

(2012) 09 BOM CK 0130

In the Bombay High Court

Case No : Civil Revision Application No. 662 of 2012

Dhirajilal Vishanji Chedda

APPELLANT

Vs

Kshitija Infrastructure Pvt. Ltd. (Formerly Known As Astral Builder Pvt. Ltd.), Maharashtra Housing and Area Development Authority, Mumbai Building Repairs and Reconstruction Board, Mhada Unit and The Executive Engineer, E-2 Division, M.B.R. and R. Board

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11(d), 115

Constitution of India, 1950 — Article 226

Maharashtra Housing And Area Development Act, 1976 — Section 16(1)(g), 173, 177, 95A, 95A(2)

Maharashtra Rent Control Act, 1999 — Section 16, 16(1), 16(1)(i), 33

Citation : (2013) 2 ABR 178 : (2012) 6 ALLMR 44 : (2013) 1 BomCR 840 : (2013) 1 MhLj 58

Hon'ble Judges : Ranjit More, J

Bench : Single Bench

Advocate : S.M. Gorwadkar instructed by Mr. Niranjana A. Mogre, for the Appellant; Aspi Chinoy, Mr. D.D. Madon, With Mr. Cyrus Ardeshir, instructed by M/s. Kanga and Co. for Respondent No. 1, Mr. V.M. Parshurami, for Respondent Nos. 2 to 4 in C.R.A. 662, 664 and 665 of 2012 and Mr. S.P. Thorat, for Respondent Nos. 2 to 4 in C.R.A. 663, 666 and 667 of 2012, for the Respondent

Judgement

Ranjit More, J.—Heard the learned counsel appearing for the respective parties. Since parties and issues involved are similar, these Civil Revision Applications are being disposed of by common judgment. The representative facts are taken from the first matter, viz., Civil Revision Application No. 662 of 2012, for the sake of brevity and convenience.

2. By this Revision u/s 115 of the Code of Civil Procedure, 1908, the applicant is challenging the orders of the learned Single Judge and Appellate Bench of the Small Causes Court, whereunder the applicant's plaint is rejected under Order 7,

Rule 11 (d), of C.P.C.

3. Respondent No. 1 is the owner and landlord of the suit premises, and respondent Nos. 2 to 4 are the Authorities under the Maharashtra Housing and Area Development Act, 1976. The applicant filed a suit for declaration that his possession of the suit premises is protected under the Maharashtra Rent Control Act, 1999 and by prayer (b), a declaration is sought that the applicant, as a tenant of suit premises, cannot be summarily evicted vide notice issued by respondent Nos. 2 to 4 u/s 95A(2) of the MHADA Act. By prayer clauses (c) and (d), the validity of notice u/s 95A(2) of the MHADA Act is challenged. The applicant also applied for orders of temporary injunction protecting his possession. The respondents objected jurisdiction of the Small Causes Court. The issue of jurisdiction was decided by the learned Single Judge of the Small Causes Court, and the applicant's suit was dismissed. Appellate Bench of the Small Causes Court confirmed the finding of the learned Single Judge that the Small Causes Court has no jurisdiction to try the suit, however set aside the order of the learned Single Judge dismissing the suit, and, instead, the applicant's plaint was rejected under Order 7, Rule 11(d), of C.P.C.

4. The following facts are not disputed:-

Respondent No. 1 is the owner of the plots bearing City Survey Nos. 1944, 1/1944, 2/1944, 3/1944 and 4/1944, along with the 17 buildings constructed on these plots. The applicant is the tenant in respect of Room No. 29 on the 2nd floor of one of the buildings, viz., Laxmi Building, 616-P, N.M. Joshi Marg, Byculla, Mumbai. Defendant No. 1 submitted his properties to MHADA for re-development. There are, in all, 6 such plots of defendant No. 1, on which 17 buildings are standing. 70% of the tenants of these buildings have given their consent for development of these buildings. MHADA has undertaken the development of these buildings and their re-development by amalgamating all these 6 plots together. Thereafter, notices u/s 95A(2) of the MHADA Act are issued, which, as stated above, are challenged by filing the above suit.

