

LAXMI RAM PAWAR

v.

SITABAI BALU DHOTRE & ANR.
(Civil Appeal No. 2789 of 2005)

DECEMBER 1, 2010

[AFTAB ALAM AND R.M. LODHA, JJ.]

Maharashtra Slum areas (Improvement, Clearance and Redevelopment) Act, 1971:

ss. 4 and 2(e)(v) – ‘Slum area’ – ‘Occupier’ – ‘Trespasser’ – HELD: ‘Occupier’ as defined in Clause (v) of s.2(e) includes any person who is liable to pay to the owner damages for use and occupation of any land or building and would take within its fold and sweep a trespasser since such person is not only liable for damages for an act of trespass, but also liable to pay damages for use and occupation of land or building trespassed by him – It is immaterial whether damages for use and occupation are, in fact, claimed or not.

ss. 4, 2(e)(v) and 22(1)(a) – ‘Slum area’ – ‘Occupier’ – Suit for eviction of trespasser – Prior permission of competent authority – HELD: Before initiation of any suit or proceedings for eviction of a trespasser who is ‘occupier’ within the meaning of s.2(e)(v), the written permission of the Competent Authority u/s 22(1)(a) is mandatorily required – In the instant case, though the ‘occupier’ is a trespasser, but the suit for her eviction was not maintainable for want of written permission of the competent Authority and was rightly dismissed by the trial court.

Words and Phrases:

‘Trespass’ – ‘Trespasser’ – Connotation of.

Plaintiff-respondent no. 1 filed a suit against the

A defendant-appellant and respondent no. 2, the Executive
Engineer of the State Electricity Board, for declaration,
possession and permanent injunction in respect of a
room admeasuring 8' x 10' (the subject room) situate in
the city of Pune. Her case was that she constructed the
subject room in 1987, got electricity connection in her
name, was paying taxes to the Municipal Corporation and
had the photopass in her name; that she permitted her
friend, the appellant, to stay temporarily in the subject
room and when she was asked to vacate it, she refused
denying the right of the plaintiff. It was stated that the
defendant was neither a tenant nor a licensee but a
trespasser and had no right to remain in possession of
the subject room. The defendant-appellant contested the
suit stating that she had the photopass for the subject
room. She denied the room to have been constructed in
1987 and her status of a trespasser. She claimed that the
subject room was situate in the slum area declared under
the Maharashtra Slum Areas (Improvement, Clearance
and Redevelopment) Act, 1971 and the suit was not
maintainable without the written permission of the
Competent Authority in view of the prohibition contained
in s. 22(1)(a) of the Act. The trial court accepted the title
of the plaintiff over the subject room, but dismissed the
suit holding that the suit without permission of the
Competent Authority was not maintainable. On plaintiff's
appeal, the first appellate court decreed the suit holding
that as the defendant was a trespasser, the permission
of the Competent Authority was not necessary. The
second appeal of the defendant having been dismissed
by the High Court *in limine*, she filed the appeal.

G The question for consideration before the Court
was: "is a trespasser covered by the definition of
'occupier' in s. 2(e)(v) of the Maharashtra Slum Areas
(Improvement, Clearance and Redevelopment) Act, 1971"

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and if yes, "whether for his eviction from the land or building in a declared slum area, the written permission of the Competent Authority u/s 22(1)(a) of the 1971 Act is mandatorily required." A

Allowing the appeal, the Court B

HELD:

1.1 A 'trespass' is an unlawful interference with one's person, property or rights. With reference to property, it is a wrongful invasion of another's possession. [para 10] C
[194-F-G]

Words and Phrases, Permanent Edition (West Publishing Company), pages 108 and 115; Black's Law Dictionary (Sixth Edition), 1990, page 1504; Halsbury's Laws of England; Volume 45 (Fourth Edition), page 631 – referred to. D

1.2 The definition of 'occupier' in s. 2(e) of the Maharashtra Slum areas (Improvement, Clearance and Redevelopment) Act, 1971 is not exhaustive but inclusive. Clause (v) that reads, 'occupier', includes 'any person who is liable to pay to the owner damages for the use and occupation of any land or building' would surely take within its fold and sweep a trespasser since such person is not only liable for damages for an act of trespass but also liable to pay to the owner damages for the use and occupation of any land or building trespassed by him. It is immaterial whether damages for the use and occupation are in fact claimed or not by the owner in an action against the trespasser. Clause (v), includes a person who enters the land or building in possession of another with permission or consent but remains upon such land or building after such permission or consent has been revoked since after revocation of permission or consent, he is liable to pay damages for unauthorised use of land or building. The H

- A first appellate court relied upon *Shanker Dagadu Bakade's* case which has already been overruled in *Taj Mohamed Yakub* and distinguished the latter on superficial reasoning without properly appreciating the statement of law expounded therein. The High Court failed to notice such grave error in the judgment of the first appellate court. [para 15] [198-B-G; 199-A-B]

Taj Mohamed Yakub vs. Abdul Gani Bhikan (1991) Mh L J 263 – approved.

