

Harish

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

**WRIT PETITION NO.2253 OF 2023
WITH
INTERIM APPLICATION NO.4173 OF 2023
IN
WRIT PETITION NO.2253 OF 2023**

Smt. Gulabidevi Ramjiwan Shukla
(deceased) through legal heirs
Ashok Ramjivan Shukla & Anr. ...Petitioners/
Applicants
Versus
Anant Asharam Jain & Ors. ...Respondents

**WITH
INTERIM APPLICATION NO.2337 OF 2023
IN
WRIT PETITION NO.2253 OF 2023**

Ashok Ramjivan Shukla & Anr. ...Applicants
Versus
Anant Asharam Jain & Ors. ...Respondents

**WITH
WRIT PETITION NO.2640 OF 2023
WITH
INTERIM APPLICATION NO.4174 OF 2023
IN
WRIT PETITION NO.2640 OF 2023**

Smt. Gulabidevi Ramjiwan Shukla
(deceased) through legal heirs
Ashok Ramjivan Shukla & Anr. ...Petitioners/
Applicants
Versus
Anant Asharam Jain & Ors. ...Respondents

WITH
INTERIM APPLICATION NO.2338 OF 2023
IN
WRIT PETITION NO.2640 OF 2023

Ashok Ramjivan Shukla & Anr. ...Applicants

Versus

Anant Asharam Jain & Ors. ...Respondents

Mr. G. S. Godbole, Senior Counsel a/w Mr. Yahya Goghari, Mr. Mustafa Sabbir Shamim i/b Shamim & Co., for the Petitioners/Applicants.

Mr. Shreepad Murthy a/w Mr. Abhishek Patil a/w Clarissa Miranda i/b Mr. N. Raja, for the Respondents.

CORAM : MADHAV J. JAMDAR, J.

DATE : 28th April, 2023

P.C.:

1. Heard Mr. Godbole, learned senior counsel appearing for the Petitioners and Mr. Murthy, learned counsel appearing for the Respondents.

2. On the earlier occasion after hearing the parties, I expressed that, as there is no substance in the Writ Petitions, the Writ Petitions are required to be dismissed. However, as the proceedings are arising out of Execution Application, if undertakings to vacate the suit premises are given, then, considering that, the suit premises are residential premises this Court may consider grant of six months' time for vacating the suit premises to the Petitioners. At that time Petitioner - Ashok

Ramjivan Shukla was not present and his son namely Sumedh Ashok Shukla was present. He was hesitant to even consider the suggestion to file undertaking and to even state that, the Petitioner is in possession of the said property. Therefore the Petitioner has been asked to remain present. Today a letter of Petitioner Ashok Ramjivan Shukla is submitted by Mr. Shamim, learned counsel appearing for the Petitioner. The said letter is handed over to him by son of the Petitioner Sumedh Ashok Shukla, who is personally present in Court. The letter states that, as the right leg of the petitioner is swollen, he is not able to walk and therefore, he could not remain present in the Court. Said Sumedh Ashok Shukla states that, he is not aware who is occupying the suit premises. What has transpired in the Court during hearing of the Writ Petition is set out in detail to show the conduct of the Petitioner.

3. In the Writ Petition which has been filed under Article 227 of the Constitution of India, the Petitioner is challenging the legality and validity of the Order dated 7th December, 2022 passed below Exhibit-1 in Revision Application No. 309 of 2022 by the Revisional Court of Small Causes Court at Mumbai. In the said Revision Application, order dated 12th September, 2022 passed by the learned Judge of Small Causes Court, Mumbai below Exhibit-16 in Execution Application No. 76 of 2021 in R.A.E. & R. Suit No.

1276 of 1999 is challenged.

4. The factual position on record shows that, the said R.A.E. & R. Suit No. 1276 of 1999 was decreed by Judgment and Decree dated 25th April, 2018. The said Decree was challenged by the present Petitioner i.e. Defendant by filing Appeal before Appellate Bench of Small Causes Court at Mumbai along with Delay Condonation Application. However, the said Delay Condonation Application i.e. MARJI Application was rejected by the learned Appellate Court by order dated 11.10.2021. Against that order the present Petitioner filed Civil Revision Application No. 242 of 2021 and the same was dismissed by a learned Single Judge by order dated 16th December, 2021. Thereafter, Review Petition No. 4 of 2022 was filed by the Petitioner and the same was also dismissed by the learned Single Judge by order dated 8th July, 2022. Thereafter, the Petitioner filed Special Leave Petition challenging the said Order and the said Special Leave Petition was rejected by the Hon'ble Supreme Court by order dated 17th February, 2023.

