

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 58 OF 2025

Shahida w/o Mohammed Yaqub Khan ...Applicant

Versus

Ishtiyak Ahmed Mohd. Raza and ors. ...Respondents

WITH

INTERIM APPLICATION NO. 15988 OF 2024

Mr. Atul Damle, Senior Advocate, a/w Payal Vardhan,
Vimlesh Singh and Amit Jaiswal, for the Applicant.
Mr. Pradeep Thort, a/w J. S. Yadav, for Respondent Nos.1 to
4.

CORAM: N. J. JAMADAR, J.

DATED: 1st APRIL, 2025

Order:-

1. Heard the learned Counsel for the parties.
2. This revision is directed against an order dated 9th September, 2024 passed by the learned Judge, City Civil Court, Bombay, in Notice of Motion No.57 of 2024 in Suit No.2751 of 2016, whereby the Notice of Motion taken out by the applicant – defendant No.4 for rejection of the plaint, came to be rejected.
3. M/s. Hariom Constructions, defendant No.1, is a developer. Defendant No.1 is carrying out a Slum Rehabilitation and Redevelopment Scheme on the plots of

land bearing CTS No.136, 136/1-57, 137, 138, 138/1 to 5, 139, 139/1-9, 140, 140/1-5, 141, 141/1-15 of village Kurla, at LBS Road, Mumbai. The plaintiff claimed that the name of plaintiff No.1's father Mohd. Rajak was shown at Sr. No.157 of the Annexure-II as an eligible hutment dweller in respect of a commercial premises. Defendant No.1 has entered into the agreements including Permanent Alteration Accommodation Agreement ("PAAA") with other hutment dwellers. However, defendant No.1 refused to enter into such agreement and give the benefits under the redevelopment scheme to the plaintiffs. Hence, the suit for declaration that the plaintiffs are eligible hutment dwellers and are entitled to get permanent alternate accommodation with all redevelopment benefits, and a mandatory direction to the defendant No.1 to execute PAAA with the plaintiffs as executed with the other eligible hutment dwellers.

4. During the pendency of the said suit, defendant No.4, who raised a rival claim over the premises (in respect of which the suit for declaration as eligible slum dwellers has been instituted) came to be impleaded as a party defendant to the suit.

5. Defendant No.4 took out the Notice of Motion seeking rejection of the plaint on the ground that there is no cause of action for the suit, the suit claim is undervalued and the suit is also barred under the provisions of Section 42 of the Slum Act, 1971.

6. The plaintiff resisted the Notice of Motion.

7. By the impugned order the learned Judge, City Civil Court, was persuaded to reject the Notice of Motion.

8. Mr. Damle, the learned Senior Advocate for the applicant, would urge that the aspect of bar of jurisdiction under Section 42 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("the Slum Act, 1971") was not properly appreciated by the learned Judge, City Civil Court, and was decided with material irregularity. It was submitted that the bar of jurisdiction under Section 42 of the Slum Act, 1971 in respect of the matters which the Administrator, Competent Authority, Grievances Redressal Committee or Tribunal is empowered by or under the said Act to determine, is absolute. The question of entitlement of the plaintiffs to the benefits under the Slum Rehabilitation Scheme is a matter which is squarely covered

by the province of the authority of the Competent Authority under the Slum Act, 1971.

9. Mr. Damle further submitted that in the case at hand, plaintiff No.1 had, in fact, preferred an appeal before the competent authority under Section 35 of the Slum Act, 1971 against an order of eviction passed under Sections 33 and 38 of the Slum Act, 1971. By an order dated 19th June, 2017, the Competent Authority dismissed the said appeal. However, the developer was directed to execute an agreement with plaintiff No.1. The said order was challenged by the plaintiffs in Writ Petition (L) No.1865 of 2017. By an order dated 3rd August, 2017, the said writ petition came to be dismissed as the subject structure was already demolished, with liberty to the plaintiffs to take appropriate measures in the pending suit.

