

# **Kumud W/O Mahadeorao Slunke vs Shri Pandurang Narayan Gandhewar ... on 10 May, 2019**

**Author: Uday Umesh Lalit**

**Bench: Indu Malhotra, Uday Umesh Lalit**

Civil Appeal No. \_\_\_\_ of 2019 @ SLP(C) No. 10469 of 2016  
Kumud w/o Mahadeorao Salunke vs. Shri Pandurang  
Narayan Gandhewar Through Lrs. & Ors.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4873\_\_\_\_ OF 2019  
(Arising out of SLP(C) No.10469 of 2015)

KUMUD W/O MAHADEORAO SALUNKE

...Appellant

VERSUS

SHRI PANDURANG NARAYAN GANDHEWAR  
THROUGH LRS. & ORS.

...Respondent

JUDGMENT

Uday Umesh Lalit, J.

1. Leave granted.
2. This appeal arises out of Judgment and Order dated 19.06.2014 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur in Writ Petition No.2199 of 2003.
3. The appellant, landlord of the premises in question sought permission of the Rent Controller under the provisions of C.P. and Berar Letting of Houses and Rent Control Order, 1949 seeking eviction of the respondent on the grounds that he bona fide required defaulter in paying rent to the appellant. After the Rent Reason:

controller granted the permission, the appellant terminated the Civil Appeal NO. \_\_\_\_ of 2019 @ SLP(C) No. 10469 of 2016 Kumud w/o Mahadeorao Salunke vs. Shri

Pandurang Narayan Gandhewar Through Lrs. & Ors.

tenancy by issuing notice under Section 108 of the Transfer of Property Act, 1982. Thereafter, he filed Civil Suit No.334 of 1996 seeking eviction of the respondent. However, an objection was taken by the respondent that the premises were governed by the Maharashtra Slum Areas (Improvement, clearance and Re-development) Act, 1971 (hereinafter referred to as, 'the Act') and as such the requisite permission of the Slum Authority under Section 22 had to be obtained. The suit was therefore withdrawn by the appellant, and application was preferred by him before the Slum Authority seeking required permission.

4. The Slum Authority vide its order dated 28.11.2000 granted the permission. In an appeal arising therefrom, an order of remand was passed by the Appellate Authority. The matter was gone into by the Slum Authority afresh and by its order dated 30.05.2002 the permission was granted to the appellant to file the suit for eviction. The appeal preferred by the respondent challenging the order passed by the Slum Authority was dismissed by the Appellate Authority on 31.10.2002 after giving opportunity to the parties and after scrutinising the material on record. While considering the submission made on behalf of the respondent as regards alternative accommodation, it was observed by the Appellate Authority as under:

"5-4. U/s 22 (4) of Maharashtra Slum (Improvement & Re-development) Act, 1971 the competent authority should have seen that whether the alternative accommodation is available to the occupied within his means it does not mean that the competent Authority should search the accommodation. The wife of appellant as in service in mentioned in para 15 Civil Appeal NO. \_\_\_\_\_ of 2019 @ SLP(C) No. 10469 of 2016 Kumud w/o Mahadeorao Salunke vs. Shri Pandurang Narayan Gandhewar Through Lrs. & Ors.

of written notes of arguments. Under the circumstances whether alternative accommodation is available and can be made available, the burden of proof lies with the appellant.

However, the appellant failed to prove the same and hence there is no substance in the point.

6. On the basis of above discussion and verifying the record of lower court and provisions of Maharashtra Slum (Improvement & Re-development) Act, 1971, therefore I come to the conclusion that no substantial proof is presented by the appellant to interfere with the finding of lower court & hence I pass the following order.

**ORDER** The appeal is rejected and the order passed by lower court dt.30th May, 2002 is confirmed."

5. Having secured the permission from the Slum Authority, Civil Suit No.113 of 2003 was filed by the appellant seeking decree of eviction of the respondent. The suit was however dismissed by the Trial Court on 27.09.2007. Regular Civil Appeal No.444 of 2007 arising therefrom was allowed by the Appellate Court and by its judgment and order dated 17.08.2010 it passed decree for eviction of

the respondent and also passed order as regards payment of arrears. It is undisputed that the decree passed by the Appellate Court was not challenged in any manner and has attained finality.