5. Thereafter the Defendant No. 1A- Ashok Ramjivan Shukla i.e. the present Petitioner filed Application bearing Exh. 16 in Execution Application No. 76 of 2021 seeking dismissal of the Execution Application No. 76 of 2021 on the ground that the Court has no jurisdiction and the Execution Application is not

maintainable. It is the contention of the Petitioner that, the suit property has been declared as slum under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (hereinafter referred to said “**Slum Act**”) and therefore, the Court has no jurisdiction to execute the decree unless the requisite permission has been obtained from the competent authority. To substantiate the said contention, the Petitioner has inter alia relied on notification dated 23rd February, 1978.

6. Mr. Godbole, learned Senior counsel submitted that, as the said property has been declared as slum, the execution proceedings are without jurisdiction. He has submitted that, the point whether the property in question is declared as slum has to be examined at the stage of the suit proceeding as well as the execution proceeding. To substantiate the said contention, he relied on Section 22 of the Slum Act and more particularly relied on sub-section 1(a) of the Slum Act.

7. On the other hand, it is the contention of Mr. Murthy, learned counsel appearing for the Respondent that, all along the Petitioner has raised the contention that, the suit property has been declared as slum and in effect all the Courts have rejected the said contention and therefore, the said contention which has been finally decided cannot be raised again. He submitted that the

suit property is not declared as slum.

8. Perusal of record shows that the suit bearing R.A.E. & R. Suit No.1276 of 1999 was filed on 18th August 1999. The suit property mentioned in the plaint is Room No.16 in Chawl No.10, Sunita Estate, Opp. Bhaichand Textile Mills, L.B.S. Marg, Bhandup (W), Mumbai- 400 078 (hereinafter referred to as “**the suit premises**”). Initially, ex-parte decree was passed in the said suit, however, thereafter, the said decree was set aside and the Original Defendant Smt. Gulabidevi Ramjivan Shukla filed written statement dated 10th December 2001. In the written statement *inter alia* the contention has been raised that, the said land on which the suit premises is constructed is declared as slum and as the Plaintiff has failed to obtain prior permission under section 22 of the Slum Act, the suit was not maintainable and the Small Causes Court has no jurisdiction to deal with the case.

9. The record shows that the Defendant, after filing of the written statement, remained continuously absent and failed to cross-examine the witness of the Plaintiff and no oral and documentary evidence is laid by the Defendant. The learned Trial Court observed that, although earlier ex-parte decree was set aside after Application was filed by the Defendant, the Defendant failed to lead any evidence and prove the contention that the said

land on which the suit premises is constructed is declared as slum. By recording the said finding, *inter alia*, the learned Trial Court has decreed the suit by the Judgment and Decree dated 25th April 2018.

10. The said judgment and decree dated 25th April 2018 passed by the learned Trial Court was challenged after a delay of about three and half years i.e. on or about 14th August 2021 by filing Appeal (ST) No. 332 of 2021 along with Delay Condonation Application i.e. MARJI Application No. 143 of 2021. The said MARJI Application came to be dismissed by judgment and order dated 11th October 2021 passed by the learned Appellate Bench of Small Causes Court, Mumbai. In the said order it is stated that, the delay is of 658 days. The said order was challenged by filing Civil Revision Application No. 242 of 2021. The said Civil Revision Application came to be dismissed by order dated 16th December, 2021. Thereafter the Review Petition No. 4 of 2022 was filed seeking review of order dated 16th December, 2021 passed in Civil Revision Application No. 242 of 2021 and the said Review was also dismissed by order dated 8th July 2022.

11. Perusal of Review Petition No. 4 of 2022, clearly shows that, the Petitioner has raised contention regarding the land on which the suit premises is constructed has been declared as slum.

Therefore, in effect the said contention has been rejected by learned Single Judge by passing the order dated 8th July 2022. Thereafter the Petitioner filed Special Leave Petition bearing Diary No. 2195 of 2023. In the said Special Leave Petition on page 18 following ground (J) is specifically raised:

“(J) Because the High Court has committed error by overlooking the aspect that the learned appellate Bench also miserably failed to understand that, the SRA authority issued survey receipt dated 1/1/1995, which shows that, the subject land belongs to SRA.”

12. As set out hereinabove, the said Special Leave Petition was dismissed by order dated 17th February, 2023. Thus, in effect, the contention raised by the Petitioner that, the suit property is declared as slum has been rejected throughout. It is significant to note that, the learned Trial Court has specifically dealt with that aspect and has observed that, the Petitioner has not produced any evidence to support the said contention and the said order has been confirmed up to the Hon’ble Supreme Court. Therefore, the said finding, which the Petitioner has failed to prove that, the suit property has been declared as slum has been rejected up to the Supreme Court and attained finality.

