

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

Second Appeal No. 169 of 2013

Housabai Baburao Auti.

.. Appellant.

Versus

The Commissioner,
Ahmednagar Municipal
Corporation And Another.

.. Respondents.

Shri. Ajit Manohar Gholap, Advocate, for appellant.

CORAM: T.V. NALAWADE, J.

DATE : 29 MARCH 2016

ORDER:

1) The appeal is filed to challenge the judgment and decree of Regular Civil Suit No.412/2006 which was pending in the Court of the Civil Judge, Senior Division, Ahmednagar and also the judgment and decree of Regular Civil Appeal No.86/2008 which was pending in the Court of the District Judge-5, Ahmednagar. The suit filed by the present appellant against the respondent Corporation for declaration that the notice issued to the plaintiff directing her to remove some construction is illegal, is dismissed

by the Courts below. Similarly relief of injunction to protect the construction is also not given. Heard learned counsel for the appellant.

2) The plaintiff is the owner of one plot, Plot No.1 from Survey No.275/2 situated at Nalegaon, District Ahmednagar. The area of this plot is 2.5 R. The plaintiff had made construction over this portion illegally, without taking permission of the local body. It is the case of the plaintiff that the construction was regularised by the local body but by giving the notice which is under challenge a direction was given to remove the construction which was covering the road having width of 4.5 meters on eastern side of the constructed portion. The suit was contested by the local body. The local body contended that the construction was made by the plaintiff without taking permission and the construction was not as per the provisions of the town planning rules. It was contended that the construction to the extent of 1.5 meters on eastern side of the plaintiff was covering the road of 4.5 meters width left in the development plan. It was contended that on a stamp paper the plaintiff had agreed

on 1-10-2002 to pull down that construction when construction was regularised but the construction was not pulled down as per this undertaking. The defendant contended that inspection of the spot was made by the officers and it was noticed that the plaintiff has not acted as per the promise given on 1-10-2002 and so the notice was given to the plaintiff to remove the said construction which was apparently encroachment over public road.

3) The issues were framed on the basis of aforesaid pleadings. Both the Courts below have held that the construction in dispute, of the width of 1.5 meters covering the public road was illegal and there was nothing wrong in the steps taken by the local body of giving direction in the notice to remove that construction.

4) The learned counsel for the appellant was allowed to show to this Court copy of lay out plan of Survey No.275/2. Copy of notice under challenge was also shown. In the notice it is mentioned that undertaking was given to remove the portion of 1.5 meters width construction to see that the road has width of 4.5 meters

but the plaintiff had not acted as per this promise and due to that there was nuisance to the public and the local body was facing problems in creating amenities like drainage system.

5) The relevant portions of the depositions are quoted in the judgments by the Courts below. They show that it is not disputed that the width of the road needs to be 4.5 meters. Officer of the local body has given evidence that the construction to the extent of 1.5 meters was on the road and so direction was given to remove that portion. Report was prepared by the officers of the local body after visiting the spot and then the notice was given. It needs to be kept in mind that the construction of the plaintiff was regularised and so the construction was saved even when it was made without taking permission of the local body. The substantive evidence is given that undertaking was given by the plaintiff to see that she will remove the construction to the extent of 1.5 meters to see that the road of width of 4.5 meters is kept on that side. It is clear that the plaintiff does not want to remove that construction. It is not the matter between plaintiff and the

local body but such construction causes nuisance to the public at large. The portions towards road side are generally used for creating drainage, for laying lines of various departments like electricity, phone etc. Thus, no concession can be given to the plaintiff in that regard. The findings of the Courts below are the findings on questions of facts and they are concurrent. No substantial question of law as such is involved in the matter.

6) In the result, the appeal stands dismissed.

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

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