

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

SECOND APPEAL NO.172/2015

**(Sunil Karamchand Abhichandani ..vs.. Corporation of the City of Nagpur through its
Municipal Commissioner and others)**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A. M. Ghare, Advocate for appellant.
Mrs. S. S. Jachak, Advocate for respondent nos.1 to 4.
Mr. O. D. Jain, Advocate for respondent no.5.

CORAM : A. B. CHAUDHARI, J.
DATE : MARCH 18, 2016

Heard learned counsel for the rival parties.

In the present second appeal, there is a challenge to the concurrent finding of fact recorded by the two courts below by which the suit filed by the appellant-plaintiff was dismissed. The crux of the matter is availability or non availability of the sanctioned plan order issued by the Town Planning Authority. In this behalf, the appellant relied on a note from the note-sheet of the office filed by the Corporation at Exh.71. The learned counsel for the appellant contended that in Exh.-71, which is a photocopy that was placed on record by way of secondary evidence, it is recited that the proposed sanction in question should be given. Beyond this, there is no evidence with the appellant-plaintiff to show that there was any sanction order issued nor there is any evidence to that effect.

In the official course of business, the note-sheets are written for giving proposals to the issue sanction orders but the recommendation to grant sanction is no sanction unless explicit order is passed by the competent Town Planning authority. Therefore, to place reliance on Exh.-71, the note-sheet that too a photocopy and contend that it is sanction order and, therefore, the Court should have passed a decree, in my opinion, is an absurd proposition. The appellant, therefore, clearly failed to prove his case before the trial Judge. Whether there is sanction for construction or not cannot be a matter left to the whims and caprice of anyone. The law requires passing of sanction order for making construction and does not depend on the officers writing note-sheets.

In that view of the matter, Exh.71 note-sheet is of no avail and consequently, I find no merit in the second appeal since no question of law, muchless substantial question of law arises in the present matter. Hence, following order is passed.

ORDER

(i) Second Appeal No.172/2015 is dismissed summarily. No order as to costs.

JUDGE