13. The contention of Mr. Godbole, learned Senior Counsel that,

in terms of Section 22 of the Slum Act, the said aspect has to be considered at both stages i.e. stage of the filing of the suit and the stage of the execution is not correct. Mr. Godbole, learned Senior Counsel has relied on sub-section 1A of section 22 of the Slum Act. The said reliance is totally misplaced. For the purpose of ready reference, relevant portion of Section 22 of the Slum Act is reproduced hereinbelow:-

“22. Proceedings for eviction of occupiers [or for issue of distress warrant] not to be taken without permission of Competent Authority

(1) Notwithstanding anything contained in any other law for the time being in force, **no person shall except with the previous permission in writing of the Competent Authority,—**

(a) **institute, after commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, any suit or proceeding for obtaining any decree or order for the eviction of an occupier from any building or land [in a slum area or for recovery of any arrears of rent or compensation from any such occupier, or for both; or]**

(b) **when any decree or order is obtained in any suit or proceeding instituted before such commencement for the eviction of an occupier from any building or land in such area [or for recovery of any arrears of rent or**

compensation from such occupier, or for both]
execute such decree [or order; or]

(c)

[(1A) Notwithstanding anything contained in sub-section (1) as in force before the commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Amendment) Act, 1986 (hereinafter in this section referred to as “the amendment Act”) or in any other law for the time being in force, no person shall, except with the previous permission in writing of the Competent Authority,—

(a) execute any decree or order obtained in any suit or proceeding instituted during the period commencing from the 30th day of September 1985 being the date of the expiry of the Maharashtra Vacant Lands (Further Interim Protection to Occupiers from Eviction and Recovery of Arrears of Rent) Act, 1980 and the date of commencement of the Amendment Act, for eviction of an occupier from any building or land in a slum area (which area was earlier purported to be covered by the definition of “vacant land” in clause (f) of section (2) of the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation and Summary Eviction) Act, 1975 or for recovery of any arrears of rent or compensation from such occupier, or for both; or

- (b)
- (2)
- (3)
- (4)
- [(4A)
- (5)"

14. It is clear that, the said Sub-Section 1A of Section 22 was inserted by Maharashtra Act-II of 1987 for the purpose of protecting the occupiers of Slum regarding the decree or order which has been passed in suit or proceeding instituted during the period commencing from 30th day of September 1985 and the date of commencement of the amendment Act, for eviction of an occupier for any building or land in slum Area.

15. In the present case, admittedly the contention that, the property in question is declared as slum has been raised on the basis of notification dated 31st August 1977. The present suit has been filed on 18th August 1999 and in the written statement the said contention is raised. Thus, it is clear that reliance on Section 22(1A) of the Slum Act is totally misconceived.

16. It is significant to note that the learned Trial Court has specifically dealt with the said aspect. As a result of further orders, the said finding has been confirmed upto the Supreme

Court. It is settled legal position that, the principles of res-judicata are applicable to the different stages of the same proceedings. Although the execution proceeding can't be treated as continuation of the suit still the suit property is not declared as slum is held by the learned Trial Court and the said order is confirmed up to the Hon'ble Supreme Court. It is further significant to note in all the proceedings the said contention is specifically raised including even before the Supreme Court. Thus, it has to be assumed that, the said contention has been rejected and attained finality.

17. In any case, it is not the contention of the Petitioners that the said property has been declared as slum after the filing of the suit. The Petitioners are relying on the same Notification which they have relied in the written statement filed in the suit to support their contention that the property on which the suit premises are situated is declared as slum. Therefore, it is clear that the said contention which has been rejected and attained finality cannot be allowed to be reagitated.

18. The other Writ Petition No.2640 of 2023 is filed regarding order passed in Mesne Profit Application. However, the contention raised is the same i.e., as the property is declared as slum and, therefore, the Small Causes Court has no jurisdiction.

The above reasons will also apply to the contentions raised in Writ Petition No.2640 of 2023.

19. Apart from above aspects, which are on the merits of the case, it is significant to note that, the present Writ Petition has been filed under Article 227 of the Constitution of India. The said jurisdiction is extraordinary and is to be used sparingly. This is a case where the Petitioner all along represented that, he is in possession of the suit property and therefore his possession be protected. When this Court after hearing the Writ Petition opined that, as there is no ground to interfere and the Writ Petitions are required to be dismissed, however, longer time can be granted for vacating the suit premises as the suit premises are residential, it is pertinent to note that the Petitioners are not even ready to file an affidavit or undertaking at least contending that, the Petitioners are in the possession of the suit property. Thus, it is clear that, these Petitions have been filed by clearly misrepresenting before this Court that, the Petitioners are residing in suit premises i.e. Room No. 16, Chawl No. 10, Sunita Estate, Oppo. Bhaichand Textile Mills, L.B.S. Marg, Bhandup West, Mumbai - 400 078.

20. As there is no substance in both the Writ Petitions, the Writ Petitions are dismissed with cost of Rs. 10,000/- in each Petition.

21. In view of dismissal of Writ Petitions, nothing survives in the Interim Applications and the same are also dismissed.

(MADHAV J. JAMDAR, J.)