

Sequeira

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

***SECOND APPEAL (St.) NO. 13016 OF 2016
With
CIVIL APPLICATION NO. 798 OF 2016***

Smt.Renu Kailas Bhagat. ... Appellant
V/s.
Nashik Municipal Corporation. ... Respondents.

***Along with
SECOND APPEAL (St.) NO. 13022 OF 2016
With
CIVIL APPLICATION NO. 797 OF 2016***

Shri Kailas Rameshchandra Bhagat. ... Appellant
V/s.
Nashik Municipal Corporation. ... Respondent.

Mr.A.M.Kulkarni, for the Appellant in both the Appeals and
Applicant in both C.A.
Mr.Vaibhav Patankar, for the Respondent in both Appeals.

***Coram : N.M. Jamdar, J.
Monday 20 June, 2016.***

Oral order. :-

Both these Appeals challenge the Judgment and Orders passed by the learned Civil Judge, Junior Division, Nashik and the District Judge, Nashik partly decreeing the Suit and dismissing the Appeal filed by the Appellants, who are husband and wife.

2. The Second Appeal (Stamp) No.13016 of 2016 arises from Regular Civil Suit No.461 of 2007 and Second Appeal (Stamp) No.13022 of 2016 arises from Regular Civil Suit No.462 of 2007. The grievance of the Appellants was that they were operating the food stall / shop abutting to the wall of Nashik Road railway station after obtaining the Shop Act license and without any notice the Respondent-Corporation proceeded to demolish the structure. The learned Civil Judge after hearing both the sides wherein the Appellants produced documentary evidence, concluded that the structures were standing in a public place. The learned Civil Judge also held that the Appellants failed to demonstrate legality of the structure. The learned Civil Judge held that though the structure was demolished without notice the Appellants were not entitled to any injunction. The Appellants thereafter filed Appeals in the District Court, Nashik which was dismissed by the learned District Judge.

3. Heard the learned counsel for the parties.

4. The Respondent-Corporation has not issued notice giving seven days time to the Appellants and the grievance of the Appellants is that there was no due process adopted. The learned counsel for the Appellants has placed on record photographs

showing that stalls are standing on the site. It is the grievance of the learned counsel for the Respondent-Corporation that these stalls have been put up after demolition. The learned counsel for the Appellants submitted that now the Municipal Corporation should remove these stalls by following due process. This submission cannot be accepted. The learned District Judge, has rightly relied on the decision of the Apex Court in the case of *Maria Margarida Sequeriad Fernandes v. Erasmo Jack de Sequeria - AIR 2012 SC 1727*, wherein the Apex Court has elaborated the concept of due process of law, which simply means giving an adequate opportunity. The Appellants approached the Civil Judge thereafter the District Court and had full opportunity to put forth their grievance. The learned counsel for the Respondent-Corporation has placed on record certain photographs which indicate that the finding of fact recorded by both the Courts that the structure stands in congested area near railway station, is fortified. The Appellants, except the shop license have not been able to show any documentary evidence that the structures were legal. In absence of any documents showing the legality of the structure, an injunction restraining the Respondent-Corporation from demolishing the illegal structures, cannot be granted. No question of law arises in these Appeals.

5. At the most request of the learned counsel for the Appellants to give time to vacate the premises can be considered. If the

Appellants file an undertaking on affidavit within a period of three weeks that they will peacefully vacate the structure after period of four months permitting the Respondent-Corporation to remove the same, the Corporation will not carry out further demolition for period of four months. However if the affidavit is not filed within period of three weeks as stated, it will be open to the Respondent - Corporation to take the action of demolition.

6. The learned counsel for the Appellants then, on instructions, submitted that the Appellants will make an application for regularisation. This request presupposes that the structure is not legal. If such an application is made within period of three weeks, the Respondent-Corporation will take a decision thereupon within period of three weeks thereafter. It is made clear that filing of affidavit as above is not waived even if an application for regularisation is made. The Application for regularisation would be decided as per rules and regulations.

7. Both the Second Appeals are accordingly disposed of. The Civil Applications in both the Appeals stand disposed of.

(N.M. Jamdar, J.)