

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10616 OF 2022

Mr. Pradeep Balkrishna Pandit & Ors.

...Petitioners

Versus

Jam Hosiery Workds Pvt. Ltd.

Thr. Sachin Pravin Gosar & Ors.

...Respondents

Mr. Shashikant Surana i/b Mr. Madhur Surana for the Petitioners.

Ms. T. S. Sindhu a/w Riddhi P. Pandey for Respondent No.1.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : DECEMBER 5, 2023

P. C. :

1. Heard Mr. Surana, learned counsel for the Petitioners and Ms. Sindhu, learned counsel for the Respondents.

2. By this Petition filed under Article 227 of the Constitution of India, the challenge is to two orders dated 22nd August, 2022 passed by the Trial Court issuing warrant of possession and rejecting the application preferred by legal heirs/representatives of Petitioner Nos. 1 to 5, 7 to 12, 14 and 16 for not adding them as party to the Execution Application No. 44 of 2021. The other order under challenge is the order dated 6th September, 2022 passed by the Appellate Bench rejecting the Revision Application No. 79 of 2022 filed against the order of the Trial Court

below Exhibit 37 in Execution Application No. 44 of 2021 in Obstructionist Notice No. 98 of 1982 in R.A.E. & R Suit No. 2075 of 1976.

3. The facts of the case are that the Respondent No. 1 was the original owner of the property and in the year **1976** had filed R.A.E. & R Suit No. 2075 of 1976 against the Original Tenants i.e. Respondent Nos. 2 to 6. on the ground of non payment of rent. This suit came to be decreed which is stated to be an Ex-parte Decree on 3rd March, 1982. The Execution of the decree was obstructed by the Petitioners pursuant to which an obstructionist notice No. 98 of 1982 was filed by the Respondent No. 1 in the Small Causes Court against the Petitioners which came to be allowed and directions were passed to execute the decree vide order dated 21st February, 1984. This order came to be challenged by filing Appeal No. 242 of 1984 and the same was dismissed vide order dated 5th December, 1985 and directions were issued to the obstructionists i.e. the Petitioners herein to vacate the subject property. As against this, Writ Petition No. 2358 of 1986 was filed before this Court and as similar question of law was pending before the Apex Court, interim stay was granted vide order dated 5th September 1986 subject to filing of undertaking that they shall hand over the vacant possession of the subject property to the Original owner in case they fail in the Petition.

Subsequent thereto, the Apex Court dismissed the Appeal and the Petition i.e. Writ Petition No. 2358 of 1986 was disposed of by this Court by order dated 19th August 2002 and the decree became executable. Subsequent thereto, execution Application was filed by the decree holder on 1st March, 2021 for executing the decree dated 3rd March, 1982.

4. In the execution proceedings, the Executing Court vide order dated 22nd August, 2022 passed below Exhibit No. 37 noted that there was no stay in favour of the Petitioners and issued warrant of possession under Order 21 Rule 35(1) of Code of Civil Procedure, 1908. The Executing Court passed a common order of even date below Exhibit Nos. 40 to 52 rejecting the application of the Petitioners for being brought on record as legal heirs of the Obstructionist Nos. 1 to 3, 5, 7, 9 to 14, 16 and 18.

5. In the Revision Application No. 79 of 2023 filed against the order of issuance of warrant of possession by the Executing Court the issues framed by the Revisional Court reads thus:

1. Whether the applicants/obstructionists have an independent right title and interest in the suit premises?
2. Whether the applicants can raise the issue of declaration of the suit premises as slum for the first time before the executing Court?
3. Whether the executing Court would be justified in

considering the legality of the decree under execution in peculiar circumstances?

Negating the issues as stated above, the Revisional Court refused to interfere with the orders passed below Exhibit 37 and Exhibit 40 to 52.

6. The sole submission raised by Mr. Surana, learned Counsel for the Petitioners is that by reason of subsequent events viz the subject premises being notified as slum under Section 4 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 (Slum Act) vide order dated 13th June, 1996, formation of society of slum dwellers, subject property being declared as “Slum Rehabilitation Area” under Section 3 (c) of Slum Act, notification being issued under Section 14(1) of the Slum Act, the bar under Section 22(1)(b) of the Slum Act has come into operation and as such, the decree cannot be put into execution without the permission of the Competent Authority. He points out the orders and notification issued by the Slum Rehabilitation Authority annexed at Page Nos. 99 to 104 of the Petition.

7. He contends that on **14th June, 1996** the subject area was declared as a slum and on **28th November, 2013**, the Respondent No. 1-Original landlord conveyed the property to a third party and has thereafter filed an Application as a constituted attorney. He would further submit that, by virtue of the final notification issued under Section 14(1) of the Slum Act

the property now stood vested in the State. He would further submit that the society of slum dwellers have paid the land cost and had been held eligible for rehabilitation in situ. He has invited the attention of this Court to the findings of the Revisional Court and would submit that the Revisional Court has not considered the notifications in proper prospective and have failed to appreciate the provisions of Section 22(1)(b) of Slum Act. He has further invited the attention of this Court to the reply filed by the Respondent No. 1 which shows that the Respondent No. 1 is aware of the notification and the acquisition of the properties and as such, the acquisition being unchallenged, the provisions of Section 22(1)(b) of Slum Act are attracted.

