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

*SECOND APPEAL NO. 133 OF 2015
with
CIVIL APPLICATION NO. 267 OF 2015*

Shakil Sattar Padvekar. ... Appellant/Applicant.

V/s.

Sawantwadi Municipal Corporation. ... Respondent.

Mr. S.S. Redekar for the Appellant and Applicant.

Mr. S.M. Railkar for the Respondent.

CORAM : N.M. Jamdar, J.

12 July, 2016.

P.C. :-

The Appellant challenges the Judgment and order passed by the District Judge Sindhudurg in Regular Civil Suit No. 10 of 2013 dated 11 December 2014 allowing the Appeal filed by the Municipal Council and dismissing the Suit filed by the Appellant.

2. The Suit was filed by the Appellant seeking an injunction against the Respondent – Municipal Council that the structure of the Appellant should not be removed without following due process of law. The Appellate Court after assessment of evidence including the cross-examination of PW-1 concluded that the structure is situated on public street amounting to obstructions to public at large and therefore, the Respondent – Municipal Council was entitled to remove the said structure under Section 179 (3) of Municipalities Act.

3. The learned Counsel for the Appellant submitted that Section 179 (3) of the Act is not applicable as a structure is not on public street. However, the learned District Judge has considered the cross-examination of the witness for the Appellant as well as the evidence led by the witness for the Corporation to conclude that the structure is located in public street. Even assuming the contentions of the Appellant that it is not on public street but on Municipal land, nothing is shown that the structure has any permission or any lease granted by the Municipal Council.

4. The learned Counsel for the Appellant then submitted that the Municipal Council should follow due process of law before taking any action against the Appellant's structure is concerned. The

learned Counsel relied on the decision of the learned Single Judge of this Court in the case of *Abdul Hasan Shaikh Mansoori v/s. Municipal Corporation of Mumbai* reported in 2007(2) BCR 80. However, the Apex Court in the case of *Maria Margarida Sequeriad Fernandes V/s. Erasmo Jack de Sequeria* reported in AIR 2012 SC 1727 has expounded the concept of Due Process of Law and had laid down wherein once a party approaches the Court of law to get its right adjudicated, due process is followed. In the present case the Appellant invoked the jurisdiction of the Civil Courts. The learned District Judge considered the evidence on record as regard the legality and its location of the structure and recorded a finding of fact against the Appellant. The Appellant had full opportunity to put-forth its case to demonstrate how the structure is legal and no action of demolition is necessary. Having once gone through the trial and an Appeal, as per the decision of the Apex Court in the case of *Maria Margarida Sequeriad Fernandes*, due process is followed. The learned District Judge is right in holding that once the Appellant approached the Court of equity for grant of injunction, it was upon the Appellant to show how the structure is legal and not on public street, which the Appellant failed to do.

5. In the circumstances, no question of law arises in this Appeal. The Second Appeal is disposed of. The Civil Application is disposed of accordingly.

6. At this stage the learned Counsel for the Appellant seeks continuation of the ad-interim order. If the Appellant files an undertaking within period of one week from today that if ad-interim order is not continued after the stipulated period, he will remove structure at his own accord, then the ad-interim order granted in this Appeal will continue for a period of five weeks from today.

(N.M. Jamdar, J.)