



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1729 OF 2023

Santosh Vasant Dighe.

...Petitioner.

Versus

Norbert Augustine Dsouza .

...Respondent.

WITH

WRIT PETITION NO. 1732 OF 2023

Vanita Vasant Dighe.

...Petitioner.

Versus

Norbert Augustine Dsouza .

...Respondent.

Mr. Sachin P. Shetye for the petitioner.

Ms. Utsav V. Mheta and Bijal A. Chowleru for the respondent.

Coram : Sharmila U. Deshmukh, J.

Date : December 5, 2023.

P. C. :

1. Challenge in the petition is to the order dated 21st December 2022 passed by the trial court rejecting the petitioner's application seeking dismissal of suit. The suit R.A.E. Suit No. 215 of 2022 is filed by the respondent claiming to be the owner of subject property and seeking eviction of petitioner. In these proceedings, an application came to be filed below Exhibit-45 for dismissal of the suit on the ground that survey number on which the suit premises is situated has

been declared as slum on 30th November 1978 by the competent authority and therefore by virtue of section 22(1)(a) of the Maharashtra Slum Areas (Improvement, Clearance and Rehabilitation) Act, 1971, without the permission of competent authority, the suit cannot be proceeded with, which came to be rejected by the impugned order dated 21st December 2022.

2. Heard learned counsel appearing for the respective parties.

3. Learned counsel appearing for the petitioner submits that the admitted position is that survey number on which the suit premises is situated has been declared as a slum by the competent authority. Pointing to page no.187 of petition, he would submit that the respondent had instituted the proceedings before the competent authority seeking permission in respect of 29 slum-dwellers which does not include the name of the petitioners. He submits that this permission although granted in respect of other slum-dwellers has been construed as a permission of the competent authority as against present petitioners and thus application has been rejected by the impugned order.

4. *Per contra* Ms. Utsav Mehta, learned counsel appearing for the respondent submits that in the proceedings before the competent authority under section 22(2) of the Maharashtra Slum Areas (Improvement, Clearance and Rehabilitation Act, 1971, the present

petitioners had participated and vakalatnama had been filed on their behalf. She would further submit that the name of slum-dweller which is reflected at serial no.14 in the proceedings before the competent authority is an occupant of the same premises as that of the petitioner. She submits that before the trial court, the order of competent authority was produced and the submissions were advanced about the participation of petitioners in the proceedings before the competent authority.

5. Upon a query by this court as to whether the submissions which are now sought to be advanced across the bar as regards the slum-dweller at serial no.14 having nexus with the premises which are occupied by the present petitioners and any relation between the two, learned counsel appearing for the respondent fairly concedes that no such submission forms part of their reply to the application of petitioners.

6. Perusal of the impugned order does not indicate that the trial court has taken into consideration the fact that permission was sought by respondent no.1 against 29 slum-dwellers in which the name of the petitioners is not reflected. If the petitioners had participated in the proceedings and the slum-dweller at serial no. 14 has a nexus with the suit premises occupied by the petitioners, it is necessary that relevant material be produced on record by the

respondent and after consideration of the same, trial court to consider the issue as to whether the permission of competent authority under section 22 of the Maharashtra Slum Areas (Improvement, Clearance and Rehabilitation) Act, 1971 has been obtained *qua* the petitioners. Perusal of the impugned order does not indicate that any such exercise having been undertaken by the trial Court.

7. In the light of above discussion, the impugned order dated 21st December 2022 is quashed and set aside. Matter is remanded to the trial court to decide the same afresh after considering the submissions of both the parties on the aspect of permission under section 22(2) of the Maharashtra Slum Areas (Improvement, Clearance and Rehabilitation) Act, 1971.

8. Liberty to the parties to place additional material on record to demonstrate that permission has been obtained of the competent authority *qua* the petitioners. Needless to clarify that the trial court to consider the material on record which would be produced on record and decide the application on its own merits uninfluenced by the observations made hereinabove.

9. Petitions are allowed in above terms.

[Sharmila U. Deshmukh, J.]