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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8744 OF 2022**

Smt. Ramkali W/o Sitaram
Kushwah (since deceased)
through Legal Heirs
1a Satish Sitaram Kushwah
and Others Petitioner(s).
V/s
Shri Dinkar Vithoba Kudekar Respondents.

**WITH
WRIT PETITION NO. 8758 OF 2022**

Smt. Ramkali W/o Sitaram
Kushwah (since deceased)
through Legal Heirs
1a Satish Sitaram Kushwah
and Others Petitioner(s).
V/s
Kanta Anappa Pujari and Ors Respondents.

**WITH
WRIT PETITION NO. 8746 OF 2022**

Smt. Ramkali W/o Sitaram
Kushwah (since deceased)
through Legal Heirs
1a Satish Sitaram Kushwah
and Others Petitioner(s).
V/s
Jagammatj Anaji Kadam
(since deceased)
Through Legal Heirs
Smt. Shailaja J. Agannath Kadam
and Ors. Respondents

**WITH
WRIT PETITION NO. 8748 OF 2022**

Smt. Ramkali W/o Sitaram
Kushwah (since deceased)
through Legal Heirs
1a Satish Sitaram Kushwah
and Others Petitioner(s).
V/s
Lokya Dooma Poojari
(since deceased)
Through Legal Heirs:
Smt. Shalini Lokya Poojari and Ors. Respondents.

**WITH
WRIT PETITION NO. 8750 OF 2022**

Smt. Ramkali W/o Sitaram
Kushwah (since deceased)
through Legal Heirs
1a Satish Sitaram Kushwah
and Others Petitioner(s).
V/s
Shivdani Vishnu Singh
(since deceased)
Through Legal Heirs:
Smt. Usha Shivdani Singh & Ors. Respondents.

**WITH
WRIT PETITION NO. 8847 OF 2022**

Smt. Ramkali W/o Sitaram
Kushwah (since deceased)
through Legal Heirs
1a Satish Sitaram Kushwah
and Others Petitioner(s).
V/s

Dadasaheb Appa Madane

..... Respondent.

**WITH
WRIT PETITION NO. 8752 OF 2022**

Smt. Ramkali W/o Sitaram
Kushwah (since deceased)
through Legal Heirs
1a Satish Sitaram Kushwah
and Others

.... Petitioner(s).

V/s

Pandurang Dharma Gavhankar
(Since deceased)
Through Legal Heirs:
Smt. Sharda Pandurang Gavhankar
and Ors.

..... Respondents.

**WITH
WRIT PETITION NO. 8755 OF 2022**

Smt. Ramkali W/o Sitaram
Kushwah (since deceased)
through Legal Heirs
1a Satish Sitaram Kushwah
and Others

.... Petitioner(s).

V/s

Dashrath Krishnaji Chalke and Anr.

.... Respondents.

**WITH
WRIT PETITION NO. 8754 OF 2022**

Smt. Ramkali W/o Sitaram
Kushwah (since deceased)
through Legal Heirs
1a Satish Sitaram Kushwah
and Others

.... Petitioner(s).

V/s

L. G. Kanchan

(Since deceased)
Through Legal Heirs:
Smt. Nagamma Linga Kanchan
and Ors.

.... Respondents.

**WITH
WRIT PETITION NO. 8759 OF 2022**

Smt. Ramkali W/o Sitaram
Kushwah (since deceased)
through Legal Heirs
1a Satish Sitaram Kushwah
and Others

.... Petitioner(s).

V/s
Jalinder Baburao Gaikwad

.... Respondents

Mr. R.S. Datar i/b Druti Datar for the Petitioner in all the above Writ Petitions.

Mr. J.S. Kini i/b Sapna Krishnappa for all the Respondents in all the above Writ Petitions.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 28, 2022

P.C.:-

1] Since common issue is involved in all these Petitions, they are disposed of finally by consent of parties by this common order.

2] These Petitions are by landlord. Claim of the Petitioner for eviction of the Respondents has attained finality up to the Appellate Bench of the Small Causes Court at Bombay.

3] It appears that before decree could be executed, property was declared as slum vide Notification dated 16/8/1995. As a sequel of above, provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (For short "Slum Act") are applicable and as such Petitioner moved under Section 22(1)(b) of the Slum Act, seeking permission to execute decree, which prayer was rejected by the competent authority against which Appeal under Section 23 of the Slum Act is informed to be pending adjudication. In the meantime, Petitioner so also Respondents have applied before the Small Causes Court for return of the amounts which were directed to be deposited towards compensation. The Petitioner-landlord claims that even if area is declared as slum, he has his own remedies under the Slum Act to execute decree after obtaining permission from the competent authority which issue is subjudice before the Appellate Authority under Section 23 of the Slum Act and as such, Small Causes Court committed an error in rejecting the prayer.

4] While opposing aforesaid contentions and justifying the order of

withdrawal passed in favour of Respondents-tenants, Mr. Kini, learned Counsel appearing for Respondents, would urge that once the decree is held to be not executable in view of Notification under the Slum Act, Respondents were rightly held to be entitled to the amount of compensation. According to him, if decree is executed pursuant to the orders passed under the Slum Act in favour of the Petitioner, necessary consequences will follow. However, at this stage, order permitting withdrawal of compensation is justified.

5] I have appreciated said submissions.

6] Remedy of appeal under Section 23 of the Slum Act is a statutory remedy and has to be termed to be in continuation of earlier proceedings in which the Petitioner has sought permission to execute decree from Slum Authority. Once such proceedings are pending adjudication before the Appellate Authority under Section 23 of the Slum Act, it was expected of the Court below to take note of the same. It appears that Small Causes Court while dealing with the prayer of both parties has not considered the same. Though Mr. Kini has urged

that said fact was not brought to the notice of the Small Causes Court by the Petitioner, however fact remains that record shows that his appeal was lodged and pending since 2021 i.e. prior to the date of passing of the impugned order. In the aforesaid backdrop, fact remains that whether decree in favour of the Petitioner can be permitted to be executed or not is yet to be finally decided in view of pendency of appeal of the Petitioner.

7] That being so, in my opinion, order impugned permitting withdrawal of the amount by the Respondents is not sustainable. Similarly, even Petitioner cannot be held to be entitled to the amount of compensation.

8] As such, Petition stands partly allowed. The order impugned permitting withdrawal of the amount by Respondents-tenants in Marji Application is hereby quashed and set aside. Both the Applications, one made by the Respondents and other by Petitioner seeking permission to withdraw the amount of compensation, stands rejected. However, it is clarified that once issue of executability of the decree by

the Small Causes Court is decided, either of the parties shall be at liberty to apply for withdrawal of the amount

(NITIN W. SAMBRE, J.)