5. Mr. Gorwadkar, learned counsel for the applicant, took me through the provisions of Sections 16(1) and 33 of the Maharashtra Rent Control Act, 1999 and Section 95A of the MHADA Act, and submitted that the Maharashtra Rent Control Act, being a special enactment dealing with control of eviction of tenant, Section 33 thereof will prevail and override Section 95A of the MHADA Act. He submitted that respondent No. 1, through respondent Nos. 2 to 4, by issuing notices u/s 95A of the MHADA Act, is trying to evict the applicant. He further submitted that, in view of the provision of Section 33 of the Maharashtra Rent Control Act, respondent No. 1, in order to evict the applicant, will have to approach the Court u/s 16(1)(g) of the said Act. He also submitted that, in the facts and circumstances of the case, the Small Causes Court has jurisdiction to decide the suit, and, therefore, the impugned order deserves to be quashed. He relied upon the Full Bench judgment of the Bombay High Court in Dattatraya Krishna Jangam Vs. Jairam Ganesh Gore, , and a decision of the Apex Court in

Natraj Studios (P) Ltd. v. Navrang Studios & Ors., AIR 1981 S.C. 537.

6. Mr. Aspi Chinoy, learned senior counsel for respondent No. 1, and Mr. Parshurami, learned counsel for respondent Nos. 2 to 4, on the contrary, supported the impugned order. Mr. Chinoy submitted that the Maharashtra Rent Control Act and MHADA Act are operating in different fields. There is no overlapping or repugnancy between these two Acts. He also submitted that the proceedings u/s 95A of the MHADA Act are not the proceedings between landlord and tenant. He invited my attention to the provision of Section 33 of the Maharashtra Rent Control Act, under which the Small Causes Court gets jurisdiction to decide the dispute only between landlord and tenant. He submitted that there are 513 tenants in 17 buildings, out of which, 510 have given consent for re-development. Thirteen buildings have already been demolished. He submitted that, by issuing notices u/s 95A of the MHADA Act, action is taken by the statutory officer under the said Act to facilitate the Scheme and, therefore, the Small Causes Court has no jurisdiction. He relied upon the order dated 9th April, 2012 passed in O.S. Writ Petition (Lodging) No. 876 of 2012 and Division Bench judgment dated 19th June, 2008 in O.S. Writ Petition No. 1362 of 2008.

7. The plaint is annexed at Exhibit "A". Paragraph 28 of the plaint deals with prayer clauses, which read as follows:-

(a) That it be declared by this Hon"ble Court that the Plaintiff's possession of the suit premises is protected under the Maharashtra Rent Control Act, 1999;

(b) That it be declared by this Hon"ble Court that the Plaintiff being the lawful tenant of suit premises cannot be summarily evicted from the suit premises viz. Room No. 29, 2nd floor, Laxmi Building, 616-P, N.M. Joshi Marg, Byculla, Mumbai-400 027 vide impugned notice dated 18.4.2012 u/s. 95A(2) of MHADA Act unless and until proper procedure as laid down u/s 16(1) (i) read with section 16(4)(5) and (6) of Maharashtra Rent Control Act, 1999 is followed by the defendant no. 1 for eviction of the plaintiff from the suit premises;

(c) That it be declared by this Hon"ble Court that the impugned Notice dated 18.04.2012 u/s. 95A (2) of MHADA Act issued by the defendant nos. 2 to 4 at the behest of defendant no.1 to summarily evict the plaintiff from the suit premises is without jurisdiction and is illegal, unlawful, bad in law and not binding upon plaintiff, as section 33 of Maharashtra Rent Control Act, 1999 overrides section 95A (2) of MHADA Act, 1976;

(d) That it be declared by this Hon"ble Court that the defendant nos. 2 to 4 are not entitled to notice u/s. 173 of MHADA Act, 1976 or this Hon"ble Court in the facts and circumstances may dispense with the Notice u/s. 173 of MHADA Act;

By prayer (a), the applicant has sought declaration that his possession of the suit premises is protected under the Maharashtra Rent Control Act, 1999 and by prayer (b), a declaration is sought that the applicant, as a tenant of suit premises, cannot be summarily evicted vide notice issued by respondent Nos. 2

to 4 u/s 95A(2) of the MHADA Act. By prayer clauses (c) and (d), the validity of notice u/s 95A(2) of the MHADA Act is challenged. So far as the relief claimed under prayer clause (a) is concerned, there is no dispute that the applicant is tenant of respondent No. 1 in respect of the suit premises and the relationship of the applicant and respondent No. 1 is also not denied. The tenancy of the applicant has not been terminated and even after application of the Scheme under the MHADA Act, the relationship is not likely to come to an end. The applicant is to be provided alternative temporary premises till the work of re-development is completed; and, thereafter, he would be provided permanent alternative accommodation as per the Scheme.

