

*JPP*

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

***SECOND APPEAL NO. 96 OF 2015  
with  
CIVIL APPLICATION NO. 191 OF 2015***

Mr. Anant Bapu Haldive. ... Appellant/Applicant.

V/s.

Grampanchayat Fondaghat & Ors. ... Respondents.

Mr. Sanskar Marathe for the Appellant/Applicant.

***CORAM : N.M. Jamdar, J.***

***03 August, 2016.***

**Oral Order :-**

The Appellant challenges the concurrent Judgments and Orders passed by the Civil Judge, Junior Division, Kankavli and the District Judge, Sindhudurg, dismissing the Suit and Appeal filed by the Appellant. The Suit was filed by the Appellant to challenge the notice issued by the Local Authority dated 5 December 2005 and for injunction to restrain the Respondent – Local Authority from acting upon the notice for demolition.

2. The learned Counsel for the Appellant submitted that in this Suit for injunction both the Courts have needlessly gone into the issue of title and once the Appellant had established the factum of possession, the injunction ought to have been granted. This submission cannot be accepted. The Suit is to instruct a public body to act as per law to pursue the notice for demolition dated 5 December 2005. It is not a Suit simplicitor between two individuals for injunction. In the circumstances, it was obligatory on the part of the Appellant to produce a permission for erecting the suit structure. No such permission is produced on record.

3. The learned Counsel for the Appellants then submitted that there is no discussion as regards legality of the notice. This submission also cannot be accepted, if the Appellant has failed to produce any permission for the structure. There is no question of legality of the notice issued by the public body. The Respondent is duty bound to take note of violation of planning laws and notice has been issued and served.

4. The learned Counsel for the Appellant submitted that now the Appellant be permitted to produce the permission now in the Second Appeal. The Suit was instituted in the year 2006. After a full fledged trial, and the Appeal, for a span of decade the

Appellant has not produced any such permission on record. There is absolutely no reason given. It is not possible to entertain such oral request to produce a document in the Second Appeal. Furthermore, the Appellant was working in the local Gram Panchayat. Therefore, he is fully aware of the proceedings and implications of not having a permission.

5. In the circumstances, no fault can be found with the assessment of evidence by both the Courts, no question of law arises. The Second Appeal is dismissed. Civil Application is disposed of accordingly.

6. By way of indulgence, it is directed that when the Respondent – Authority will act on the notice of demolition, they will give four weeks advance notice to the Appellant.

*(N.M. Jamdar, J.)*