

Sequeira

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

**SECOND APPEAL NO. 628 OF 2014
Along with
CIVIL APPLICATION NO. 1501 OF 2014**

Sau.Kusum Murlidhar Wade .. Appellant / Applicant

Versus.

Kolhapur Municipal Corporation. .. Respondent

Mr.Ajit Kenjale i/b Mr.Rajesh Dharap, for the Appellant / Applicant.

None for the Respondent.

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

PC. :

By this Appeal the Appellant challenges the Judgment and Decree passed by the Civil Judge Senior Division Kolhapur, dated 26 February 2007, dismissing the suit filed by the Appellant and Judgment and Order dated 18 January 2014 passed by the District Judge, Kolhapur dismissing the Appeal of the Appellant.

2. The suit was filed by the Appellant for declaration, injunction and damages / compensation from Respondent-Corporation. According to the Appellant, cabin No.108 and 94 and an open space of 200 sq.ft. was allotted to the Appellant and she was running a stall in the said premises. It was her contention that the Respondent-Corporation demolished the stall inspite of there being a protective order by the Court. She accordingly, sought for

damages and to restrain the Respondent-Corporation from carrying out proposed construction of 'jhunka-bhaakar kendra'.

3. The learned Civil Judge Senior Division and the learned District Judge, after assessing the evidence rendered a finding that the Appellant failed to prove that the open space was given to the Appellant by the Government.

4. As regards the damages, the Courts recorded a finding that the structure was not demolished but it was removed voluntarily by the Appellant and for that purpose the Courts relied upon the documents at Exhibit nos.71, 73. The learned counsel for the Appellant submitted that the documents which were relied upon by the Courts below i.e. Exhibit 71, 72, 73 ought not to have been relied upon as the proceedings in the appellate Court would show that it was not clear as to from whose custody these documents came to be produced. This submission cannot be accepted. The Court had exhibited these documents and relied upon the same. No argument was made by the Appellant that these documents should not be relied upon. In fact the appellate Court has rendered a finding that in the Criminal case filed by the Appellant, the Appellant has not made a grievance regarding genuineness of these documents. Since these documents at Exhibit No.72 and 73 form part of the record, they establish that the action of the Respondent-Corporation as regards demolition was not in contravention of the order of the Court but it was part of compromise. Whether the demolition took place or whether the

removal of the structure was part of compromise, is a finding of fact. While considering the documents on record both the Courts did not commit any illegality or perversity. It is not possible to re-appreciate the evidence and set aside the concurrent findings of fact. No question of law arises. The arguments advanced are regarding assessment of evidence. The Second Appeal is accordingly dismissed.

5. 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.)