

Sequeira

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

***SECOND APPEAL NO. 394 OF 2015
Along with
CIVIL APPLICATION NO. 1518 OF 2014***

The Commissioner,
Kolhapur Municipal Corporation & anr. .. Appellants / Applicants
Versus.
Shri Suresh Tatyasaheb Dugge & anr. .. Respondents

Mr.S.S.Patwardhan, for the Appellant / Applicant.
Mr.Chetan Patil, for Respondent No.1.

***CORAM: N.M. JAMDAR, J.
Wednesday, 23 March 2016.***

PC. :

By this Appeal the Appellant-Municipal Corporation, Kolhapur challenges the Judgment and Order dated 9 July 2013 passed by the District Judge, Kolhapur dismissing the Appeal No.225 of 2011 filed by the Appellant-Corporation challenging the Judgment and Decree passed by Civil Judge Junior Division Kolhapur, in Regular Civil Suit No.181 of 2003.

2. The suit was filed by the Respondent No.1 for possession, mesne profits and permanent injunction against the Appellant-Corporation and the Respondent No.2. The Appeal filed by the Municipal Corporation and Respondent No.2 were dismissed by the learned District Judge, Kolhapur on 9 July 2013. The case of

the Appellant-Corporation was specific that the suit property was acquired by the Municipal Corporation by instituting proceedings under Land Acquisition Act 1894. It was also the case of the Appellant-Corporation that the Respondent No.2 was put in possession as a project affected person in part of the suit property.

3. Both the Courts have considered the evidence on record and have found that the Appellant-Corporation did not produce records of any proceedings taken under the Land Acquisition Act 1894, to demonstrate that the suit property was acquired. As against this the case of the Respondent No.1 was that the property has devolved on Respondent No.1 being ancestral property.

4. The learned counsel for the Appellant-Corporation contended that while challenging the mutation entry carried out pursuant to the acquisition proceedings, the Respondent No.1 in its memo of appeal has admitted the factum of acquisition. He submitted that this is good enough to demonstrate that the land had vested in Municipal Corporation.

5. I have gone through the copy of the appeal memo which shows that the Respondent No.1 has denied that any acquisition took place and has taken various grounds including that no compensation is paid. From this it cannot be presumed that the acquisition proceedings in fact took place and the lands vested in Municipal Corporation. Once trial Court had rendered the finding against the Appellant-Corporation on the ground that factum of

acquisition cannot be stated to be proved for lack of documentary evidence at-least in First Appeal, the Appellant-Corporation could have taken remedial measures. On the basis of the evidence that is available, both the Courts have rightly drawn a conclusion that the factum of acquisition is not proved. Once that is not proved the Respondent No.1 was entitled to the reliefs prayed for in the suit. In the circumstances no substantial question of law arises. Appeal is dismissed.

6. In view of the order passed in Second Appeal as above, the Civil Application does not survive and is accordingly disposed of.

(N.M. JAMDAR, J.)