

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

**Second Appeal No.262 of 2016
With
Civil Application No.4197 of 2016**

Jagdev Narayan Borse (Mali). .. **Appellant.**

Versus

The State of Maharashtra
And Others. .. **Respondents.**

Shri. Pramod P. Dhorde, Advocate, for appellant.
Shri. Kartik Mundhe, Assistant Government Pleader, for
respondents.

CORAM: T.V. NALAWADE, J.

DATE : 4th APRIL 2016

ORDER:

1) The appeal is filed against the judgment and decree of Regular Civil Appeal No.1065/2012 which was pending in the Court of the Ad-hoc District Judge-2 Jalgaon and also against the judgment and decree of Regular Civil Suit No.272/2006 which was pending in the Court of the Civil Judge, Senior Division, Jalgaon. Heard learned counsel for the appellant.

2) The suit was filed in respect of 15 x 10 ft. space situated in front of Tahsil office, Jamner. The space was

adjacent to the Neri - Jamner Road No.185, the State Highway.

3) It is the case of the plaintiff that the disputed space came in possession of his father in the year 1959 as a lessee from District Khandes Local Board. It is contended that licence was given to the father of the plaintiff to run hotel on this space and then a shed was constructed and the father started running the hotel. It is contended that initially rent was paid to District Local Board and then to the Zilla Parishad by the father of the plaintiff. It is contended that for some time rent was paid to the village panchayat and then to Municipal Council Jamner.

4) It is the case of the plaintiff that in the year 1973 his brother Trambak started electrical shop by the side of the hotel and for that business also licence was obtained. It is the case of the plaintiff that both these spaces have been in use for more than 30 years and in possession of the plaintiff and the licences are not cancelled. It is also the contention that due to adverse possession plaintiff has become owner.

5) Notice was given to the plaintiff under the provisions of the State Highway Act 1955 and the plaintiff was asked to remove aforesaid construction as it was encroachment on the portion of the State Highway. It is contended that objection was taken to this notice but without giving hearing to the plaintiff, the defendants, the Collector and Executive Engineer, PWD, started pulling down the construction and so cause of action took place for the suit. The plaintiff also contended that it was not proper on the part of the defendants to make construction of the highway or increase the width of the highway when the road is passing through thickly populated area like limits of municipality. The relief of declaration and injunction was claimed on the basis of aforesaid contentions.

6) The defendants filed written statement and contested the matter. They contended that property was never given by way of lease to the plaintiff. It was contended that only because some authorities had issued licence in respect of business that does not mean that lease was given of the land. It was contended that the land

belongs to the Government, PWD and it comes within the limits of the State Highway and so the construction of the plaintiff was encroachment on the State highway. It is contended that writ petitions were also filed in respect of the said action but the writ petitions were dismissed and it was observed by this Court that the encroachment needs to be removed. The defendants contended that notice was issued as there was no right to the plaintiff to continue the possession, he was encroacher.

7) Both the sides produced documents and oral evidence was given. Plaintiff mainly relied on document like licence issued in respect of the business, bill of electricity showing that he was using the premises for many years. On one hand, the plaintiff was contending that he was put in possession as lessee and on the other hand, he was claiming ownership due to adverse possession. It is not disputed that the portion belongs to the Government and due to existence of adjacent State highway, construction on this space was not possible. Some receipts of local body tax and fee were produced but due to such receipts it cannot be said that any right was

given to the plaintiff. There is virtually no record with the plaintiff to show that land was allotted to him. The contentions that initially some space was in possession and then more space was used and a new shop was opened show that the plaintiff was virtually trying to grab the property of the Government. He used the land of the Government for many years illegally. As this action was amounting to encroachment on State highway, there was necessity to remove the same and there was power under the said Act and also under the Maharashtra Land Revenue Code with the authority like defendants to remove such encroachment. Notice was given in that regard. It cannot be said that the action of the defendants was illegal. Thus, there was no question of giving any relief in favour of the plaintiff. Findings of the Court below are findings of fact and the plaintiff has no right as such in the land on which he had made construction of shed. No substantial question of law as such is involved in the matter. In the result, the appeal stands dismissed. Civil Application stands disposed of.

Sd/-
(T.V. NALAWADE, J.)

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