

(2011) 01 BOM CK 0148

Bombay High Court

Case No: Writ Petition No. 680 of 2000

Shri Hari Dhondu Gurav

APPELLANT

Vs

Shri Jhonney Augustine Gomes

RESPONDENT

Date of Decision: Jan. 7, 2011

Acts Referred:

- Improvement, Clearance and Redevelopment Act, 1971 - Section 2, 22, 3
- Presidency Small Cause Courts Act, 1882 - Section 53
- Provincial Small Cause Courts Act, 1887 - Section 27B

Citation: (2011) 7 ALLMR 662 : (2011) 5 BomCR 150 : (2011) 2 MhLj 715

Hon'ble Judges: D.G. Karnik, J

Bench: Single Bench

Advocate: P.N. Karlekar, instructed by R.R. kolkar, for the Appellant;

Final Decision: Dismissed

Judgement

D.G. Karnik, J.

This writ petition is directed against the judgment and order dated 15th September, 1999 passed by an Appellate Bench of the Small Causes Court, Mumbai, dismissing the appeal of the Petitioner, and thereby confirming the decree for eviction passed by the trial court against the Petitioner.

2. Respondent is an owner and landlord of the property known as "Clement D'Souza Chawl" situate at Karol Village, Vidya Vihar, Mumbai⁸⁶. The Petitioner was a monthly tenant occupying one room bearing No. 2 (for short "the suit premises") situate at the said chawl. As the Petitioner was in arrears of rent, by a notice of demand dated 21st January, 1983, the Respondent called upon by the Petitioner to pay all arrears of rent and also to hand over the possession of the suit premises. The notice was followed by a suit for eviction which was filed on 5th of July, 1983. The trial court after considering evidence produced on record found that the Petitioner was in arrears of rent from 1st June, 1981 and had failed to pay the same despite the

service of notice on him. Consequently, the trial court passed a decree for possession. On Appeal, the Appellate Bench confirmed the decision of the trial court.

3. Before the trial court, the Petitioner had contended that the suit building was declared as a "slum area" and therefore, the court had no jurisdiction to entertain and try the suit. The very contention was raised before the Appellate Bench of the Small Causes Court. The trial court held that though the suit structure was situated in the slum area its jurisdiction to try the suit was not ousted. On appeal, the appellate court also confirmed the said decision and held that the suit was maintainable. Aggrieved by the said decision, the Petitioner is before this Court.

4. Mr. Karlekar, learned Counsel appearing for the Petitioner, submitted that since the suit property was situated in an area which declared as a "slum area" and since the permission of competent authority was not obtained for filing of the suit, it was not maintainable and was liable to be dismissed. He submitted that u/s 22 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment Act, 1971 (hereinafter referred to as the "Slum Act") a permission of the competent authority was necessary for filing of any suit for eviction and since the permission was not obtained, the suit was not maintainable and was liable to be dismissed.

5. It is not disputed that the suit building is situated in C.T.S. No. 385 of Village Kirol, Mumbai 86. Initially by a notification dated 28th November, 1977 published in the Maharashtra Government Gazette dated 16th February, 1978, the CTS No. 385 at village Karol was declared to be a slum area by the competent authority under the Slum Act. However, on appeal filed by the Appellant and other owners of land in village Karol, that Notification was set aside by the Appellate Authority somewhere in the year 1980. Thereafter on 1st October, 1983 a fresh notification was issued by the competent authority u/s 3 of the Slum Act, declaring CTS No. 385 and some other properties of the village Karol to be a Slum Area. Thus between the period of 1980 and October, 1983, there was no notification declaring CTS No. 385 in which the suit premises are located to be a slum area. The suit notice was issued on 21st January, 1983 and the suit was filed on 5th of July, 1983 when there was no notification in force declaring the suit property to be a slum area. It is only during the pendency of the suit that the suit property was declared as the slum area. In this light, it is necessary to examine whether the suit which was instituted on 5th of July, 1983 was barred by Section 22 of the Slums Act. Section 22 of the Slums Act reads as follows:

22.(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) apply to any Judge or the Registrar of the Small Cause Court under Chapter VIII of the Presidency Small Cause Courts Act, 1882, in its application to the State of Maharashtra, or to any Court of Small Causes under Chapter IVA of the Provincial Small Cause Courts Act, 1887, in its application to the State of Maharashtra, for a distress warrant for arrears of rent against any occupier of a house or permission in a slum area

(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) apply to any Judge or Registrar of the Small causes Court under Chapter VIII of the Presidency Small Cause Courts Act, 1882, in its application to the State of Maharashtra, or to any Court of Small Causes under Chapter IVA of the Provincial Small Cause Courts Act, 1887, in its application to the State of Maharashtra, for a distress warrant for arrears of rent against any such occupier of a house or premises in any such slum area.