- C *Shankar Dagadu Bakade and Ors. vs. Bajirao Balaji Darwatkar 1990(2) Bom CR 38 – stood overruled.*

2.1 Once it is held that a trespasser is included in the definition of 'occupier' in s. 2(e)(v) of the 1971 Act, what necessarily follows is that before initiation of any suit or proceeding for eviction of such trespasser, the previous written permission of the Competent Authority is required as mandated by s. 22(1). Section 22(1) starts with *non obstante* clause and it is clear from the provision contained in clause (a) thereof that no person shall institute any suit or proceeding for obtaining any decree or order for eviction of the occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier or for both without the previous written permission of the Competent Authority. The use of words 'no' and 'shall' in sub-s. (1) of s. 22 makes it abundantly clear that prior written permission of the Competent Authority for an action under clause (a) thereof is mandatorily required and is a must. The role of the Competent Authority under the 1971 Act is extremely important as the legislature has conferred power on him to carry out execution of works in improvement of the slum. These provisions contained in s. 22 are salutary in light of the scheme of 1971 Act and have to be followed. [para 16] [199-B-H]

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2.2 In the instant case, respondent no.1 set up the case in the plaint that the appellant was a trespasser in the subject room. The first appellate court has also recorded a categorical finding, which has not been disturbed by the High Court, that the appellant was occupying the subject room as trespasser. In the circumstances, the suit was clearly not maintainable for want of written permission from the Competent Authority and was rightly dismissed by the trial court. [para 17] [200-C]

2.3 The judgment of the High Court affirming the judgment of the first appellate court is set aside. The suit filed by respondent no.1 stands dismissed. However, this will not preclude respondent no.1 from instituting fresh suit or proceeding for eviction against the appellant after obtaining necessary written permission from the Competent Authority. [para 18] [200-D-E]

Case Law Reference:

(1991) Mh L J 263 approved para 15

1990(2) Bom CR 38 stood overruled para 15

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2789 of 2005.

From the Judgment & Order dated 20.09.2004 of the High Court of Judicature at Bombay in Second Appeal No. 1125 of 2004.

Ravindra Keshavrao Adsure for the Appellant.

Punam Kumari for the Respondents.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. The decision in this appeal, in our opinion, turns upon the answer to the following question : is a

- A trespasser covered by the definition of 'occupier' in Section 2(e)(v) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short, 'the 1971 Act') and if yes, whether for his eviction from the land or building in a declared slum area, the written permission of the Competent Authority under Section 22(1)(a) of the 1971 Act is mandatorily required.

2. The aforesaid question arises in this way. The first respondent—Sitabai Balu Dhotre filed a suit for declaration, possession and permanent injunction in respect of a room admeasuring 8 x 10 ft. situate in Survey No. 1001, Wadarwadi bearing Hut No. 12/161/B/P/424, Taluka Haveli, Pune (for short, 'subject room') against the appellant—Laxmi Ram Pawar and the second respondent—the Executive Engineer, Shivajinagar, Sub Division, Maharashtra State Electricity Board, Pune in the Court of 10th Joint Civil Judge, Junior Division, Pune. The case set up by the first respondent was that the subject room was constructed by her in 1987; she got electricity connection in her name and has been paying taxes to the Pune Municipal Corporation. She claimed that she was having photopass in her name. According to her, she permitted the appellant being her friend to stay temporarily for two months in the subject room as she (appellant) was not having any shelter to live in. After expiry of two months, the first respondent asked the appellant to vacate the subject room but she requested the first respondent to allow her to stay in that room for some more time as she was arranging for some alternative accommodation but later on, the appellant denied the first respondent's right in the subject room necessitating the legal proceedings against her. The first respondent averred that the appellant was neither tenant nor licensee but a trespasser and has no right to remain in possession of the subject room.

3. The appellant traversed the first respondent's claim and set up the case in the written statement that the subject room was constructed by her in 1987 and she was holding a

photopass for the said room. She denied that she was a trespasser. She set up a plea that subject room was situate in the slum area declared under the 1971 Act and the suit filed by the first respondent was not maintainable without written permission of the Competent Authority in view of the prohibition contained in Section 22(1)(a) of that Act.

