

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

**SECOND APPEAL NO.32 OF 2012
ALONGWITH
CIVIL APPLICATION NO.35 OF 2012**

Krushni Utpanna Bajar Samiti .. Appellant.

V/s

The Collector Satara and ors. .. Respondents.

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Mr. A.V. Anturkar, Senior Counsel a/w. Mr. Amol Gatne i/by Mr. S.B. Deshmukh, Advocate for the Appellant.

Mr. A.R. Patil, AGP for the Respondent.

CORAM : SMT. R.P. SONDURBALDOTA, J.

26th FEBRUARY, 2015

P.C.

1. By this Second Appeal, the original plaintiff challenges the concurrent findings of facts and law in the suit filed by it against the respondent, the Collector, Satara and the District Inspector of Land Records. The appellant's Special Civil Suit No.189 of 1987 was dismissed by the trial Court by its judgment and order dated 30th June, 1992 and its appeal being Regular Civil Appeal No.401 of 2000 was dismissed by the District Court by the judgment and order dated 5th September, 2011.

2. The appellant is Krushi Utpanna Bajar Samiti established under Krishi Utpadan Vikri Act, 1963. It filed suit for declaration that, it is the owner of a portion of the land out of CTS No.217 situate at Raviwar Peth, Satara as described at para-1 of the plaint and the two-storeyed building constructed thereon. It also sought a declaration that, the entries of name of respondent No.1 recorded in the city survey records are illegal and the provisions of the Bombay Government Premises (Eviction) Act, 1955 are not applicable to the suit property. The appellant prayed for mandatory injunction to record its name in the City Survey Records as the owner of the suit property and for possession of three of the rooms in the building in occupation of respondent No.1.

3. The case of the appellant as pleaded in the plaint is that, it is the owner of the portion of land at City Survey No.217 which was reserved for construction of rest house for agriculturists visiting Satara in connection with the work with the appellant. As the appellant was short of funds, it had on 20th October, 1963 applied to respondent No.1 for allotment of non-refundable grant of Rs.1,00,000/- for construction of Shetkari Niwas. Accordingly, respondent No.1 allotted non-refundable grant of Rs.1,00,000/- to

the appellant and with the help of that amount, the appellant constructed the suit building. The first floor of the building was let out by the appellant to Shivaji Sanghralaya with rent of Rs.325/- per month. Three rooms on the ground floor were given to respondent No.1 as licensee and the remaining two rooms on the ground floor remained in occupation of the appellant. On 21st February, 1977, the appellant sent a letter to respondent No.1, requesting him to handover possession of the rooms in his occupation, as also the first floor. Respondent No.1 by his reply dated 21st May, 1977 refused to vacate the premises as suitable alternate accommodation was not available to him. The appellant repeated the request on 30th May, 1977 for atleast the premises on the ground floor but the defendant did not vacate the premises. On 8th August, 1984 the appellant realised that respondent No.1 had got his name entered in the City Survey records as the owner of the suit property. This was done behind the back of the appellant. Therefore, by its notice dated 13th January, 1985 the appellant demanded vacant possession of the suit property from the respondents and also demanded that respondent No.1, deletes his name from the City Survey Records. In his reply dated 16th March, 1985 respondent No.1 refused to vacate the suit

property claiming irrevocable license in respect of the land for construction of the building. He further threatened the appellant to evict it from the portion of the suit building by resorting to the provisions of the Bombay Government Premises (Eviction) Act, 1955, after which the appellant filed Special Civil Suit No.189 of 1987 for reliefs as mentioned above.

4. The respondents alleged that the suit is barred by the law of limitation and also bad for want of statutory notice u/s 80 Code of Civil Procedure. On merits the respondents opposed the suit denying the title of the appellant over the land at City Survey No.217. They claimed that the Government of Maharashtra had sanctioned and advanced grant of Rs.1,00,000/- for Satara District, for its outstanding performance in Small Saving Collection in the year 1959-60 under letter No.SSS/1060/G-S/14/2501 dated 29th April, 1960. The respondents had initially decided to construct a Stadium-cum-farmer's rest house near Satara S.T. Stand. The plans and estimates for the construction of that place were prepared. In the meantime, the appellant offered the suit land to the State of Maharashtra without any cost for construction of the building. It also agreed that, on construction of the building, it would undertake the

management, maintenance and upkeep of the building. The offer of the appellant was accepted and the suit building was constructed by the State of Maharashtra out of the grant of Small Saving Collection of Rs.1,00,000/- for District-Satara. Thus, the suit building is owned by the State of Maharashtra. On completion of construction, the first floor of the building was let out to Chatrapati Shivaji Museum on the monthly rent of Rs.325/- to be paid to respondent No.1. For that purpose, postal account was opened separately in the name of respondent No.1 and the rent amount is deposited in that Account. Then the main hall and one room at ground floor of the building was used for accommodating Small Saving branch for Collectorate and one room is used for village Talathi office. The remaining two rooms were given to the appellant as licensee for occupation of the visiting farmers. The respondents alleged that, the appellants had in the year 1967-68 admitted the ownership of the suit building by the State of Maharashtra after which the name of respondent No.1 was entered into the record of rights.

5. The oral evidence in the suit consists of deposition of Secretary of the appellant. The respondents did not examine any witness. The Courts below found that the appellant except for the

certified copy of the property card (Exhibit-7 and 38), had not produced any document to establish its title to the suit property. Perusal of the entry in the property card indicated that, it was restricted to delivery of possession to the appellant on 15th January, 1962 as per the order passed by the Assistant Collector in the land acquisition proceedings. The appellant had produced letter dated 28th October, 1963 written by its Chairman to the then Collector, Satara stating that it had acquired Revision Survey No.282 for Market Yard out of which it had kept reserved, land admeasuring 80' x 45' for construction of Shetkari Niwas. It had requested respondent No.1 that there was an amount of Rs.1,00,000/- for construction of Shetkari Niwas. The letter further stated that on construction, the appellant would maintain the building. Thus, there is nothing to establish that the State Government had allotted Rs.1,00,000/- by way of non-refundable grant for construction of Shetkari Niwas. The Courts below noted that it was not even the case of the appellant that it had got the plans of the building prepared, sanctioned and the building constructed. The Courts below on the basis of the deposition of the witnesses and the documentary evidence held that the appellant had given the land without any remuneration to the

Government for construction of Shetkari Niwas. The Courts further held that the State Government is the owner of the building of Shetkari Niwas and holds permanent grant and irrevocable license in respect of the land under the building.

6. The Appellate Court has confirmed the findings with the reasoning that the facts of the case fulfil requirements of irrevocable license under Section 60 (b) of the Easement Act. It noted that the appellant offered voluntarily without cost, the land to the State Government on which the Government constructed a building of permanent in nature, by spending Rs.1,00,000/- from its own funds. Resultantly, irrevocable license has come into existence in favour of the Government. The finding given is completely supported by the pleadings and the evidence led by the parties.

7. It is patent from the above discussion that no substantial question of law arises in the matter for consideration of the Court. Hence, the Second Appeal is dismissed. With dismissal of the appeal, Civil Application No. 35 of 2012 for interim reliefs does not survive. The same is accordingly disposed off.

(Smt. R.P. SondurBaldota, J.)