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**(2017) 09 BOM CK 0149**

**In the Bombay High Court**

**Case No :** 19108 of 2017 WITH CIVIL APPLICATION No 1905 of 2017

Manohar Dattatray Rajopadhye

APPELLANT

Vs

Vaibhav Development Corporation, & Ors.

RESPONDENT

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**Date of Decision :** 12-09-2017

**Acts Referred:**

[Code of Civil Procedure, 1908](#), [Order 7 Rule 11](#) & [Order 7 Rule 11\(d\)](#)

**Citation :** (2017) 09 BOM CK 0149

**Hon'ble Judges :** Mridula Bhatkar

**Bench :** SINGLE BENCH

**Advocate :** Pradeep J. Thorat, Aditi Naikare, Niranjana A. Mogre

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**Judgement**

1. Admit. By consent, the First Appeal is heard finally and decided at the stage of admission, as short law point is involved.
2. This First Appeal is directed against the judgment and decree dated 6th June, 2016 passed by the learned Judge of the City Civil Court, Dindoshi, Mumbai in L.C. Suit No. 3255 of 2015 thereby rejecting the said suit on the ground of maintainability under Order VII Rule 11(d) of the Code of Civil Procedure. The appellant/plaintiff has filed the suit for simplicitor injunction that the respondents/defendant nos. 1 to 4 shall not interfere with the possession of the plaintiff and the occupants through the plaintiff and not to prevent the entry of the plaintiff and the occupants from entering into the suit land, i.e., Survey no. 101 corresponding to CTS No. 778 and 777B, Survey No. 99, Hissa No. 1 corresponding to CTS No. 664 and Survey No. 99, Hissa No. 2 corresponding to CTS No. 663, 665 part, 666 and 667 of village Ambivali in the area known as Santosh Niwas and Sai Niwas otherwise than due process of law.
3. It is the case of the appellant/plaintiff that he is the owner of the structures standing on the suit land and he let out the structures to nearly 180 tenants. The structures are standing prior to 1965. The defendant nos. 2 and 3 are the tenants of the plaintiff. Defendant no. 1 is claiming to be a builder and brought

by defendant nos. 2 and 3 for the purpose of development of the suit property. In fact, 90% of the tenants have given consent in favour of the plaintiff to take steps for redevelopment of suit property, but the defendants are threatening them and the plaintiff. On 9th November, 2015, higher links of the respondents/defendants started forcibly asking the tenants to sign certain papers and therefore, the appellant/plaintiff was compelled to file the suit for injunction. After notice, the defendants appeared. They filed their written statement and raised the issue of maintainability mainly on the ground that the plaintiff is a slum lord. The suit area is declared as slum by the Government Notification and therefore, no suit can be entertained by the Civil Court to obtain any such orders in respect of implementation of the scheme. The short point of determination involved in the Appeal as -

"Whether the order passed by the trial Court rejecting the plaint under Order VII Rule 11(d) that the suit is barred under section 42 of the Maharashtra Slum Areas (Improvement, Clearance and Re-development) (Amendment) Act, 2003 (hereinafter referred to as "the Act") is illegal and wrong"

4. The learned counsel for the appellant has submitted that in the plaint, the appellant/plaintiff is not asking any relief against the authority working under the Act. He seeks relief against the private parties who are threatening him and compelling the tenants to sign the papers in favour of defendant no. 1/developer. He submitted that the plaintiff may lose his case on merits, however, the suit itself is not barred under section 42 of the Act. He submitted that the averments in the plaint and the relief prayed in the plaint cannot be covered within the ambit of section 42 of the Act. In support of his submissions, the learned counsel relied on the judgement of the Single Judge of this Court in the case of Qari Mohammad Zakir Hussain & Ors. vs. Municipal Corporation of Greater Mumbai & Ors., reported in 2002(2) Bom. C.R. 98. The learned counsel for the appellant has submitted that whether the area is declared slum or not is irrelevant, as the appellant seeks some other relief than that under the Slum Act.

5. Per contra, the learned counsel for the respondent has submitted that the plaintiff has suppressed the fact that the suit area is declared as slum by the Government Notification. The defendants, who are the occupiers in the slum have decided who should be their developer, however, the plaintiff being the slum lord, is trying to obstruct this process and therefore, he has not come to the Court with clean hands and his action in fact is a back door entry to frustrate the scheme of redevelopment under the Act and thus he supported the order passed by the trial Court.

