

(2012) 02 BOM CK 0198
In the Bombay High Court
Case No : Writ Petition No. 2660 of 2011

Manohar Bhadade

APPELLANT

Vs

Smt. Madhuri Walokar, Amol Walokar and Sandip

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Maharashtra Housing and Area Development Act, 1976 — Section 108(1)
Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 2, 22, 3, 3(1), 3(2)

Citation : (2012) 3 ALLMR 798 : (2012) 3 MhLj 314

Hon'ble Judges : R.K. Deshpande, J

Bench : Single Bench

Advocate : A.S. Chandurkar with Mr. P.N. Shende, for the Appellant; A.S. Jaiswal, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Deshpande, J.—Rule, made returnable forthwith. Heard Shri A.S. Chandurkar, the learned counsel for the petitioner; and Shri A.S. Jaiswal, the learned counsel for the respondents.

2. The petitioner is the judgment-debtor; whereas the respondents are the decree-holders in Regular Civil Suit No. 42 of 2003 decreed by the learned 2nd Additional Judge, Small Causes Court, Nagpur, by his judgment and order dated 26-9-2006. The decree is for eviction and possession in respect of the suit premises, the description of which is made in para 1 of the plaint, reads as under:

1. That, there is a Property bearing Municipal Corporation House No. 1093 (old), 977 (new) situated in Ward No. 31, Plot No. 1228, Chitar Oli, near Gandhi Putala, Central Avenue, Nagpur. The area of the said plot is about 1755 sq.ft. and on the said plot there is a building having constructed area of 850 sq.ft. The said building consists of ground floor, mezzanine floor and first floor.

3. In Special Darkhast No. 80 of 2007 filed by the respondents/plaintiffs, an

objection was raised to the executability of the decree on the ground that the area in question falls in slum area, in respect of which the notification has been issued by the Competent Authority and hence without obtaining the permission of the Slum Authorities under the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short, "the Slums Act"), the decree cannot be executed.

4. In the earlier round of litigation, the matter came up before this Court and in Letters Patent Appeal No. 577 of 2010, this Court framed the following issues and remanded the matter back to the Executing Court to record its findings and to decide the matter:

(i) Whether the property is located in Ward No. 34 as shown in Notification dated 19.11.1979.

(ii) Whether the Notification is issued by competent authority under the provisions of Section 3 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

(iii) Whether the property can be said to be located within the area notified under the Notification in question. The Executing Court is at liberty to examine the witness from the competent office.

On remand of the matter, the Executing Court has passed an order dated 13-4-2011. By the said order, Issue No. (i) is answered in the affirmative holding that the property is located in Ward No. 34 and it is covered by the notification dated 29-11-1979. This finding is not under challenge and none of the parties dispute that the property in question is covered by the said notification dated 29-11-1979. The Executing Court has held that the notification dated 29-11-1979 has not been issued by the Competent Authority u/s 3 of the Slums Act and, therefore, the objection to the executability of the decree for want of permission from the Competent Authority under the Slums Act, has been rejected. The reliance is placed upon the evidence of the Competent Authority under the said Act to the effect that the notification dated 29-11-1979 has been issued under the Maharashtra Housing and Area Development Act, 1976 (for short, "MHADA Act") and not under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Thus the order dated 13-4-2011 passed by the Executing Court is the subject-matter of challenge in this petition.

5. The question, which arises for consideration of this Court, is whether the notification dated 29-11-1979 issued under sub-section (1) of Section 108 of the Maharashtra Housing and Area Development Act, 1976 can be said to be the notification issued by the Competent Authority, as defined u/s 2(c) read with Section 3(2)(d) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, as was then existing.

6. In order to appreciate the controversy, Section 2(c) of the Slums Act defines ? Competent Authority? to mean a person or body appointed to be Competent

Authority u/s 3 of the Slums Act. Section 3 of the Slums Act dealing with the appointment of Competent Authorities, as was then existing, is relevant and the same is reproduced below:

3. (1) The State Government may, by notification in the Official Gazette, appoint any person to be the Competent Authority for the purposes of the Act, for such area as may be specified in the notification.

