

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

CONTEMPT PETITION NO.228 OF 2015

Lekhraj Meghji Solanki

..Petitioner

Versus

Mrs. Dularibai Badlu Verma & Ors.

..Respondents

Mr. R. S. Apte, Senior Advocate i/by Mayuresh Lagu, for the
Petitioner.

Ms. Aparneswari Natarajan a/w Amitkumari Tiwari i/by
Omar Khaiyam Shaikh, for Respondent Nos.1 to 11.

Mr. P. P. Pujari, AGP for Respondent No.12/State.

CORAM : NITIN W. SAMBRE, J.

DATE : 1st AUGUST, 2022

P.C.

1. The Civil Revision Application No.156 of 2008
was taken out by the respondents in which an order was
passed on 14th February, 2014 based on undertaking which
reads thus :-

“We, (1) Dhulari Bai Badlu Verma, (2) Ramu
Verma, (3) Kisan Kumari Verma, (4) Anil Verma,
(5) Sangeeta Verma, (6) Anita Verma, (7) Sunil
Verma, (8) Sunanda Verma, (9) Poonam Verma,
(10) Naina Vema, (11) Vicky Verma all adults,
residing at Shed No.53, Census No.6 18/20
Rajaramwadi, Plot No.2, Waroda Road, Bandra
(W), Mumbai 400 050 do hereby state on solemn
affirmation:

1. We say that we are residing at the aforesaid address.

2. We say that we are filing the present Undertaking pursuant to the order/directions dated 14/2/2014 **(and modified vide order dated 28/2/2014)** passed in the aforesaid Civil Revision Application and undertake as hereunder:

- a. That we are in possession of the suit premises and nobody else is in possession;
- b. That we have not created any third party interests of parted with possession;
- c. That we will hereafter neither create third party interest nor part with possession;
- d. That we will go on regularly paying the rent until further orders;
- e. That we will not apply for further extension of time;
- f. That in case we are unable to obtain suitable orders from the High Court within 16 weeks from today, we will hand over vacant and peaceful possession of the suit premises to the Respondents within 16 weeks from today;

3. We also state that we have filed Writ Petition No.89/2013 and also another Civil Writ Petition bearing No.5929 of 2013 pending before

this Hon'ble Court and that notwithstanding the undertaking given herein, we reserve our rights to apply to this Hon'ble Court for appropriate reliefs to protect our possession."

2. The said undertaking was not honoured. This Court accordingly recorded default on the part of the respondents in its order dated 18th June, 2019, which reads thus :-

"Heard Mr. Apte, learned Senior Counsel for the petitioner and Mr. Shaikh, learned Counsel for the respondents No.2 to 6 and 8 to 12 at length.

2. This Contempt Petition alleges breach of order dated 14.02.2014 passed by this Court in C.R.A. No.156 of 2008. By that order, C.R.A. preferred by respondent No.1 - Dularibai Badlu Verma was dismissed.

3. Mr. Apte invited my attention to paragraph 109 of that order. Respondent No.1 sought continuation of interim order dated 06.07.2009 for a period of 16 weeks and assured that respondent No.1 and all adult family members residing with her would give usual undertaking in this Court within four weeks in terms of paragraph 109.

4. In pursuance thereof, respondents No.1 to 11 filed undertaking dated 11.03.2014. In prayer clause 2(f), they undertook that in case they are unable to obtain suitable orders from the higher Court within 16 weeks from the date of the order, they would handover vacant and peaceful possession of the suit premises to the petitioner

within 16 weeks. Mr. Apte submitted that the period of 16 weeks expired on 13.06.2014. Respondents No.1 to 11 however, did not handover possession after expiry of 16 weeks.

5. He submitted that in the affidavit in reply filed by respondents No.3, 8, 10 and 11, it is contended that plot No.2, Waroda Road, Bandra (West), Mumbai 400 050 where the suit premises is situate is already declared as a slum area on 26.03.2015 as per the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Slum Act'). As the area where the suit premises is situate is declared as slum area, petitioner-decree holder cannot execute the decree unless procedure under Section 22 is followed. Mr. Apte invited my attention to the decision of **Gour Gopal Dutt Vs. Shantilata Mitra, AIR 1976 Calcutta 475**, and in particular paragraph 5. In paragraph 5, the learned Single Judge observed thus,

“5. ...Now the execution of a decree is between the parties, that is, between the judgment-creditor and the judgment-debtor. But an undertaking to Court is a matter between the Court and the person who gives the undertaking to Court and they are entirely different and separate....”

6. The said decision was considered by the learned Single Judge of this Court in **Bhagirathibai Nagesh Prabhu Vs. Om Prakash Bodhraj Kohli, 1992 Mh.L.J. 393**, and in particular paragraph 5.