(2) Every person desiring to obtain the permission referred to in Sub-section (1) or (1A) shall make an application in writing to the Competent Authority in such form and containing such particulars as may be prescribed.

(3) On receipt of such application, the Competent Authority, after giving an opportunity to the parties of being heard and after making such summary inquiry

into the circumstances of the case as it thinks fit, shall, by order in writing, either grant or refuse to grant such permission.

(4) In granting or refusing to grant the permission under Clause (a) or (b) of Sub-section (1) or Clause (a) of Sub-section (1A), the Competent Authority shall take into account the following factors namely,:

(a) whether alternative accommodation within the means of the occupier would be available to him, if he were evicted;

(b) whether the eviction is in the interest of improvement and clearance of the slum area;

(b1) whether, having regard to the relevant circumstances of each case, the total amount of arrears of rent or compensation and the period for which it is due and the capacity of the occupier to pay the same, the occupier is ready and willing to pay the whole of the amount of arrears of rent or compensation by reasonable installments within a stipulated time.

(c) any other factors, if any, as may be prescribed.

(4A) (a) In granting or refusing to grant the permission under Clause (c) of Sub-section (1) or Clause (b) of Sub-section (1A), the Competent Authority shall take into account the following factors namely,:

(i) what is the amount of rent and for what period it is due;

(ii) whether a notice of demand referred to in the proviso to Sub-section (1) of Section 53 of the Presidency Small Causes Courts Act, 1882 or in the proviso to Sub-section (1) of Section 27B of the Provincial Small Cause Courts Act 1887 as the case may be, has been duly given to the occupier liable to pay the arrears of rent;

(iii) whether the occupier is willing to pay arrears within a stipulated time;

(iv) any other factors, if any, as may be prescribed.

(b) If, within a period of six months from the date of receipt of any application for permission under Clause (c) of Sub-section (1) or Clause (b) of Sub-section (1A) the Competent Authority does not refuse to grant the permission, it shall be deemed to have been granted at the expiration of such period.

(5) Where the Competent Authority refuses to grant the permission [under any of the clauses of Sub-section (1) or (1A) it shall record a brief statement of the reasons for such refusal, and furnish a copy thereof to the applicant."

6. Clause (a) of Sub-section (1) of Section 22 prohibits institution of a suit for eviction of an occupier from any building or land which is in a slum area. It does not prohibit the court from continuing with the suit which has already been instituted before the area is declared as slum. As the suit premises were not declared as slum area when

the suit was instituted, there was no prohibition for filing of a suit. It cannot therefore, be said that the institution of the suit itself was improper and/or the jurisdiction of the court to entertain the suit which was properly instituted was taken away. Sub-section (b) provides that when decree or order for eviction is obtained in a suit or proceedings, which is instituted before the commencement of the Slum Act, the occupier of any building or land cannot execute the decree without permission of the competent authority. Clause (b) contemplates a permission to be obtained only for execution of a decree and does not render the decree which has been obtained in a suit filed prior to the commencement of the Slum Act. Consequently, the contention of the learned Counsel for the Petitioner that the court had no jurisdiction to entertain and try the suit and/or continue with the trial after the suit premises were declared as slum, cannot be accepted.

7. Relying upon a decision of this Court in the case of *Jethmal Jagganathji Dangra v. Parmeshwar Sheotabal Teli* (1988 Mh. IJ 711), the learned Counsel for the Petitioner submitted that the notification declaring the area to be a slum area would have a retrospective effect. I am unable to agree. In that case, this Court has held that amendment to the Slum Act made by the Amending Act of 1986 would have the retrospective operation. I have quoted Section 22 referred to above, as amended by the Maharashtra Act of 1986 and interpreted. The decision, therefore, has no application to the facts of the present case. No other point was urged.

8. There is no merit in the petition, which is hereby dismissed. Rule is discharged with no order as to costs.