

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 164 OF 2015

Nashik Municipal Corporation and anr. .. Applicants

vs.

Lahanu A. Unhale (since deceased
through Lrs) and ors. .. Respondents

Mr. J. Shekhar a/w. Narendra Sharma i/b J. Shekhar & Co. for the
Applicants.

CORAM : M. S. SONAK, J.

DATE : 5 May, 2015.

P.C. :-

1] By an order dated 7 April 2015, parties were put to notice that an endeavour shall be made to dispose of the civil revision application finally, at the stage of admission.

2] This Civil Revision Application impugns the order dated 22 August 2012 rejecting the applicants' contention that the suit as instituted was barred under the provisions of Section 149 of the Maharashtra Regional and Town Planning Act, 1966 (said Act).

3] The impugned order, upto the paragraph '9' records the submissions/contentions of either parties. In paragraph '10', which is ultimate paragraph of the impugned order, the learned Joint Civil Judge, Senior Division at Nashik has observed thus:

“10. After having heard learned advocate of the plaintiff, the points raised by him in the written notes of argument appears to be justifiable, but when the reference of the authority of our Hon'ble parent High Court reported in 2005-BCR-4-577, in the case of Bales Sardara Paracha Vs.

Municipal Corporation of Greater Bombay, is referred, the observations of our Hon'ble parent High Court in para. 18 to 26 are read apparently, it appears that, if this authority is made applicable to the parent suit, the plaint does not become tenable as it stands on record. But if the points raised by the learned advocate of the plaintiff which are reflected in his written notes of argument are perused, then it appears that the facts of the authority relied upon by the learned advocate of the defendant are not identical with the facts of this suit. Therefore, the points raised in the written argument are found justifiable to reject the application of the defendant. Hence, I hereby upheld the points raised by advocate of the plaintiff in this matter and pass following order”.

4] The aforesaid, is hardly a satisfactory manner to deal with the contentions raised by the parties. The aforesaid, is also hardly a satisfactory manner to deal with the decisions of this Court directly in the context of the provisions contained in Section 149 of the said Act. Accordingly, the impugned order is liable to be set aside.

5] This Court was itself inclined to consider the issue of jurisdiction and decide whether or not the Civil Suit as instituted is maintainable. However, on behalf of the respondents-plaintiffs, no appearance has been put in, despite service. Accordingly, with a view to afford a fair opportunity to the respondents-plaintiffs in the matter, the impugned order dated 22 August 2012 is set aside and the learned Civil Judge is once again directed to decide the issue of jurisdiction in accordance with law and after taking into consideration and analyzing the contentions of all the parties as well as decisions on the subject.

6] The learned Civil Judge is directed to decide on the issue of jurisdiction as expeditiously as possible and in any case within a period of three months from today. All parties to cooperate with the learned Civil Judge in the matter of expeditious decision upon this issue, particularly because it is reported that the plaintiffs have obtained an interim orders against the Nashik Municipal Corporation and the same is in operation.

7] With aforesaid directions, Revision Application is disposed of. There shall be no order as to costs.

8] All concerned to act upon an authenticated copy of this order, which the applicants shall place it before the learned Civil Judge at the earliest and in any case before 8 June 2015.

(M. S. SONAK, J.)

dinesh