

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 78 OF 1996

Municipal Corporation, Aurnagabad
through the Commissioner,
Municipal Council, Aurangabad

.. Appellant
(Orig. Defendant)

VERSUS

Tulsi Flat Owners Co-operative
Society, Eknath Nagar, Aurangabad
through its Chairman,
Premchand S/o Sumermal Surana
Aged 38 years, Occu.: Business,
R/o Samarth Nagar, Aurangabad

.. Respondent
(Orig. Plaintiff)

Mr. G.K. Kulkarni, Advocate h/f. Mr. A.M. Karad, Advocate and
Mr. R.R. Mane, Advocate for the appellant
Mr. N.R. Bhavar, Advocate for the respondent

CORAM : M.T. JOSHI, J.

DATE : 15/01/2015

ORAL ORDER :

1. Heard both sides.
2. Aggrieved by the direction to pay compensation of Rs.14,64,984/- on the ground that the present appellant-Municipal Corporation has wrongfully demolished the legal construction of the respondent, the present appeal is preferred.

3. The case of the respondent-plaintiff in short was that it has sought permission to revise the earlier permission to built the building on 6/10/1989. Thereafter, the reminders were given on 9/4/1989 and 11/12/1989. However, neither the permission was granted nor the permission was refused and, therefore, according to the provisions, deemed permission to the construction was assumed by the respondent and, therefore, they constructed the building as per the revised map. The present appellant, however, without issuing notices, as is required under the provisions of law, suddenly demolished the said building and, therefore, declaration that the construction carried out by the respondent was legal and valid, and for compensation as detailed supra, came to be prayed by the respondent in the suit.

4. The appellant Municipal Corporation came with a case that no application for revised lay-out or any reminders were received by it and, therefore, the illegal construction was removed.

5. The learned Civil Judge Senior Division has framed as many as five issues. Those are as follows:-

"1. Whether the plaintiff society proves that the construction carried out by it was legal and valid?

2. Does it prove that the defendant's employees unauthorisedly demolished the same thereby putting the plaintiff to damages?

3. Is the plaintiff entitled to recover the damages of Rs.14,64,984.15 Ps. from the defendant, as claimed in para 24 of the plaint?

4. Whether the defendant proves that it is entitled to claim a compensatory costs of Rs.3000/- from the plaintiff?

5. What order?"

The findings of the learned Civil Judge Senior Division were as under:-

"6. My findings on above issues are:-

1. Does not arise.

2. Affirmative.

3. Affirmative.

4. Negative.

5. See order as below."

6. The findings of the learned Civil Judge Senior Division would show that according to him, it was not required to find out as to whether the construction carried by the respondent is legal and valid. According to him, it was sufficient to note that the construction was demolished without any notice and, therefore, since the demolition was carried against the rules, the appellant would be liable to pay the compensation and, therefore, the suit was partly decreed.

7. Upon hearing both the sides, it has become clear that while the learned Civil Judge Senior Division did not grant any declaration regarding the legality or otherwise of the construction made by the respondent, solely on the basis that the notices, as required under the rules were not issued for demolition, the suit was partly allowed. In fact, the case for compensation is based on law of tort. In the circumstances, unless a civil wrong is found, the compensation could not have been awarded. The learned Civil Judge Senior Division however did not forward any finding as regards the issue no.(1), as detailed supra, which was the very basis of

the claim of the respondent. In that view of the matter, the case need to be remanded to the learned trial Court. As the evidence from both the sides is completed, only oral arguments are required to be heard again and findings on all the issues afresh are required. Thereafter, in the first appeal against the findings of facts, this Court would be able to have the assistance of the findings of the trial Court.

8. In the result, the following order:-

I) The appeal is hereby allowed without any order as to costs.

II) The impugned judgment and decree of the learned trial Court is hereby set aside and quashed.

III) The case is remanded back to the trial Court. The trial Court is directed to hear both the sides on merit of the case and, thereafter, decide all the issues afresh.

IV) Parties to appear before the trial Court on 26/02/2015. The learned trial Court shall thereafter decide the suit within a period of three months. Since

the directions are issued to the parties to appear before the trial Court, there is no need to issue any separate notices by the learned trial Court.

9. First appeal stands disposed of accordingly.

Sd/-
[M.T. JOSHI]
JUDGE

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