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4. On the basis of the pleadings of the parties, the trial court framed the following issues :

- “1. Does plaintiff prove that he has title over the hutment bearing No. 12/261/B/P/424 situated at S.No. 1001 Wadarwadi, Shivajinagar, Pune?
2. Does plaintiff further prove that defendant No. 1 is residing in the said hutment?
3. Does plaintiff further prove that defendants are trying to cut off the electric supply from the electric meter No. 26540?
4. Whether the suit is tenable without permission of competent authority?
5. Is plaintiff entitled to claim possession of the suit hutment from defendant No. 1?
6. Is plaintiff entitled to claim permanent injunction as prayed for?
7. What order and decree?”

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5. After recording the evidence and hearing the parties, the trial court recorded its findings in the negative in respect of issue nos. 1,3,5 and 6 and in the affirmative with regard to issue no. 2. While dealing with issue no. 4, the trial court held that the suit without obtaining the written permission from the Competent Authority was not tenable. Accordingly, the trial court dismissed the suit on August 31, 2000.

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A 6. The first respondent challenged the judgment and decree passed by the trial court in appeal before the District Court, Pune which was transferred to the court of the 8th Additional District Judge, Pune for hearing and final disposal. The first appellate court reversed the findings of the trial court
B on issue nos. 1 and 4 and held that the suit filed by the first respondent was maintainable without the permission of the Competent Authority as she was a trespasser and in case of trespasser in occupation of slum area governed by the 1971 Act, the permission of the Competent Authority was not
C necessary. The first appellate court, thus, set aside the judgment and decree of the trial court and decreed the suit filed by the first respondent on July 30, 2004 and directed the appellant to deliver the possession of the subject room to the first respondent within 60 days therefrom.

D 7. Being not satisfied with the judgment and decree dated July 30, 2004 passed by the first appellate court, the appellant preferred second appeal before the High Court of Judicature at Bombay but without any success as the second appeal was dismissed *in limine* on September 20, 2004.

E 8. The answer to the question which has been framed by us at the outset has to be found in light of the statutory provisions contained in the 1971 Act. Section 2(e) of the 1971 Act defines 'occupier' as follows :

F "S.2(e) "occupier" indudes,-

(i) any person who for the time being is paying or is liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which such rent is paid or is payable;
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(ii) an owner in occupation of, or otherwise using, his land or building;

(iii) a rent-free tenant of any land or building;
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- (iv) a licensee in occupation of any land or building; and A
- (v) any person who is liable to pay to the owner damages for the use and occupation of any land or building;”

9. Section 3(1) empowers the State Government to appoint the Competent Authority for the purposes of the 1971 Act. Section 4 provides for declaration of slum area/s by the Competent Authority on its satisfaction to the aspects stated therein. Chapter VI of the 1971 Act deals with the subject titled 'Protection of Occupiers in Slum Areas from Eviction and Distress Warrants'. Section 22 which falls in Chapter VI to the extent it is relevant for the present appeal reads as follows : B C

“S.22. (1) Notwithstanding anything contained in any other law for the time being in force, no person shall except with the previous permission in writing of the Competent Authority— D

(a) institute, after commencement of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, any suit or proceeding for obtaining any decree or order for the eviction of an occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier, or for both; or E

..... F

(2) Every person desiring to obtain the permission referred to in sub-section (1).....shall make an application in writing to the Competent Authority in such form and containing such particulars as may be prescribed. G

(3) On receipt of such application. the Competent Authority, after giving an opportunity to the parties of being heard and after making such summary inquiry into the circumstances of the case as it thinks fit, shall, by order in writing, either grant or refuse to grant such permission. H

A (4) In granting or refusing to grant the permission under clause (a) or (b) of subsection (1), the Competent Authority shall take into account the following factors, namely :-

B (a) whether alternative accommodation within the means of the occupier would be available to him, if he were evicted;

(b) whether the eviction is in the interest of improvement and clearance of the slum area;

C (b-1) whether, having regard to the relevant circumstances of each case, the total amount of arrears of rent or compensation and the period for which it is due and the capacity of the occupier to pay the same, the occupier is ready and willing to pay the whole of the amount of arrears of rent or compensation by reasonable installments within a stipulated time;

D (c) any other factors, if any, as may be prescribed.
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E (5) Where the Competent Authority refuses to grant the permission under any of the clauses of sub-section (1) it shall record a brief statement of the reasons for such refusal, and furnish a copy thereof to the applicant."