(2) Where any body corporate (including a local authority) is appointed to the Competent Authority, then the powers and functions of the Competent Authority under this Act shall, subject to such restrictions and conditions as the Competent Authority may impose in this behalf, be exercised and performed on behalf of such body corporate--

(a) by the Municipal Commissioner or any office not below the rank of a City Engineer or Deputy Municipal Commissioner as may be specified by the Municipal Commissioner in this behalf, in the case of a Municipal Corporation constituted under any law for the time being in force;

(b) by the Chief Officer, in the case of a Municipal Council constituted under any law for the time being in force;

(c) by the Chairman of the Nagpur Improvement Trust (constituted under the Nagpur Improvement Trust Act, 1936), in the case of such Trust;

(d) by the Housing Commissioner or any officer not below the rank of Assistant Housing Commissioner specified by the Housing Commissioner in this behalf, in the case of a Housing Board constituted under any law for the time being in force.

7. Sub-section (1) of Section 3 above, empowers the State Government to appoint Competent Authority for the purposes of the Slums Act for such area, as may be specified in the notification. The State Government has issued notification dated 19-9-1972 appointing Competent Authority for the purposes of Slums Act. The said notification being relevant is reproduced below:

Urban Development, Public Health and Housing Department Sachivalaya, Bombay-32, dated 19th September 1972

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

760

No. SCA. 1671/72772-F-III.--In exercise of the powers conferred by sub-section (1) of section 3 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (Mah. XXVIII of 1971), the Government of Maharashtra hereby appoints--

(1) the Vidarbha Housing Board [constituted under the Madhya Pradesh Housing Board Act, 1950 read with the Madhya Pradesh Statutory Bodies (Regional Constitution) Act, 1956] for those areas in the City of Nagpur which consist of

lands belonging to the Government or the said Board;

(2) the Nagpur Improvement Trust (constituted under the Nagpur Improvement Trust Act, 1936) for those areas in the City of Nagpur which consist of lands belonging to the said Trust; and

(3) the Nagpur Municipal Corporation constituted under the City of Nagpur Corporation Act, 1948 (C.P. and Berar II of 1950), for all other areas in the City of Nagpur:

to be the Competent Authority for the purposes of the said Act.

By order and in the name of the Government of Maharashtra,

Government Notification, Urban Development, Public Health and Housing Department No. SCA.1671/ 72772-F-III, dated the 19th September 1972.

H.G. Phadnis, Deputy Secretary to Government.

Government Notification, Urban Development, Public Health and Housing Department No. SCA.1671/ 72772-F-III, dated the 19th September 1972. For the words "for the purposes of the said Act" the words "for the purposes of the said Act except Chapter III thereof shall be substituted."

8. By the aforesaid notification, the State Government has appointed three different authorities as the Competent Authorities within the meaning of Section 2(c) of the Slums Act for the purposes of the Slums Act for different areas. The Vidarbha Housing Board is appointed as the Competent Authority for those areas in the City of Nagpur, which consist of lands belonging to the Government or the said Board. The Nagpur Improvement Trust is appointed as the Competent Authority for those areas in the City of Nagpur, which consist of lands belonging to the said Trust, and the Nagpur Municipal Corporation has been appointed as the Competent Authority for all other areas in the City of Nagpur. These are the only three authorities competent to issue notification u/s 4(1) of the Slums Act, declaring area under their jurisdiction to be the slum area. It is only by virtue of the notification issued u/s 4(1) of the Slums Act by any of these authorities declaring any area to be the slum area, the provisions of the Slums Act would become applicable and the provisions of Section 22 of the Slums Act regarding obtaining of previous permission in writing of the Competent Authority would be attracted for execution of the decree.

9. The notification in question dated 29-11-1979 has been issued under sub-section (1) of Section 108 of the MHADA Act by the Chief Officer, Nagpur Housing Area and Development Board. It has not been issued under sub-section (1) of Section 4 of the Slums Act. It has also not been issued either by the Vidarbha Housing Board, the Nagpur Improvement Trust, or the Nagpur Municipal Corporation, which are the Competent Authorities u/s 2(c) of the Slums Act appointed by the notification issued under sub-section (1) of Section 3 of the said Act. The Nagpur Housing and Area Development Board is not the Competent

Authority u/s 2(c) of the Slums Act appointed by the State Government by issuance of notification under sub-section (1) of Section 3 of the Slums Act. Hence, the provisions of Section 22 of the Slums Act would not be attracted in the present case.