6. Heard the submissions. The entire issue revolve around the interpretation of Section 42 of the Act. Section 42 reads as thus-

"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 Administrator, Competent

Authority 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."

7. In the case of Qari Mohammad (*supra*), the Single Judge of this Court while dealing with section 42 of the Act has held that:

"It is also well settled that even if the jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into the issues where the provisions of the Act have not been complied with, or statutory Tribunal has not acted in conformity with the fundamental judicial procedure."

It further held that :

"Applying the said principle to the present case, and more particularly on reading the plaint as a whole, it would be seen that necessary assertions have been made in the plaint in various paragraphs from paragraphs 13 to 36. The plaintiffs have given circumstances on the basis of which they have reasons to complain that the offending act of the authorities was obviously committed in connivance with respondents Nos. 5 to 8 so as to unduly favour the said respondents. The assertions, therefore made in the plaint are that the act done or intended to be done was clearly in transgression of the provisions of the Act of 1971. Such being the position, it would be incomprehensible that such a plaint ought to be returned being barred by section 42 of the Act."

8. The ratio laid down in the case of Qari Mohammad that any action if taken mala fide under the Act can be challenged before the Civil Court and there is no bar under section 42 of the Act to taking away the jurisdiction of the Civil Court. However, in the case of Qari Mohammad, the appellant/plaintiff has filed the suit wherein he has claimed that his several request for redevelopment and construction of tenements were turned down without indicating any reason by the respondent/Corporation and they allotted the land to respondent nos. 5, 6 and 7 for development of the Society unilaterally. Thus, allegation was made by the appellant/plaintiff of the collusion between the respondent and the authority and therefore as action alleged to be mala fide, so it was held that the Civil Court is having the jurisdiction. In the matter in hand, the suit is not filed against the authority. It is filed only against the private parties.

9. It is useful to reproduce the relevant portion from Section 42 to make the position clear:

"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".

10. This part of section 42 includes three different propositions, hence for correct grasp and better understanding of the statute, they are to be read as follows:

Firstly, there should be conferment of power under or by that Act;

Secondly, the action is to be taken or to be taken in pursuance to that power;

Thirdly, no injunction shall be granted by any Court or other authority in respect of that action.

11. Thus, all these three ingredients should be present to attract section 42 of the Act. The action necessarily to be taken in pursuance to the conferment of the power by or under the Act. For the action otherwise taken under the Act, bar of not granting injunction by the Court will not be applicable. Thus, the power is conferred under the Act either to some person or to some authority. The power also can be delegated by such authority to some person. In the present case, the defendants are trying to obtain the consent letters from the slum dwellers as a step towards redevelopment. This activity to mobilize the slum dwellers undoubtedly done to take the scheme of redevelopment of the slum ahead with the requisite consent of 70% of the slum dwellers. For want of requisite consent, the development cannot proceed and the developer cannot be appointed. However, this act of giving sanction or collecting the sanction is not done under the conferment of power under the Act. It is a voluntary act taken over by slum dwellers or under the leadership of some slum dwellers as they all should come together and should take steps to get the redevelopment materialized. Thus, the steps taken otherwise without pursuance of conferment of powers to facilitate the redevelopment or the steps taken to frustrate the redevelopment either cannot be covered under section 42 of the Act. The plaintiff being a slumlord, assumed is trying to puncture the process of appointment of developer and redevelopment by the slum dwellers, with a fear that he may lose his hold over his property and, therefore, he has filed the suit. The trial Court while dealing with the prayer of injunction will have to take into account the declaration of slum and the object of the Act and so also suppression of this material fact by the plaintiff, which has direct bearing on the merits of the case. Thus, the plaintiff may not be entitled to get any such order of injunction against the defendants, but this itself cannot be brought within the ambit of section 42 as no action is taken in pursuance of conferment of power under the act by the defendants. If a developer is appointed by an authority and if some steps are taken by the developer of demolition or eviction, then, that act definitely will attract section 42 of the Act as the developer is acting under the action taken in pursuance of power conferred by or under the Act. This is not the present case. Therefore, the order of the trial Court of rejecting the plaint under Order VII Rule 11(d) of the CPC is set aside. The trial Court to try and entertain the suit and decide the Notice of Motion on merits independently. The parties to appear before the trial Court on 26.9.2017.

12. First Appeal is disposed of accordingly.

13. In view of disposal of First Appeal, Civil Application is also accordingly disposed of.