

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.125 OF 2020
WITH
CIVIL APPLICATION NO.113 OF 2020**

The Pune Municipal Corporation
Pune Municipal Corporation Building,
Shivajinagar, Pune 411 005.

...Appellant

V/s.

1. Yeshwant Sadashiv Gaikwad
(Since deceased through Legal Heirs)
- 1(a) Smt.Kusum Yeshwant Gaikwad
- 1(b) Shri Udaysinh Yeshwant Gaikwad
- 1(c) Shri Pradeepsinh Yeshwant Gaikwad

All R/at 53/E, Pune Municipal Corporation,
Sevak Society, Hanumannagar,
943, Shivajinagar, Pune – 411 016.

2. Shri Ujwalsinh Yeshwant Gaikwad
R/at 53/E, Pune Municipal Corporation,
Sevak Society, Hanumannagar,
943, Shivajinagar, Pune – 411 016.

3. Shri Madhukar Tukaram Gosavi
R/at: Survey No.25/3/1, Village Vitthalwadi,
Hingane Khurd, Sinhgad Road,
Taluka Haveli, Pune 411051.

4. Shri Rahul Madhukar Gosavi
R/at: Survey No.25/3/1,
Village Vitthalwadi, Hingane Khurd,
Sinhgad Road, Taluka Haveli,
Dist. Pune 411 051.

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5. M/s. Kavathekar Argade and Co.
Its office at 228, Aandashram,
Hingane Khurd, Vitthalwadi,
Pune 411 051.
6. Shri Vijay Hari Argade
r/at: 228, Aandashram, Hingane Khurd,
Hingane Khurd, Vitthalwadi,
Pune 411 051.
7. Shri Padmakar Narayan Kavathekar
R/at: 228, Aandashram, Hingane Khurd,
Hingane Khurd, Vitthalwadi,
Pune 411 051.
8. M/s. Kavathekar and Sons
R/at: 228, Aandashram, Hingane Khurd,
Hingane Khurd, Vitthalwadi,
Pune 411 051.
9. Shri Vishnu Padmakar Kavathekar
R/at: 228, Aandashram, Hingane Khurd,
Hingane Khurd, Vitthalwadi,
Pune 411 051. ...Respondents

Mr.Rishikesh M. Pethe	Advocate for Appellant.
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CORAM : S. M. MODAK, J.

DATE : 17th OCTOBER 2025

ORAL JUDGMENT :

Heard learned Advocate Mr. Pethe at the admission stage.

2. The Court of Civil Judge Senior Division as per judgment dated 27th May 2015 has decreed the suit filed by present Respondent Nos.1(a) to 1(c) and by Respondent No.2. Suit was decreed partly and present Appellant-Pune Municipal Corporation is directed to pay a sum of Rs.16,91,602/- towards the damages. Present Respondent No.3 and 4 are owners of the plot whereas Respondent No.5 is the partnership firm of which Respondent Nos.6 and 7 are the Partners. Respondent No.8 is also the partnership firm of which Respondent No.9 is one of the Partner. The parties will be referred to as per their original status before the trial Court.

3. The Defendant Nos.2 to 8 being the builders have constructed a building on a plot of land bearing Survey No.25, Hissa No.3/1, corresponding to CTS No.2258 and 2259 at Taluka Haveli, District Pune. The original Plaintiffs have purchased the flats on 1st floor and 2nd floor vide the agreements dated 22nd February 1996 and 23rd December 1996 on paying necessary consideration. These agreements were duly registered. On this background, Plaintiffs contend that PMC has issued a notice of demolition dated 4th November 2004 under Section 478(1) of Bombay Provincial Municipal Corporations Act, 1949. The Plaintiffs apprehended that the building in which their flats are situated, will be demolished and hence, they have filed the Civil Suit asking for several reliefs after

giving the pre-suit notice under Section 487 of Bombay Provincial Municipal Corporations (for short 'BPMC Act') Act, 1949 on 4th November 2004. Before filing of suit the Pune Municipal Corporation has demolished the building.