6. In the meantime, Writ Petition No.2199 of 2003 was filed by the respondent challenging the permission granted by the Slum Authority as confirmed by the Appellate Authority vide its order dated 31.10.2002. This Writ Petition was allowed by the High Court by its judgment and order dated 19.06.2014. It was observed that the Slum Authority had not considered the relevant factors Civil Appeal NO. \_\_\_\_\_ of 2019 @ SLP(C) No. 10469 of 2016 Kumud w/o Mahadeorao Salunke vs. Shri Pandurang Narayan Gandhewar Through Lrs. & Ors.

enumerated in Clauses (a) to (c) of Section 22(4) of the Slum Act, 1971 and consideration of those factors by the Appellate Authority would not legalize the absence of such consideration by the competent authority. It was observed as under:-

“7. In the present case, it is undisputed that the competent authority has not applied its mind and has not taken into consideration the relevant factors enumerated in clause (a) to (c) of section 22(4) of the Slum Act, 1971. The consideration of these factors by the appellate authority does not legalize the order passed by the competent authority. It is settled law that if anything has to be done according to the provisions of law, then it should be done in that manner only. The competent authority has passed the cryptic order. The appellate order cannot substitute its reasoning to legalize the order passed by the fact-finding authority.” With this view, the writ petition was allowed and the matter was again remitted to the authority for inquiry.

7. We heard Dr. A. Rajeev B. Masodkar, learned Advocate in support of the appeal and Mr. Kishor Lambat, learned Advocate for the respondents.

8. In Vidarbha part of the State of Maharashtra, before the enactment of Maharashtra Rent Control Act, 1989, there had to be two rounds of litigation to seek eviction of a tenant. The first round had to be before the Rent Controller seeking permission to issue a quit notice under Section 108 of the Transfer of Property Act. If such permission was granted, then only the landlord could issue a notice of termination of tenancy and file a civil suit seeking eviction of a tenant. In the present case the first round Civil Appeal NO. \_\_\_\_\_ of 2019 @ SLP(C) No. 10469 of 2016 Kumud w/o Mahadeorao Salunke vs. Shri Pandurang Narayan Gandhewar Through Lrs. & Ors.

before the Rent Controller was gone into. Bona fide need as a ground for eviction may, in a given case, have an additional facet of comparative hardship and whether the tenant has any alternative accommodation or not. In any case, the matter had attained finality. The permission was granted by the Rent Controller and the civil suit was filed only thereafter in which an objection was taken that the premises being governed by the provisions of the Act, the requisite permission of the Slum Authority was mandatory.

9. In the proceedings so initiated the Slum Authority granted that permission. The matter was carried in appeal and the issue whether the requirements under Section 22(4) of the Act stood

satisfied or not was also considered by the Appellate Authority.

It must also be noted that the Civil Suit seeking eviction also attained finality.

10. In the circumstances, the view that weighed with the High Court was not correct. The respondent had opportunity at every stage to present his case and whether the requirements of Section 22(4) of the Act stood satisfied or not was a matter which was dealt with by the Appellate Authority in sufficient detail. In the circumstances there was no reason for the High Court to interfere in its jurisdiction under Article 227 of the Constitution of India.

11. We, therefore, allow this appeal, set aside the judgment and Civil Appeal NO. \_\_\_\_ of 2019 @ SLP(C) No. 10469 of 2016 Kumud w/o Mahadeorao Salunke vs. Shri Pandurang Narayan Gandhewar Through Lrs. & Ors.

order dated 19.06.2014 passed by the High Court in Writ Petition No.2199 of 2003 and restore the order dated 31.10.2002 passed by the Appellate Authority.

12. This appeal stands allowed. No order as to costs.

.....J. (Uday Umesh Lalit) .....J. (Indu Malhotra) New Delhi;

May 10, 2019.