F 10. A 'trespass' is an unlawful interference with one's person, property or rights. With reference to property, it is a wrongful invasion of another's possession. In Words and Phrases, Permanent Edition (West Publishing Company), pages 108, 109 and 115, in general, a 'trespasser' is described, inter alia, as follows:

G "A "trespasser" is a person who enters or remains upon land in the possession of another without a privilege to do so created by the possessor's consent or otherwise. In re Wimmer's Estate, 182 P.2d 119, 121, 111 Utah 444."
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"A "trespasser" is one entering or remaining on land in another's possession without a privilege to do so created by possessor's consent, express or implied, or by law. Keesecker v. G.M. Mckelvey Co., 42 N.E. 2d 223, 226, 227, 68 Ohio App. 505."

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"A "trespass" is a transgression or wrongful act, and in its most extensive signification includes every description of wrong, and a "trespasser" is one who does an unlawful act, or a lawful act in an unlawful manner, to the injury of the person or property of another. Carter v. Haynes, Tex., 269 S.W. 216, 220."

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11. In Black's Law Dictionary (Sixth Edition), 1990, page 1504, the term 'trespasser' is explained as follows :

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"Trespasser. One who has committed trespass. One who intentionally and without consent or privilege enters another's property. One who enters upon property of another without any right, lawful authority, or express or implied invitation, permission, or license, not in performance of any duties to owner, but merely for his own purpose, pleasure or convenience".

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12. In Halsbury's Laws of England; Volume 45 (Fourth Edition), pages 631-632, the following statement is made under the title 'What Constitutes Trespass to Land'.

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"Every unlawful entry by one person on land in the possession of another is a trespass for which an action lies, even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it or takes possession of it, or expels the person in possession, or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades

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A the airspace of another, or if he discharges water upon another's land, or sends filth or any injurious substance which has been collected by him on his own land onto another's land."

B In the same volume, page 634, under the title 'trespass ab initio', the legal position is stated thus :

C "If a person enters on the land of another under an authority given him by law, and, while there, abuses the authority by an act which amounts to a trespass, he becomes a trespasser ab initio, and may be sued as if his original entry were unlawful. Instances of an entry under the authority of the law are the entry of a customer into a common inn, of a reversioner to see if waste has been done, or of a commoner to see his cattle.

D To make a person a trespasser ab initio there must be a wrongful act committed; a mere nonfeasance is not enough."

E The aforesaid statement takes into consideration *the Six Carpenters' case*¹ wherein the general rule given is this, 'when entry, authority or licence is given to any one by the law, and he doth abuse it, he shall be a trespasser ab initio'.

F 13. In Law Lexicon, The Encyclopaedic Law Dictionary by P. Ramanatha Aiyar, 2nd Edition, Reprint 2000, page 1917, the word 'trespass' is explained by relying upon Tomlins Dictionary of Law Terms as follows:

G "Trespass, in its largest and most extensive sense, signifies any transgression or offence against the law of nature, of society, or the country in which we live; whether it relates to a man's person or his property. Therefore beating another is a trespass; for which an action of trespass in assault and battery will lie. Taking or detaining

H 1. (1610) 8 Co Rep 146.

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a man's goods are respectively trespasses, for which an
action of trespass on the case in trover and conversion, A
is given by the Law; so, also, non-performance of promises
or undertakings is a trespass, upon which an action of
Trespass on the case in assumesit is grounded: and, in
general, any misfeasance, or act of one man, whereby B
another is injuriously affected or damnified, is a
transgression, or trespass, in its largest sense; for which
an action will lie."

14. In Salmond on the Law of Torts, 17th Edition by R.F.V.
Heuston, 1977, page 41, the expression, 'Trespass by C
remaining on land' is explained in the following manner :

"Even a person who has lawfully entered on land in the
possession of another commits a trespass if he remains D
there after his right of entry has ceased. To refuse or omit
to leave the plaintiff's land or vehicle is as much a trespass
as to enter originally without right. Thus, any person who
is present by the leave and licence of the occupier may,
as a general rule, when the licence has been properly E
terminated, be sued or ejected as a trespasser, if after
request and after the lapse of a reasonable time he fails
to leave the premises."

Under the title 'Continuing Trespasses', page 42, it is
stated: F

"That trespass by way of personal entry is a continuing
injury, lasting as long as the personal presence of the
wrong doer, and giving rise to actions de die in diem so
long as it lasts, is sufficiently obvious. It is well-settled,
however, that the same characteristic belongs in law even G
to those trespasses which consist in placing things upon
the plaintiff's land. Such a trespass continues until it has
been abated by the removal of the thing which is thus
trespassing; successive actions will lie from day to day H
until it is so removed; and in each action damages (unless

A awarded in lieu of an injunction) are assessed only upto the date of the action. Whether this doctrine is either logical or convenient may be a question, but it has been repeatedly decided to be the law.”

