

(2009) 01 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 3297 of 1993

Shashikant Narottam Lade, (Since deceased through his
L.Rs. Smt. Sheela Shashikant Lade and Others)

APPELLANT

Vs

Smt. Shankari B. Ajimal and Harbhajansingh B. Ajimal, (Heirs
and Legal representatives of deceased Bakshishsingh B.
Ajimal)

RESPONDENT

Date of Decision : 20-01-2009

Acts Referred:

Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 —
Section 4A

Citation : (2009) 2 MhLj 631

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

**Advocate : P.J. Thorat, V.A. Thorat and R.A. Thorat, for the Appellant;
Harbhajansingh B. Ajimal, Respondent No. 2, for the Respondent**

Judgement

Anoop V. Mohta, J.—The Petitioners who are legal heirs of Original Tenant, have challenged the impugned Judgment and Order whereby the Appellate Court by reversing the trial Court Judgment and Order, granted decree of eviction in favour of the Respondent's legal heirs of the original landlord.

2. The reasoning given by the Appellate Court is based upon the material available on record including the evidence which need no interference, as the Appellate Court right in holding that the Original tenant was defaulter and not ready and willing to pay the rent, though demanded by a statutory notice dated 1st April, 1976. The trial Court was wrong in holding that there was no proper service of the notice, though held that he was in arrears of rent of suit premises from 1st October, 1975. The Respondents / Landlords had sent notices including of his advocate. The notices were sent by registered post acknowledgement due and a copy was sent under certificate of posting also, apart from ordinary post. The notice was also pasted on the outer door of the suit premises. The registered packet received back with the postal remark "not claimed". All those notices and

postal endorsements are also part of the record and exhibited collectively. The Respondents- Landlords, therefore, had taken all possible steps and methods to serve the notice. In the facts and circumstances, as there is no contrary material on record except mere denial, I am of the view that the notice was duly served. I have already taken such view in the matter of same Respondents against other similarly situated tenant. Krishna Ramchandra Jadhav " Yadav, Rajesh K. Jadhav " Yadav, Sachin K. Jadhav " Yadav and Bharat K. Jadhav " Yadav Vs. Smt. Shankari B. Ajimal, . On this aspect, there is no much difference in the present case. The Judgment, therefore, relied by the learned Counsel appearing for the Petitioners in Parvatibai Maruti Hande v. Satish Mohanram Prajapati 2002 (Supp.) Bom.C.R.522 and Lalmani Ramnath Tiwari Vs. Bhimrao Govind Pawar, , have no merit because of its distinct and distinguishable facts itself. In the present case, I see there is no reason to interfere with the Judgment and Order passed by the Appellate Court whereby it is held that the notice is duly served. There is no perversity or illegality in deciding the same.

3. Having once held that the notice was duly served and as admittedly the Petitioners / Tenant not paid the arrears and never intended to pay the same inspite of service of notice and as there is no dispute with regard to the arrears of rent, the grant of decree of eviction on the ground of default and arrears of rent must followed. The Appellate Court, therefore, right in granting the said decree on that ground.

4. The Petitioners failed to prove that the Suit Premises is situated on the Government land and falls within the ambit of Maharashtra Slum Area (Improvement Clearance Redevelopment) Act, 1971. (for short, "Maharashtra Slum Area Act"). The burden lies upon the Petitioners / tenants to prove, if they wanted the protection, of which in the present case they failed to do so. There is evidence of a witness from the Competent Authority including certificate from Deputy Collector, Encroachment to show that C.T.S. No. 354/103 to 106 are not covered u/s 4A of the Maharashtra Slum Area Act and therefore, the premises in question is not entitled for any protection as prayed.

5. Taking all this into account, I see there is no reason to interfere with the impugned Order of decree of eviction as passed. The Petition is, therefore, dismissed.

6. The stay of decree of possession as granted by this Court is also stand vacated. Rule discharged. No order as to costs.

7. The learned Counsel appearing for the Petitioners seek stay of this judgment for eight weeks. I am inclined to grant the same on the condition of not creating any third party right or interest in the property and to deposit arrears of rent, if any.