4. Pune Municipal Corporation contended that this building is unauthorized and constructed without obtaining permission and this building is coming in the road-line of the development plan. As the building was demolished, Plaintiffs sought for mandatory injunction so also claimed damages.

5. Pune Municipal Corporation contested the suit and their plea was that, the building was constructed without obtaining permission. Whereas, Plaintiffs' contention is that the building was constructed when the said area was not falling within the limits of Pune Municipal Corporation and in fact the area was included on 11th September 1997. According to the Plaintiffs, as such, the Corporation is not having right to demolish the said building. The second contention taken by the Pune Municipal Corporation is that the building is coming in the road-line of a development plan and as such, needs to be demolished. The other Defendants have not contested the suit. Some of them had filed written-statement but not given evidence and others have failed to appear inspite of service of the summons.

6. On behalf of the Plaintiffs one Pradeepsingh Yeshwant

Gaikwad has given evidence whereas on behalf of the Corporation, one Sudhir Kadam, Deputy Engineer and one Prassana Joshi, Executive Engineer have given evidence. Both the parties also relied upon the documentary evidence in the form of pre-suit correspondence and the plans.

Trial Court Judgment

7. The trial Court after appreciating the evidence concluded that, the building was not falling within the road-line of the development plan and as such, the demolition of the building by the Corporation was not legal. The trial Court has assessed the damages and directed the Corporation to pay a sum of Rs.16,91,602/-. Those findings are there in issue No.2 (Page-67).

Appellate Court

8. The Corporation challenged this Judgment by way of Regular Civil Appeal No.335/2016, however, fails to convince the Court. That is how their Appeal was dismissed on 28th June 2018. That is why present Appeal is filed on behalf of the Corporation.

Second Appeal

9. This Court will have to decide whether any substantial question of law is involved or not and whether there is a need to issue notice to the Respondents. The only point which Mr. Pethe, learned Advocate for the Appellant, raised is wrong appreciation by both the Courts below about the two maps which were produced

before the trial Court. One map i.e., an extract from Development Plan at Exhibit – 77 shows that the building is falling within the road-line whereas, the Plaintiffs relied upon the enlarged copy of the map and it is at Exhibit – 78. Both these maps were considered by both the Courts below and they came to conclusion that, the building is not falling within the road-line.

10. According to Mr. Pethe, learned Advocate, both the Courts below have not considered the difference between the extract produced by them and the enlarged copy of the map which is produced by the Plaintiffs while cross-examining the witness Sudhir Kadam who is examined by the Corporation. The relevant details find place in paragraph no.19 of his evidence. Learned Advocate Mr. Pethe has produced a copy of the paper book prepared during hearing of the First Appeal.

11. This is the only point which is raised while arguing this Appeal. Now it has to be seen whether truly speaking it can be considered as a substantial question of law because as contemplated under Section 100 of CPC, the Appeal can be admitted only if substantial question of law is involved. This phrase is interpreted in various judgments. When the findings are perverse, that is to say that they are arrived at without considering a piece of evidence and/or they are arrived at by considering a piece of evidence which cannot be considered as per the provisions of Indian Evidence Act. Merely because both the Courts below have taken one view, the

Appeal cannot be admitted just because second view is possible.

Findings of Appellate Court

12. With this view in mind, I have gone through the record. As said above, in respect of two grievances, the First Appellate Court has dealt with the grievance about the authority of the Corporation to issue notice under Section 478 of BPMC Act. The main issue was if the building is constructed earlier to that area is included in the Corporation, whether it can be demolished by taking recourse to the provisions of Section 478 of BPMC Act. The learned Appellate Court Judge negated the stand of the Corporation. He has placed reliance on the observations in case of *Ninad Sahakari Griha Rachana Sanstha Maryadit Pune v/s. Pune Municipal Corporation*¹.

13. The second contention raised by the Plaintiffs was about the provisions of the Gunthewari Act. Though Plaintiffs have applied for regularization, the said proposal was rejected by the Corporation. However, the Appellate Court held that the proper procedure was not followed while rejecting the proposal. The Application for regularization was rejected after the demolition was over. The relevant findings are there in paragraph no. 23 to 27.