8. Section 33 of the Maharashtra Rent Control Act, 1999 talks about suit or proceeding between landlord and tenant relating to the recovery of rent and possession of any premises. A perusal of the reliefs claimed by the applicant makes it clear that the present proceedings are not between the only landlord and tenant. The applicant has impleaded the Authorities under the MHADA Act as respondent Nos. 2 to 4. The applicant has also challenged notices issued by those Authorities u/s 95A of the MHADA Act. In these circumstances, no fault can be found with the impugned orders, to the effect that Small Causes Court will have no jurisdiction to decide the suit.

9. Section 16 of the Maharashtra Rent Control Act, 1999 enumerates various grounds on which landlord may recover possession of the tenanted premises. Steps u/s 95A of the MHADA Act are taken by the statutory officer under the said Act to facilitate the Scheme. The Maharashtra Rent Control Act, 1999 and the MHADA Act, 1976 operate in different fields. There is no overlapping or repugnancy between these two enactments. In these circumstances, I do not find any substance in the contention of Mr. Gorwadkar that, under the guise of notice u/s 95A of the MHADA Act, respondent No. 1 wants to evict the applicants.

10. Similar question came up for consideration before a Division Bench of this High Court in Suresh R. Dubey & Ors. v. The State of Maharashtra & Ors. in O.S. Writ Petition No. 1362 of 2008. The petitioners in that case were the tenants in the property known as "German Chawl No. 367", situate at Tardevo Division, Tulsiwadi Road, Mumbai. There were 154 tenants, in all, including the petitioners in the said chawl. The chawl was in a dilapidated condition, and, therefore, the tenants were interested in re-development of the said chawl. The tenants by majority - over 70% - decided to appoint a developer to undertake the work of re-development. MHADA, being satisfied with this aspect, issued No Objection Certificate to follow the entire procedure for the re-development of the property. MHADA, having satisfied that more than 70% of occupants of the said chawl have consented for re-development of the chawl, granted further approval / permission. Bombay Municipal Corporation also granted I.O.D. for re-development. Except 13 petitioners, other 140 tenants entered into individual agreements with the developer. The 13 petitioners, who did not support the re-development, filed suit in the Small Causes Court against the landlord and

developer. MHADA was not party to this suit. Initially, the Small Causes Court, by ad-interim order, restrained the defendants in that suit from dispossessing the plaintiffs from the suit premises, without following due process of law. The landlord challenged this order by filing Writ Petition, stating that the project has been approved by MHADA, and there is consent of more than 70% occupants of the said premises. The said Writ Petition was disposed of, wherein the learned counsel for respondent No. 1, viz., MHADA, submitted that the application of the petitioner was considered, and appropriate orders have been passed, and action in pursuance thereof will be taken. Thereafter, MHADA offered transit accommodation to each of the tenants. They, however, did not accept it. MHADA thereafter, was constrained to follow procedure of summary eviction u/s 95A of the Act. The petitioners, therefore, approached the Division Bench by filing the above-stated petition under Article 226 of the Constitution of India. The grievance of the petitioners was that the respondents have committed breach of order of the Small Causes Court, whereby the defendants were directed not to disturb the possession of the petitioners, unless due process of law was followed. It was the contention of the petitioners therein that, since they are tenants, due process of law is to file suit for possession in the Small Causes Court. The Division Bench negated the contention by making following observation in paragraph 13, which reads as under:-

13. The MHADA and the developer are not terminating the tenancy of the petitioners. Their tenancy rights have been accepted by the MHADA and the developer. Not only that the owner also accepts their tenancy rights. Only the owner and other tenants have submitted a scheme to the MHADA for redevelopment of the property in issue. Each tenant including each petitioner is going to get a permanent tenement after the redevelopment of the property in view of his tenancy rights. Therefore, the contention of the learned counsel for the petitioner that unless and until the tenant is evicted by following the procedure under the Rent Act the scheme under the MHADA Act cannot be executed is based on misconception of law.

The ratio of Division Bench judgment in Suresh Dubey's case is perfectly applicable to the facts and circumstances of the present case, and, therefore, I find no merit in the applicant's contention that only Small Causes Court will have jurisdiction to decide his suit.

