

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****SECOND APPEAL NO. 771 OF 2015****ALONGWITH****CIVIL APPLICATION NO. 1648 OF 2015****IN****SECOND APPEAL NO. 771 OF 2015****Ratnagiri Nagar Parishad****..... Appellant****VERSUS****Gangaram Narayan Ambekar & Ors.****..... Respondents**

Mr.Rakesh Bhatkar for the Appellant.

Mr.Manas N.Gawankar for Respondent nos. 1, 2, 4 to 7, 9, 10, 13 to 16, 18 and 19.

CORAM : R.D. DHANUKA, J.**DATE : 29th AUGUST, 2016****P.C.**

By this second appeal filed under section 100 of the Code of Civil Procedure, 1908, the appellant (original defendant) has impugned the order and judgment dated 11th February, 2015 passed by the District Judge, Ratnagiri allowing the appeal filed by the original plaintiffs thereby setting aside the said judgment and decree passed by the learned trial judge on 31st January, 2011 dismissing the Regular Civil Suit No.25 of 2005 filed for seeking perpetual injunction against the appellants herein from starting proposed solid waste (Management and Handling) project on the suit property i.e. Gat No. 219, of village Dandadam.

2. The defendant was allotted a plot of land i.e. 219 admeasuring 2 Hec.46 Are landed property situated at Village Dandadam, Taluka Ratnagiri for the purpose

of setting up a solid waste (Management and Handling) plant. The plaintiffs who reside at Village Mirzole and village Kele in the Taluka and District Ratnagiri filed a suit in the representative capacity under Order 1 Rule 8 of Code of Civil Procedure and applied for perpetual injunction against the defendant from the setting up the said project on various grounds.

3. The suit was resisted by the defendant by filing written statement. Both the parties examined various witnesses before the learned trial judge. By the judgment and decree dated 31st January 2011, the learned trial judge dismissed the said Civil Judge filed by the plaintiffs. Being aggrieved by the said judgment and decree dated 31st January, 2011, the plaintiffs filed an appeal (Regular Civil Suit No. 34 of 2011). The learned District Judge-Ratnagiri by an order and judgment dated 11th February, 2015 allowed the said appeal filed by the plaintiffs and has set aside the judgment and decree dated 31st January 2011, decreed the RCS No.25 of 2005 and has granted injunction against the defendant from starting the proposed solid waste (Management and Handling) plant on the suit property on various grounds.

4. Learned counsel appearing for the defendant invited my attention to some of the findings rendered by the learned trial judge and would submit that though the finding recorded by the learned trial judge were correct which were based on the evidence led by both the parties, the appellate court has interfered with the said findings of fact recorded by the trial judge. He submits that the plot of land was allotted to the Municipal Council by the State Government for setting up a public project. He submits that the appellant has not taken any steps for setting up the said plant and thus the suit filed by the plaintiffs was totally premature. He submits that the plaintiffs had not examined any expert to prove that if any such plant was set up by the Municipal Council, it would be prejudicial to the interest of

the villagers in the vicinity.

5. It is submitted by the learned counsel for the defendant that the findings recorded by the learned District Judge are totally perverse and contrary to the evidence of the witnesses examined by the defendant on record. He lastly submits that as and when any steps are taken by the defendant for setting up the plant, the respondent could have filed the suit and not at this juncture.

6. Learned counsel appearing for the plaintiffs on the other hand placed reliance on the findings of fact recorded by the appellate court and would submit that the appellate court has rightly considered the evidence led by both the parties in right prospective and has considered various admissions made by the witnesses examined by the defendant and has rightly reversed the findings recorded by the learned trial judge. He submits that the Government had allotted another plot to the Municipal Council which was cancelled in view of the political interference. He submits that the witnesses examined by the defendant had admitted before the trial court that if the project proposed to be set up by the defendant was allowed to be set up, it will be dangerous to the health of the entire village. He submits that admittedly the plot on which the defendant had proposed to set up the plan was having a sheer slope and considering the proposal of the defendant to bring 15-16 trucks, everyday on the suit plot, it would have polluted the river which was used by the villagers for various purposes and more particularly during the monsoon.

7. A perusal of the order and judgment passed by the appellate court indicates that the appellate court has considered the evidence led by both the parties independently and have formulated seven points for determination. A perusal of the judgment indicates that the appellate court has dealt with the evidence led by

both the parties and has considered various admissions of the witnesses examined by the appellant and more particularly in their cross examination. After considering the evidence led by both the parties, the appellate court has rendered a finding that the witnesses examined by the appellant has admitted that the suit property for proposed project was having sheer slope and river is situated at the bottom of the slope. The agricultural land of private owners are situated between the suit property and the Government road. There is no approach to the suit property. The appellate court has held that it could not be said that suit property was convenient for the proposed project, because there was no acquisition of the private properties for the road.

8. The appellate court has held that the suit property was having slope towards southern and western side and it is revealed that Dandeadam river is situated at the bottom of the slope. If collection of 15 to 16 trucks solid waste per day was going to be stored on the suit property which is having slope towards river, definitely it would pollute river water. The appellate court also took cognizance of heavy rainfall of about 120-130 inch per year in rainy season. It is held that if the wastage would be flown into river water, because of its decomposition, it would be fermented and it would pollute the river water which is dangerous from the health point of view of villagers. The appellate court has also taken cognizance of the allotment of the another plot of land to the appellant by the State of Maharashtra which was cancelled due to the political pressure.

9. The appellate court also took the cognizance of the fact that the waste would be collected by the appellant in Ratnagiri which is about 10 km away from the suit plot for which the appellant will have to spend lacs of payment towards transportation charges. After considering the various facts including the

admission on record, the appellate court has taken a view that the suit plot would not be a convenient plot for the purpose of setting up of the plant of this nature.

10. The appellate court has also considered clause 8 of Municipal Solid Wastes (Management and Handling) Rules, 2000 which provided that the solid waste project must be away from the water bodies and habitation clusters. The appellant did not produce on record any documents which would show that the Pollution Control Board and Bhujal Survey Officer had surveyed the suit property as convenient and suitable for the project. No clearance certificate about the suit property is produced by the defendant on record.

11. In my view, the defendant has failed to produce any competent witness before the learned trial judge to prove that if the project as proposed was allowed to be set up, it will not cause any health hazard or create any pollution problem and would not affect the villagers of the said village. In my view the appreciation of evidence by the appellate court is proper and does not warrant any interference.

12. The finding of facts rendered by the appellate court are not perverse and are based on the oral and documentary evidence led by both parties and cannot be interfered with by this court in the second appeal under section 100 of the Code of Civil Procedure, 1908. There is no substantial question of law having arisen in this second appeal.

13. Second appeal is devoid of merits and is accordingly dismissed. No order as to costs.

[R.D. DHANUKA, J.]