7. Mr. Apte further submitted that Mr. Sundeep Kalambe, Deputy Collector (Enc/Rem) and Competent Authority, Bandra had issued

notification dated 26.03.2015 under Section 4 of the Slum Act declaring the area where the suit premises is situate as slum area. By order dated 08.05.2015, the Apex Court has issued notice to him in Contempt Petitions (C) No.184-198 of 2015. He was directed to remain present in the Court on the next date of hearing and the matter was adjourned to 08.07.2015. He further submitted that the Contempt Petition is likely to come up before the Apex Court in the first week of August, 2019.

8. Mr. Shaikh submits that respondent No.3 - Kisan Kumar Verma and respondent No.8 - Sunanda Verma are present in the Court. He has tendered photocopies of their Aadhar Cards, which are taken on record and marked 'X colly.' for identification. He submitted that as the area where the suit premises is situate is declared as a slum area, the petitioner cannot execute a decree unless and until permission under Section 22 of the Slum Act before executing the decree is obtained.

9. Prima facie, in view of the decisions in **Gour Gopal Dutt** (*supra*) and **Bhagirathibai Nagesh Prabhu** (*supra*), I do not find any merit in this submission. Respondents No.1 to 11 are given one more opportunity to comply undertaking given by them as far back as on 11.03.2014 by handing over possession before the next date of hearing, failing which, they will personally remain present in the Court on the next date of hearing.

10. Stand over to 04.07.2019. To be listed in the Supplementary Board."

3. It appears that pursuant to the chance given by this Court on 18th June, 2019, the respondents again

furnished undertakings to this Court on 9th August, 2019, 2nd August, 2019, 5th August, 2019 and 25th July, 2019.

4. The aforesaid undertakings are not honoured till this date.

5. Counsel for the petitioner would urge that the SLP preferred by the respondents herein being Petition Special Leave to Appeal (C) No.21017-21018 of 2019 which was arising out the order dated 9th August, 2019 was already dismissed on 6th September, 2019. The order dated 9th August, 2019 accepts the aforesaid undertakings and the said order reads thus :-

“The special leave petitions are dismissed.

Pending applications, if any, shall also stand disposed of.”

6. As such, it is claimed by respondents that even if the SLP against order dated 9th August, 2019 was dismissed, the petitioner is not entitled for benefit of the order dated 6th May, 2022 passed in **Contempt Petition (C) No.184-198 of 2015** between **Lekhraj Meghji Solanki & Anr. Vs. Ram Sanbhee Babulal & Ors..** Counsel for the respondents has claimed that the issue as regards the area declaring slum at the behest of the petitioner is subjudice before the division bench of this

Court in Writ Petition 89 of 2013 i.e. before the dismissal of the SLP of the respondents. According to her, if the said petition is allowed, then in that eventuality, the decree will not be executable.

7. She would further urge that the facts in the present case are similarly identical to the one in the above referred contempt petition before the Apex Court i.e. Lekhraj Meghji Solanki (*supra*). She would further urge that the respondents have already consented for vesting of the property in the Court Receiver as is directed in the judgment of the Lekhraj Meghji Solanki (*supra*) and further urge that the entire arrears shall be cleared.

8. When confronted with the respondents, SLP was already dismissed which was against the order passed in contempt petition and also the interim order in the Lakhraj Meghji Solanki (*supra*) is extended only to the contemnors in the contempt petition. My attention is invited to the reference to Writ Petition No.89 of 2013 which is pending at the behest of the respondents. It is claimed that either in the aforesaid Writ Petition No.89 of 2013 or before the Apex Court the respondents intend to take time of four weeks for taking steps.

9. The fact remains that on plain reading of the order of the Apex Court passed on 6th May, 2022 in

Contempt petition No.184-198 of 2015, though reference to the Writ Petition No.89 of 2013 of the respondents, which is pending before the division bench and such issue of pendency of the said petition is not objected by the petitioner, this Court is also required to be sensitive to the fact that language in the aforesaid order protects only to the parties to the said contempt petition before the Apex Court and not the respondents herein.

10. Counsel for the respondents though has claimed that property of the respondents is already stood vested with the Court Receiver of this Court and they are holding the property by virtue of being continued in possession as an agent of the Court Receiver, they are entitled for protection pursuant to the aforesaid order of Apex Court if appreciated, unless clarification to the order of the Apex Court which was passed on 6th May, 2022 is received, it is difficult to infer such protection in favour of the respondents.

11. As such, by way of last chance, matter is adjourned by four weeks. In case, if respondents failed to produce order of protection in their favour as regards eviction and the respondents are not willing to honour the order of this Court thereby accepting the undertaking of the respondents as reflected in the order dated 9th August, 2019, the petitioner is given liberty to execute the decree

of eviction forthwith. The petitioner shall apply for issuance of possession warrant based on the decree for eviction and this Court directs the Trial Court to grant possession warrant against the respondents, if required police aid for execution of the same, as the conduct of the respondents *prima-facie* appears in complete disregard to the undertakings furnished before this Court.

12. As regards issue of punishment to be awarded against the respondents under the contempt of Courts Act for not honouring the judgment of this Court is concerned, the same will be considered on the next date of hearing.

13. As such, matter is adjourned to 13th September, 2022, as a last chance.

[NITIN W. SAMBRE, J.]