B 15. Insofar as the definition of ‘occupier’ in Section 2(e) of the 1971 Act is concerned, it must be immediately stated that the said definition is not exhaustive but inclusive. Clauses (i) to (iv) of Section 2(e) definitely do not embrace within itself a trespasser but Clause (v) that reads, ‘occupier’ includes ‘any person who is liable to pay to the owner damages for the use and occupation of any land or building’ would surely take within its fold and sweep a trespasser since such person is not only liable for damages for an act of trespass but also liable to pay to the owner damages for the use and occupation of any land or building trespassed by him. It is immaterial whether damages for the use and occupation are in fact claimed or not by the owner in an action against the trespasser. By no stretch of imagination, a trespasser could be taken out of the definition of ‘occupier’ in Section 2(e)(v) of the 1971 Act. Clause (v), in our opinion, includes a person who enters the land or building in possession of another with permission or consent but remains upon such land or building after such permission or consent has been revoked since after revocation of permission or consent, he is liable to pay damages for unauthorised use of land or building. The Division Bench of the Bombay High Court in *Taj Mohamed Yakub v. Abdul Gani Bhikan*² has taken the view that a trespasser is included in the definition of ‘occupier’ under Section 2(e)(v) of the 1971 Act which, we hold, is the correct view. The contrary view taken by a Single Bench of the Bombay High Court in *Shankar Dagadu Bakade and Ors. v. Bajirao Balaji Darwatkar*³ is not right on this point and has rightly been overruled by the Division Bench in *Taj Mohamed Yakub*². Strangely, the first appellate court relied upon *Shankar Dagadu Bakade’s* case³ which has already been

2. (1991) Mh LJ 263.

H 3. 1990 (2) Bom CR 38.

overruled in *Taj Mohamed Yakub*² and distinguished *Taj Mohamed Yakub*² on superficial reasoning without properly appreciating the statement of law expounded therein. The High Court, unfortunately, failed to notice such grave error in the judgment of the first appellate court.

16. Once it is held that a trespasser is included in the definition of 'occupier' in Section 2(e)(v) of the 1971 Act, what necessarily follows is that before initiation of any suit or proceeding for eviction of such trespasser, the previous written permission of the Competent Authority is required as mandated by Section 22(1). Section 22(1) starts with *non obstante* clause and it is clear from the provision contained in clause (a) thereof that no person shall institute any suit or proceeding for obtaining any decree or order for eviction of the occupier from any building or land in a slum area or for recovery of any arrears of rent or compensation from any such occupier or for both without the previous written permission of the Competent Authority. The use of words 'no' and 'shall' in sub-section (1) of Section 22 makes it abundantly clear that prior written permission of the Competent Authority for an action under clause (a) thereof is a must. The role of the Competent Authority under the 1971 Act is extremely important as the legislature has conferred power on him to carry out execution of works in improvement of the slum. Sub-Section (2) of Section 22 requires the person desiring to obtain the permission to make an application in writing to the Competent Authority. As per sub-section (3) on receipt of such application, the Competent Authority by an order in writing may either grant or refuse to grant such permission after giving an opportunity to the parties of being heard and after making such summary enquiries into the circumstances of the case as it thinks fit. Sub-section (4) of Section 22 requires the Competent Authority to take into account the factors set out therein for granting or refusing the permission. These provisions contained in Section 22 are salutary in light of the scheme of 1971 Act and have to be followed. It has to be held, therefore, that for eviction of a

A trespasser who is 'occupier' within the meaning of Section 2(e)(v) of 1971 Act from the land or building or any part thereof in a declared slum area, the written permission of the Competent Authority under Section 22(1)(a) is mandatorily required.

B 17. Insofar as present case is concerned, the first respondent set up the case in the plaint that the appellant was a trespasser in the subject room. The first appellate court has also recorded a categorical finding, which has not been disturbed by the High Court, that the appellant was occupying the subject room as trespasser. In the circumstances, the suit was clearly not maintainable for want of written permission from the Competent Authority and was rightly dismissed by the trial court.

D 18. In view of the above, the appeal is allowed; the judgment of the High Court dated September 20, 2004 affirming the judgment of the 8th Additional District Judge dated July 30, 2004 is set aside. The suit filed by the first respondent stands dismissed. However, this will not preclude the first respondent in instituting fresh suit or proceeding for eviction against the appellant after obtaining necessary written permission from the Competent Authority. The parties shall bear their own costs.

R.P.

Appeal allowed.