10. Even assuming that the Nagpur Housing and Area Development Board was the successor-in-interest of the Vidarbha Housing and Area Development Board in respect of which the notification dated 19-9-1972 has been issued, then the further requirement, which is to be complied with, is to show that the notification dated 29-11-1979 has been issued by the Housing Commissioner or any Officer not below the rank of Assistant Housing Commissioner specified by the Housing Commissioner in that behalf under any law for the time being in force, as contemplated by clause (d) of sub-section (2) of Section 3 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The notification dated 29-11-1979 has been issued by the Chief Officer of the Nagpur Housing and Area Development Board. There is nothing on record to show that the Chief Officer of the Nagpur Housing and Area Development Board was the Housing Commissioner or the Officer not below the rank of the Assistant Housing Commissioner specified by the Housing Commissioner in that behalf. Hence, it cannot be said that the notification in question was issued by the Competent Authority u/s 3(2)(d) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971.

11. The reliance is placed by Shri Chandurkar for the petitioner on the judgment of this Court in *S.R. Ahmad v. Qazi Shahabuddin s/o Qazi Ikramuddin*, reported in 2004 (4) ALL MR 394, wherein the same notification dated 29-11-1979 issued u/s 108(1) of the Maharashtra Housing and Area Development Act, 1976 has been considered. In para 20 of the said judgment, the contention of the learned counsel for the appellant/trust that the provisions of Section 22 of the Slums Act, 1971 are not applicable to the suit plot covered by the notification dated 29-11-1979 was rejected and it was held that the suit premises fall within the notified slums improvement and hence in the absence of the permission from the Competent Authority, as required by Section 22 of the Slums Act, the decree was not executable. It was not the question as to whether the notification dated 29-11-1979 issued under sub-section (1) of Section 108 of the Maharashtra Housing and Area Development Act can be said to be the notification issued by the Competent Authority defined u/s 2(c) read with Section 3(2)(d) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, that was involved. Hence, the said judgment is of no help to the petitioner.

12. Shri Chandurkar for the petitioner has then relied upon the judgment of the Apex Court in *State of Bihar Vs. Kalika Kuer @ Kalika Singh and Others*, , to urge that though the earlier judgment of this Court in *S.R. Ahmad's* case, cited *supra*, may appear to be incorrect on the ground that the possible aspect of the matter was neither raised nor considered, but that would not make the said judgment *per incuriam*, and this Court is bound to follow the same. I have gone through

the judgment of the Apex Court in Kalika Kuer's case cited supra. The principles laid down in the said judgment cannot be disputed. However, in this case, I am not holding that the judgment in S.R. Ahmad's case is per incuriam. It is not the ratio of the judgment in S.R. Ahmad's case that the Nagpur Housing and Area Development Board is the Competent Authority u/s 2(c) read with Section 3(2) (d) of the Slums Act, though the finding is that the notification dated 29-11-1979 covers the area in question and the conclusion is that the decree for eviction and possession passed by the Trial Court is not sustainable in law in the absence of permission from the Competent Authority, as required by Section 22 of the Slums Act. Merely because notification in question covers the area in question, that by itself is not enough to hold that the provision of Section 22 of the Slums Act is attracted, when the competency to issue notification is challenged.

13. In fact, in the earlier judgment of this Court delivered in Civil Revision Application No. 539 of 1986 on 28-6-1990, it has been held that the notification dated 29-11-1979 has not been issued u/s 4 of the Slums Act and consequently the permission afforded to the occupiers in slum areas from eviction and distress warrants is not available. Undisputedly, there is no notification issued u/s 4(1) of the Slums Act by any of the Competent Authorities, as defined u/s 2(c) read with Section 3(2)(d) of the said Act. In view of this, the argument that the controversy is also covered by this judgment.

14. In view of above, no interference is called for in the impugned order dated 13-4-2011 passed by the Executing Court. The petition is, therefore, dismissed. Rule stands discharged. No order as to costs.

15. Shri Chandurkar for the petitioner prays for continuation of the interim order passed by this Court for a further period of four weeks.

Shri jaiswal for the respondents opposes the prayer and submits that if the undertaking is given to this Court that no third-party interest shall be created and the premises shall be vacated, then he has no objection for continuation of interim order for a further period of four weeks.

Shri Chandurkar for the petitioner makes a statement that the petitioner shall not create any third-party interest for a period of four weeks from today.

16. In view of this, the interim order granted by this Court shall continue for a period of four weeks and after expiry of the period, the said interim order shall stand automatically vacated without reference to the Court.