10. Mr. Damle strenuously submitted that the aforesaid order cannot be construed as removing the embargo under Section 42 of the Slum Act, 1971, for the adjudication of the suit. To bolster up this submission, Mr. Damle placed reliance on a Division Bench judgment of this Court in the

case of *The State of Maharashtra vs. Abdul Sattar Haji Usman & ors.*¹.

11. Mr. Thorat, the learned Counsel for the respondents – plaintiffs, supported the impugned order. It was submitted that the appeal preferred by plaintiff No.1 was against an order of eviction. However, the factum of removal of the structure, either rightly or wrongly, does not preclude the plaintiffs from prosecuting the remedies for the benefits under the redevelopment scheme. Mr. Thorat submitted that it is well recognized that the bar to the jurisdiction of the Civil Court is not to be readily inferred. Reliance was placed on the judgments of this Court in the cases of *Gari Mohammed Zakir Hussain and others vs. Municipal Corporation of Greater Mumbai and others*² and *Sushila J. Tiwari and others vs. Assistant Commissioner, F/North Ward, MCGM, Mumbai and others*³.

12. Ordinarily Civil Courts have jurisdiction to try all suits of civil nature except those of which cognizance by the Civil Court is either expressly or impliedly barred. It is equally well settled that exclusion of the jurisdiction of the Civil

1 2017 SCC Online Bom 3951

2 2001 SCC OnLine Bom 871.

3 2017 SCC OnLine Bom 10086.

Court is not to be readily inferred. And the presumption to be drawn must be in favour of existence rather than exclusion of the jurisdiction of the Civil Court.

13. In the case at hand, the core issue that arises for determination in the suit is, whether the plaintiffs are entitled to the benefits under the Slum Rehabilitation Scheme. Evidently, the plaintiffs and defendant No.4 have laid rival claims over the subject premises.

14. Undoubtedly Section 42 of the Slum Act, 1971 bars the jurisdiction of the Civil Court in specified matters. Section 42 reads as under:

“42. Bar of jurisdiction.-

Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the [Appellate Authority, Competent Authority, Grievance Redressal Committee] or Tribunal is empowered by or under this Act, to determine; and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

15. The text of the aforesaid section would indicate that the point for primary enquiry ought to be, whether the suit is in respect of the subject matter, which the Appellate Authority, Competent Authority, Grievance Redressal Committee, Apex Grievance Redressal Committee or the Tribunal is empowered by or under the said Act to determine.

If the answer is in the affirmative, then the Court will have to further examine, whether the authorities under the Act have complied with the statutory provisions or the concerned authority or Tribunal has not acted in conformity with the fundamental principles of judicial process or the authorities have transgressed the jurisdictional limits. If the answer is in the affirmative, then, despite the express exclusion of the jurisdiction, the Civil Court will still have the competence to adjudicate the dispute.

16. In the case at hand, the reliance on the order passed by the Competent Authority, in an appeal under Section 35 of the Slim Act, 1971, against an order of eviction purportedly passed under Section 33 of the Slum Act, 1971, is of little assistance to the applicant. The subject matter of the appeal was the legality and correctness of the notice and order of eviction. In contrast, the substance of the suit is the entitlement of the plaintiffs to the benefits under the rehabilitation scheme on the premise that the plaintiffs father was an eligible slum dweller, whose name was included in Annexure-II.

17. Thus, this Court finds that instead of impairing the case of the plaintiffs, the said order *prima facie* advances the

cause of the plaintiffs case as the Competent Authority had directed the developer to execute the agreement with the plaintiffs. Therefore, the learned Judge, City Civil Court, was justified in not acceding to the prayer to reject the plaint on the ground that the suit was barred under Section 42 of the Slum Act, 1971.

18. In any event, the issue of bar under Section 42 of the Slum Act, 1971, in the peculiar facts of the case, is not such that it could have been decided at the threshold. If the bar of jurisdiction is raised in the written statement, an appropriate issue can be framed and decided at the trial.

19. Resultantly, subject to the aforesaid clarification as regards the adjudication of the issue of bar of jurisdiction at the trial, the application stands rejected.

20. In view of disposal of revision application, interim application also stand disposed.

[N. J. JAMADAR, J.]