11. At this stage, it is worth to note that some of respondent No. 1's tenants have filed Writ Petition (Lodging) No. 876 of 2012 on the Original Side of this Court, challenging similar notices u/s 95A of the MHADA Act. The specific contention was raised that proposed action u/s 95A of the MHADA Act is contrary to the provisions of Sections 16 and 33 of the Maharashtra Rent Control Act. The Division Bench, by its order dated 9th April, 2012, rejected the prayer for ad-interim relief by making following observations in paragraph 10:-

10. The provisions of the Maharashtra Rent Control Act, 1999 operate in a different sphere altogether. Under the M.R.C. Act, it would be necessary for a

landlord to file proceedings in a court of law, namely, the Small Causes Court and to obtain a decree against each of the parties. The concerned authorities u/s 95A of the MHADA Act are only concerned with the implementation of the scheme which has been provided for by the State Government.

12. This takes me to consider the decisions cited by Mr. Gorwadkar, learned counsel for the applicants. The issue before the Full Bench of the Bombay High Court in Dattatraya Krishna Jangam's case (supra) was whether the City Civil Court, Bombay, had jurisdiction to entertain a suit for a declaration that the plaintiff is tenant or sub-tenant of the defendant and for an injunction restraining the defendant from proceeding with or obtaining an order for eviction of the plaintiff in the application made by the defendant u/s 41 of the Presidency Small Causes Courts Act or from executing the order for eviction obtained by him in such application. The Full bench answered the issue in negative. In the present case, the issue is about jurisdiction of the Small Causes Court in view of the challenge to the notices u/s 95A of the MHADA Act. Section 177 of the MHADA Act bars jurisdiction of the Civil Court, which reads as follows:-

Bar of jurisdiction. - Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Authority or the Tribunal is empowered by or under this Act, to determine; and no injunction or stay 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 or duty imposed by or under this Act.

A plain reading of Section 177 makes it clear that notices u/s 95A cannot be challenged in civil Court, and no injunction can be granted against respondent Nos. 2 to 4 by the Small Causes Court. The ratio of the Full Bench decision in Dattatraya Krishna Jangam's case (supra), therefore, is not applicable to the facts and circumstances of the present case.

13. The Apex Court in Natraj Studio (supra) held that the Small Causes Court alone has exclusive jurisdiction to resolve the dispute between the parties in view of Section 28(1) of the Bombay Rent Act. As stated above, the dispute in suit is not merely dispute between landlord and tenant. The applicant is challenging notices u/s 95A of the MHADA Act and statutory action of the officers of MHADA. The Small Causes Court, having limited jurisdiction to decide the proceedings between landlord and tenant only, cannot decide the validity of the notices u/s 95A. The Small Causes Court has, therefore, no jurisdiction to grant injunction against respondent Nos. 2 to 4. It is settled principle of law that, in order to determine the nature of the suit, the real substance of the suit is required to be looked at, and not legal ingenuity in drafting the plaint. Reference can be made to the Division Bench judgment in Nagin Mansukhlal Dagli v. Haribhai Manibhai Patel, AIR 1980 Bombay 123. If the plaint in the present case is read as a whole, including the prayer clauses, then, it is clear that relief in prayer clause (a) is claimed only in order to bring the suit within the jurisdiction of the Small Causes court. In fact, there is no dispute about the relationship of the applicant and

respondent No. 1. By filing application, the applicant is, in effect, challenging notices u/s 95A of the MHADA Act.

14. In the light of discussions hereinabove, I am of the considered view that the Small Causes Court will have no jurisdiction to go into the validity of the notices. In fact, it has limited jurisdiction u/s 33 of the Maharashtra Rent Control Act, 1999, apart from specific bar u/s 177 of the MHADA Act. In these circumstances, I do not find fault with the impugned order. The Civil Revision Applications are dismissed. Mr. Gorwadkar, learned counsel for the applicants, at this stage, states that protection granted by the Small Causes Court may be extended for the period of two weeks. Mr. Aspi Chinoy, learned Senior Counsel for respondent No. 1, opposes the prayer. In the interest of justice, and in order to enable the applicants to approach higher Court, the protection granted by the Appellate Bench of the Small Causes Court is continued for the period of two weeks. It is made clear that no further protection will be extended.