14. The Appellate Court also considered the opinion given by the Legal Department of the Corporation specifying that there is a requirement of initiation of appropriate proceedings by taking

¹ 2012 (2) Mh.L.J. 665

recourse to the provisions of the Land Acquisition Act. The Appellate Court concluded “*the Commissioner instead of initiating the said proceedings, has taken recourse to the provisions of Section 478 or Section 260 of BPMC Act.*” The Appellate Court concluded that the Corporation has not followed the opinion of the Legal Department. The findings are there in paragraph no.22.

15. The findings on the point which is raised by Mr. Pethe find place in paragraph no.13 to 17. As said above, the two maps produced by both the parties were considered, they are as follows :-

- (1) Plan/Map at Exhibit -77 which was produced by the Corporation
- (2) Plan/Map at Exhibit – 78 which is the enlarged copy was relied upon by the Plaintiffs.

16. After appreciating evidence, the Appellate Court concluded:

“In the map at Exhibit – 77, black colored line i.e., the revenue survey boundary and red colour line i.e., the Development Plan road-line, with reference to the suit property appear to be overlapping.”

17. The Appellate Court further concluded

“However, in the map at Exhibit -78 which is the enlarged copy, it clearly indicates that the proposed

DP road stands out of and beyond the survey of the line of the suit property towards the west”.

18. Finally, the Appellate Court concluded:

“Therefore, the documentary evidence in the nature of such plan makes it clear that the suit property was not going to be affected by 36 meters wide DP road as per the draft Development Plan.”

19. Learned Advocate Mr. Pethe has emphasized on the aspect that if the plan is enlarged, what is displayed in the plan, is not the same thing which is there in the original plan. According to him, the Appellate Court overlooked the fact that due to the enlargement, the building was seen as falling outside the road-line of the Development Plan. It is submitted that if the extract at Exhibit – 77 could have been considered, it is clearly visible that the building is falling within the road-line.

20. **In order to appreciate whether this can be a substantial question of law**, with his assistance, I have gone through the evidence given by the Deputy Engineer – Sudhir Kadam. During his evidence, he has categorically stated that the construction is coming in the way of the expansion of 36 meter road. He was thoroughly cross-examined. The colour print out of the Development Plan at Exhibit -115 was shown to him. Even colour copy of the Development Plan was shown to him. It is at Exhibit – 115A. He has admitted that the

red line of the Development Plan overlaps black line of the survey numbers. Further, he admitted that as per the enlarged map, no portion in Survey No.25 (on which the building is standing) is affected by DP Road. He has admitted that only properties at western side of DP road are affected. Even he has expressed ignorance about whether the DP road is falling within Survey No.25. He has expressed ignorance about the internal correspondence about necessity of filing the acquisition proceeding.

21. It is true the enlarged copy was not produced by the Plaintiffs during his evidence but it was shown to the witness during cross-examination. Now, Mr. Pethe, learned Advocate intends to challenge this enlarged copy of a DP plan. The question is whether it can be considered as a substantial question of law. When considered from all angles, I am not agreeable to the submissions of Mr. Pethe. The reason is the trial Court is the only forum wherein the evidence is recorded. In certain contingencies, it can be done before the Appellate Court. So when the enlarged copy was shown to the witness of the Corporation, objection ought to have been taken at that stage but it seems that neither objection was taken but the cross-examination was continued. So when the Defendant's witness was allowed to be cross-examined and when he has given certain answers during cross-examination, the trial Court and the Appellate Court were bound to consider those answers and if those answers are relevant for deciding the issue whether the building is falling within the road-line or not. I find no fault on the part of the trial Court to

consider it. If one of party by its conduct allows another party to do a particular act and if the Court gives a finding, there is hardly any scope during the Second Appeal by contending that this has to be treated as a substantial question of law. I have reproduced certain portion of the evidence above just to emphasize that witness was having an opportunity to give his explanation for enlarged copy.

22. For the above reasons, I find no merit in the Appeal and it is dismissed at the admission stage. Hence, the following order:

ORDER

- (i) The Second Appeal stands dismissed.
- (ii) Civil Application is also disposed of.

(S.M. MODAK, J.)