



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7801 OF 2023

Deodatta Shankarrao Bodhankar .Vs. M/s Chimote & Son's Through its Partner,
Ramchandra Wasudeo Chimote through LRs

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.S. Sitani, Advocate for petitioner.

Shri Akshaya Sudame, Advocate for respondent Nos.1 to 4.

CORAM : ANIL S. KILOR, J.

DATED : 11/01/2024

1. Heard.
2. The impugned order in the present writ petition is dated 03.11.2023 issuing warrant of possession passed by the executing Court namely Civil Judge Senior Division, Amravati in Darkhast No.12 of 2020.
3. The case of the petitioner is that, the said warrant of possession was issued by the executing Court beyond the judgment and decree dated 19.05.2017 passed by the Civil Judge Senior Division, Amravati.
4. It is further case of the petitioner that, the decree was in respect of three rooms on the ground floor and one room on the first floor as stated and pleaded in paragraph 7(a) of the plaint.

5. It is submitted that, while issuing warrant of possession, it was issued for the complete premises and not only in respect of three rooms on the ground floor and one room on the first floor. He, therefore, submits that, the impugned order issuing warrant of possession is illegal and liable to be quashed and set aside.

6. On the other hand, Shri Sudame, learned counsel for the respondent Nos.1 to 4 points out that, the said order of issuing warrant of possession has already been executed and after taking possession, the whole structure has been demolished and presently there is no structure in existence. He, therefore, submits that, the petition has become infructuous and no relief as claimed in the petition can be granted.

7. Shri Sitani, learned counsel for the petitioner thereupon, submits that, to defit the purpose of this petition, the building was demolished and therefore, the doctrine of frustration would apply. He, accordingly, submits that, the petitioner is entitled for possession of the open land to the extent and in proportion to possession taken from the petitioner beyond the judgment and decree. In support of his contention, he has placed reliance on a judgment of Single Bench of Punjab and Haryana High Court in the case of *Amir Chand ..vs.. Chuni Lal and Ors*, reported in **AIR 1990 P & H 345** and judgment of Division

Bench of this Court in a case of *Laxmanprasad Babulal Sahu ..vs.. State of Maharashtra* delivered on 06.10.2018 in **Writ Petition No.1542 of 2004**.

8. In light of rival submission, I have perused the record and the impugned order.

9. It is evident from the record that, the suit filed by the respondent Nos.1 to 4 for possession, damages and mesne profits was decreed and it was maintained upto the Hon'ble Supreme Court of India. It is pertinent to note that before the Hon'ble Supreme Court of India an undertaking was given by the petitioner to give the vacant possession of the subject property within six months.

10. The record further shows that, the respondent Nos.1 to 4 filed execution proceeding and during the pendency of the said proceeding, the Special Leave to Appeal (SLP) came to be decided wherein the above referred undertaking was given. According to the petitioner, this undertaking was restricted to three rooms on the ground floor and one room on the first floor.

11. Subsequently, after the disposal of the SLP, the application for issuance of warrant of possession was filed by the respondent Nos.1 to 4 on 03.11.2023 with a prayer to issue warrant of possession with the direction to the bailiff to give the possession of the subject property falling within

four boundaries i.e. towards east, north and south by government road and towards west by house of Balkrishna Patil to the decree holder by removing all the obstructions including that off the Devdatta Shankarrao Bodhankar. Thereupon, the learned executing Court passed an order issuing warrant of possession as prayed in the application and accordingly, the possession was handed over to the respondent Nos.1 to 4.

12. It has further come on record that after receiving the possession, the respondent Nos.1 to 4 demolished the complete structure and presently, there is no structure standing on the land in question.

13. In the circumstances, the only question remains is whether in light of subsequent events, the petitioner is entitled for any relief more particularly for possession of the open land.

14. Admittedly, it is the case of the petitioner that, beyond three rooms on the ground floor and one room on the first floor, the respondent Nos.1 to 4 were not entitled to take possession and the executing Court ought not to have issued warrant of possession for the entire property.

15. Thus, if the possession warrant was beyond the judgment and decree i.e. three rooms on the ground floor and one room on the first floor as alleged by the petitioner

and if the entire building was demolished, this is a fresh cause of action for which the remedy is available to the petitioner to claim damages or any right if the petitioner had in the said property.

16. As far as the judgment cited by the learned counsel for the petitioner to claim possession of the open land, those judgments are of no help to the petitioner for the reason that there was a contract in respect of tenancy in both the matters and to protect the rights of the tenant, this Court as well as the Punjab and Haryana High Court have taken a view that even after the demolition of the building, the right of the tenant exists and accordingly, the relief was granted in those cases in favour of the plaintiff.

17. However, if any right is there the petitioner may claim it by filing appropriate proceeding but in any case, such right cannot be claimed in the present writ petition. Accordingly, the writ petition is **dismissed**.

18. As according to me, this petition has become infructuous, the moment the structure was demolished, I have not examined the validity of the order of possession of the warrant.

JUDGE