

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, directions and orders.	Notes, of Court's orders and Registrar's	Office Coram, Court's or Judge's orders.
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SECOND APPEAL NO. 270 OF 2012
WITH CA/5904/2012 IN SA/270/2012

PUNDLIK LAXMANRAO NIKAM
VERSUS
MUNICIPAL CORPORATION THRU COMMISSIONER

Advocate for Appellant : Mr. Kasliwal Ajit D.

CORAM: T. V. NALAWADE, J.
DATED: 19th OCTOBER, 2015.

PER COURT:

1. The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.127 of 2010 (Old No.172 of 2008) which was pending in the Corporation Court, Aurangabad. The suit filed by the Appellant for relief of declaration and injunction against local body, Corporation of Aurangabad is dismissed by the Court and Appeal filed against the said decision by the present Appellant in District Court is dismissed. Heard learned counsel for the Appellant.

2. In the suit, notice dated 17th January, 2009 given by Corporation to the plaintiff was challenged. The notice was given as it was noticed by Corporation that on site of the construction the side margin of 2.25 mtr. was not left and the space of only 1 mtr. was left. Thus, the construction of the plaintiff was made in contravention of the Rules made under Town Planning Act. Notice of 30 days was given and plaintiff was asked either to explain the things or to pull down the construction which was made in contravention of the aforesaid Rules. The decisions given by the trial Court and first Appellate Court show that the plaintiff had applied for permission to make construction and permission was given as per the provisions of M.R.T.P. Act. He did not make the construction as per the sanctioned map of construction and his construction was in violation as mentioned in the notice.

3. The learned counsel for the Appellant submitted that after receipt of the notice, plaintiff had submitted another proposal for sanction but nothing in that regard was informed and so it needs to be presumed that as provided under section 45 (5) of the Maharashtra

Regional Town Planning Act there was a deemed permission in respect of the new proposal submitted by the plaintiff. This proposition cannot be accepted. Already permission was given as per the plan proposed by plaintiff. It was in accordance with the Rules framed under the M.R.T.P. Act. Only after issuing of the show cause notice of breach of the Rules, plaintiff filed the new proposal. It cannot be said that the new proposal was in accordance with the provisions of M.R.T.P. Act. Further, the proviso to section 45 (5) of Maharashtra Regional Town Planning Act cannot be ignored as it provides that the provision will be applicable only if the development proposal is strictly in conformity with the requirements of all the relevant development control, regulations framed under this Act or Bylaws or Regulations framed in this behalf.

4. Another submission was made by learned counsel for the Appellant and it was submitted that the provision of section 53 (3) of the Act was not properly considered by the Court and the power of the local body to regularise the things is not considered. The trial Court has referred the case reported as **AIR 2005 SC 1794**

(Mahindra Baburao Mahadik V/s Subhash Krushna Kanitkar) in that regard. The Apex Court has laid down that at the time of granting of permission the authority is expected to consider the provisions of M.R.T.P. Act and power to grant the permission can be exercised only within the purview of Building Bylaws and the local body has no jurisdiction to direct regularisation of such unauthorised constructions.

5. The instances of making unauthorised constructions are increasing and many persons have started making construction in breach of the Rules made in that regard with the presumption that the things will be regularised in future. That way, they get the construction made on more space but that creates problems for maintenance of building and also for local body for taking steps in case of urgent situation. This needs to be stopped at some time. Present matter is second appeal and in view of the facts the Courts below have held that no relief of declaration and injunction can be given to the plaintiff. Attempt was made to argue on one more point, on the authority of the officer who gave notice. There is no force in that ground also. In the

result, this Court holds that there is nothing on the basis of which substantial question of law can be formulated.

6. In the result, the appeal stands dismissed.

7. In view of final disposal of the second appeal itself nothing further survives in the civil application No.5904 of 2012 and the same also stands disposed of accordingly.

[T. V. NALAWADE, J.]

Dt.19/10/2015
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