, therefore, disregard those alleged *lis pendens* developments.

11. Heard the learned counsel for the petitioners and the learned Standing Counsel for the Respondent No.1.

12. Though the litigation has been dragging on for decades, the facts, in fact, lie in a narrow compass. The Port Trust filed the Suit in 1978, against two defendants. Those defendants secured the vacant land from the Port Trust as its tenants and later raised structures. They never contested the Suit and that led to the trial Court's decreeing the suit *ex parte*.

An ex parte decree does not suffer in quality. It is on a par with a decree on the merits.

13. After a decade, the Port Trust wanted to execute the decree. Then it found the petitioners and five others in possession of that property. As a result, the Port Trust invoked Order 21 Rule 97. The petitioners those proceedings along with other occupiers. Eventually, on the merits, the Small Cause Court has held in the Port Trust's favour. Of the ten obstructers, these five have challenged the order of eviction before the Appellate Bench, but could not succeed.

14. True, at one stage they represented to the Appellate Bench that they had settled the matter with the Port Trust and wanted a conditional withdrawal of the appeal. But the Port Trust denied any settlement. The record reveals, without any ambiguity, that the petitioners deposed in the obstruction notice proceedings that they had been inducted by the original defendants-tenants. Though they pleaded that they had been in possession of the property from 1962, the courts below observed that the petitioners could not place on record any material to that effect. Instead, they have placed certain rent receipts issued by the Port Trust beginning from only 1983. Therefore, the petitioners could not, as observed by the Appellate Bench, take advantage of the statutory stipulation of being in possession of the property by 1st February 1973 to the protected tenants. Even the Municipal tax receipts were said to be only after the Port Trust's filing the suit. Thus, the rent receipts and the Municipal

taxes receipts relate to the period only after the suit was filed. Besides that, when the Port trust received the rent, it recorded on the face of those receipts that the rent was received without prejudice to their rights in the pending eviction proceedings.

15. Infact, one of the petitioners examined as OW-1 in the obstruction proceedings admitted that they were all inducted by the defendants-tenants. And read with other evidence, the petitioners' admissions lead to only one conclusion: they were inducted pending the eviction proceedings. In this context, the Order 21, Rule 100, as amended by the State of Maharashtra, clearly mandates that any person claiming his right to possession or tenancy through the defendant who suffered decree cannot have any independent claim. Here, that aspect stands established beyond any element of doubt.

16. So the judgment and the decree bind even the petitioners with equal force. In fact, they have not established any independent title or even a semblance of justification to remain in possession on their own. Granted, they have advanced with much vehemence that the Port Trust had entered into a settlement with them. It seems much of those alleged talks of settlement were during the recent years when the appeal had been pending. Yet the petitioners made no efforts to bring on record before the Appellate Bench the subsequent developments. For the first time in this Court, the petitioners file a rejoinder along with a set of documents, which refer to an attempted settlement.

17. In proceedings under Article 227 of the Constitution of India, this Court would not look into subsequent developments unless they have been brought on record by way of amendments to the original pleadings—with the leave of the Court, of course. Nor can it receive any additional evidence, except under exceptional circumstances. For the Court exercises its supervisory jurisdiction only to ensure that the courts and the tribunals within its territory function within their jurisdictional bounds. This Court, in other words, examines the legality of the order impugned, by strictly confining to the jurisdictional errors, if any.

I, therefore, find no merit in the Writ Petition, I accordingly dismiss it.

[DAMA SESHADRI NAIDU, J.]