8. *Per contra*, Ms. Sindhu, learned counsel for the Respondents places reliance on the decision of this Court in the case of ***Shri. Hari Dhondurav vs. Shri Jhonney Augustine Gomes [Writ Petition No. 680 of 2000]*** and would contend that this Court has held that the notification declaring the area as Slum would not have retrospective effect. Pointing out to the observations of this Court in the said decision, she would contend that it is held by this Court there is no prohibition from continuing the suit which has already been instituted before the area is declared as slum. She would further submit that, there is a dispute about the authenticity of the documents produced by the Petitioners and would

contend that the property card shows that the title of the suit property vests in the Respondent No. 1. Pointing out to the acquisition notification annexed at page No. 102 of the Petition she would submit that the same in respect of the proposal which has been submitted by Vighneshwar Co-op. Hsg. Society, who is not a party to the proceedings. She submits that the decree has been passed prior to the notification and that there is no bar.

9. Considered the submissions and perused the record.

10. Only issue which is required to be considered by this Court is whether by virtue of the subsequent events which have taken place inasmuch as now the subject property has been acquired for the purpose of implementation of the slum rehabilitation scheme, the decree of eviction can be executed in view of the statutory bar which operates under Section 22(1)(b) of Slum Act which prohibits the eviction of an occupier from any building or land in execution of a decree obtained except with the previous permission in writing of the Competent Authority. The admitted position is that, there is a decree of eviction which has been passed in the year 1982 and which was the subject matter of an obstructionist notice. The orders and notifications produced on record demonstrate that the subject property has been declared as slum rehabilitation area and pursuant to the notification dated 31st May, 2019

issued under Section 14(1) of the Slum Act, the subject property is acquired by the State Government. On 6th July, 2021, the Respondent No.1 has filed an execution Application seeking execution of the decree dated 3rd March, 1982. If we consider the provisions of Section 22 of the Slum Act, the same starts with non obstante clause and provides that no person shall except with the previous permission in writing of the Competent Authority, – (a) institute after the commencement of the Maharashtra Slum Areas Act, 1971, any suit or proceeding for obtaining any decree for eviction of any occupier from any building or land in a slum area. Clause (a) of Section 22 operates in the case where the proceedings are sought to be instituted after the commencement of the Slum Act for eviction of any occupier of any building or land in the slum area. The provision of Clause (a) of Sub section (1) of Section 22 was under consideration in the case of *Shri. Hari Dhondur Gurav vs. Shri. Jhonney Augustine Gomes (supra)* and it was held that the said clause does not prohibit the Court from continuing with the suit which has already been instituted before the area is declared as slum. In the present case, what we are concerned with is the provisions of Section 22(1)(b) which operates after a decree of eviction has been passed and that decree is sought to be put into execution and in the mean time the area has been declared as a slum. In that event sub clause (b) of clause (1) of Section 22

provides that where any decree or order is obtained in a suit of proceeding instituted before such commencement for the eviction of an occupier from land or building such decree cannot be executed without the previous permission in writing of the Competent Authority. This Court has repeatedly called upon the learned counsel for Respondent No. 1 to address this Court on the statutory bar which operated by virtue of Section 22(1)(b) for execution of the decree without the previous permission of the Competent Authority. However, the only submission advanced is that the decree of eviction has been passed prior to the area being declared as slum and that the undertaking had been given to this Court by the Petitioners. We are now in the situation where decree of eviction which has been passed prior to the declaration of the area as slum is now sought to be put into execution by the decree holder. In that event the provisions of Section 22 (1)(b) clearly applies.

11. The impugned order of the Appellate Court as far as the provisions of the Slum Act area is concerned, has not considered the matter in the correct perspective. The Appellate Court has held that notices dated 31st May, 2019 have been issued by the Competent Authority under Section 3 proposing to declare the suit premises as slum and as such, there was no necessity to issue notices under Section 3 if the area has been declared as slum under Section 4 of the Slum Act in the year 1996 itself. The

Appellate Court failed to note that Section 4 deals with the declaration of any area as slum area and Section 3(c) governs declaring of the premises as slum rehabilitation area after the publication of Slum Rehabilitation Scheme. The Appellate Court failed to note the provision of Section 22(1)(b) of the Slum Act. As indicated above considering the declaration of the subject matter as slum rehabilitation area and by virtue of the notification under Section 14(1) of the Slum Act, the subject property stood vested in the State Government. It is not disputed that the Respondents were aware of the various orders and notifications passed under the Slum Act and the same remains unchallenged. As such without permission of the Competent Authority under Section 22 (1)(b) of Slum Act, the decree for eviction could not be executed. Another aspect to be noted that the decree has become unexecutable as the subject property stands vested in the State Government pursuant to the notification under Section 14(1) of Slum Act. This Court has informed that some of the Petitioners have been dispossessed due to the impugned order dated 22nd August, 2022 by execution of the possession warrant. It is therefore necessary that the possession of the dispossessed Petitioners be restored.

12. In light of the discussion above, the Petition is allowed in terms of prayer clause 'a' and 'bb'.

(SHARMILA U. DESHMUKH, J.)

This order is corrected as per Speaking to the Minutes order dated 15th December, 2023