

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

SECOND APPEAL NO.760 OF 2014

Manohar Indermal Karda,
Age 43 years, Occu.Business,
R/o Chalisgaon, Taluka Chalisgaon,
District Jalgaon

..Appellant
(Orig.Plaintiff)

Versus

Nagar Parishad, Chalisgaon,
Through Chief Officer,
Chalisgaon, District Jalgaon

..Respondent
(Orig.Defendant)

AND

SECOND APPEAL NO.761 OF 2014

Jivandas Talaram Punjabi,
Age 55 years, Occu.Trader
Proprietor of Jivan Cycle Mart,
Station road, Chalisgaon,
Taluka Chalisgaon,
District Jalgaon

..Appellant
(Orig.Plaintiff)

Versus

Nagar Parishad, Chalisgaon,
Through Chief Officer,
Chalisgaon, District Jalgaon

..Respondent
(Orig.Defendant)

Mr D.B.Thoke, Advocate for appellants
Mr R.N.Dhorde, Senior Counsel i/b Mr V.R.Dhorde, Advocate for
respondent

CORAM : N.W. SAMBRE, J.

DATE : 6th January 2015

PER COURT

1. Both these appeals can be disposed of by a common order since the issue involved is similar.

2. The respondent - Municipal Council invoked provisions of Section 179 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (hereinafter referred to as 'the Act') against the present appellants causing them notice for removal of their temporary structure vide notice dated 16th April 2003 which has prompted them to file suits for permanent injunction. The suits came to be dismissed by judgment dated 4th August 2009 which was subject matter of appeal before the Principal District Judge, Jalgaon in Regular Civil Appeal Nos.155/2009 and Regular Civil Suit No.154/2009, respectively, which suffered the same fate, as such the present second appeals.

3. Learned Counsel for the appellants Mr Thoke has urged that there was no occasion for the respondent - Municipal Council to press into service the provisions of Section 179 of the Act in view of the fact that the appellants herein are in possession over the suit property and are engaged in the business on the property in question since last 35 years. He further urged that unless it is established from the record of the Municipal Council that the structure occupied by the appellants is a part of public street, the provisions of Section 179 of the Act are not attracted. In short, his contention is that the respondent - Municipal Council has failed to discharge its burden by establishing that the appellants herein have encroached on the public street.

4. While countering the above referred submissions, Shri Dhorde, learned Senior Counsel submits that the undisputed fact on record is that the appellants herein have carried out illegal construction by

encroaching on the public street. He further urged that the appellants have not brought any evidence on record before the Courts below showing that the Municipal Council had granted permission so as to erect structure as is claimed by the appellants.

5. He further urged that the present second appeals against the concurrent findings are not tenable.

6. Having considered the rival contentions of the parties and having gone through the observations of both the Courts below, it is noticed that the learned trial Court has discussed in detail the applicability of provisions of Section 179 of the Act to the facts of this case. The learned trial Court has also looked into the evidence brought on record by the Municipal Council and by the present appellants. The witness of the respondent – Municipal Council has, in clear terms, deposed that the structure raised by the present appellants is unauthorised. The trial Court has taken into account the evidence of the Chief Engineer of the Municipal Council, Chalisgaon and other documents produced by both the parties.

7. The lower appellate Court has given due consideration to the appreciation made by the learned trial Court. Lower appellate Court has also taken into account the claim of the present appellants that they are regularly paying taxes to the Municipal Council, however, observed that in view of the judgment of this Court in the case of **Sidharam M.Yanagandul vs. State of Maharashtra**, reported in **2007 (2) ALL MR 317** mere payment of taxes to the Municipal Council would confer any right in the parties.

8. As such, no substantial question of law is involved. Second Appeals being devoid of merit stand rejected.

(N.W. SAMBRE, J.)

(vvr/760.14sa)