

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
APPEAL FROM ORDER NO.12 OF 2018

01 Manchak s/o Bapurao Pawar,
age: 73 years, Occ: Agril.,
R/o Dutt Nagar, Jintur Road,
Parbhani.

02 Ganesh s/o Sahebrao Nilvarna,
age: 45 years, Occ: Labour,
R/o Sant Tukaram Nagar,
Pathri Road, Parbhani.

03 Rustum s/o Kisanrao Jadhav,
age: 59 years, Occ: Business as
Tailor, R/o Sant Tukaram Nagar,
Pathri Road, Parbhani.

04 Vilas s/o Nivratti Magar,
age: 46 years, Occ: Business,
R/o Sant Tukaram Nagar,
Pathri Road, Parbhani.

05 Laxman s/o Shrirang Shinde,
age: 37 years, Occ: Agri.,
R/o Sant Tukaram Nagar,
Pathri Road, Parbhani.

06 Datta s/o Yogaji Pund,
age: 63 years, Occ: Pensioner,
R/o Sant Tukaram Nagar,
Pathri Road, Parbhani.

Appellants

Versus

01 The State of Maharashtra,
through the Collector, Parbhani.

02 The Parbhani Municipal Corporation,
Parbhani, through its
Deputy Commissioner,
Parbhani Municipal Corporation,
Parbhani.

Respondents

Mr.S.S.Choudhari, advocate for appellants

Mr.Bhushan V. Virdhe, A.G.P. for Respondent No.1.

CORAM : M.S.SONAK, J.**DATE : 24th January, 2018.****ORAL JUDGMENT :**

1 This appeal challenges the order dated 20.12.2017 made by the Principal District Judge, Parbhani, dismissing appellants' application at Exhibit-5 in Misc. Civil Appeal No.69/2017.

2 The issue, as to whether an Appeal from Order is maintainable or not, is itself debatable. This is because Misc. Civil Appeal No.69/2017, challenges the order dated 18.12.2017, dismissing appellants' application at Exhibit-5 in Regular Civil Suit No.250/2017. In terms of Section 104 (2) of the Code of Civil Procedure, no appeal shall lie from the order passed in Appeal under Section 104 of the CPC. However, learned Counsel for the appellants submits that bar under Section 104(2) of the Code of Civil Procedure will apply only to an order finally disposing of Misc. Civil Appeal No.69 of 2017, but not to an order merely disposing of an application at Exhibit-5 in such appeal. Though, *prima facie*, this contention cannot be accepted, looking to the insistence of learned Counsel for the appellants and since, the appeal was substantially heard, same is being disposed of.

3 The main contention of the appellants is that the location at which religious structure has been put up, was earlier reserved for the purpose of ring road, but later on, alignment of the ring road was changed and this location is no longer required for construction of ring road. Learned Counsel for the appellants submits that there is even a resolution of the Municipal Corporation for return of such land to its owners. He, therefore, submits that there was nothing wrong in putting up religious structure at the present location and respondents ought to be restrained from taking any action against the same.

4 The appellate court has written a detailed order running almost in 16 pages only to dispose of application at Exhibit-5. In fact, said order was more than sufficient to dispose of the appeal itself. In the order, it is rightly held that the issue is not about the alignment of the ring road, but the fundamental issue is that the structure, which is put up, is without any sanctioned plans or licenses. On query, learned Counsel for the appellants, as to whether the structure is licensed, the only response is that the structure was put up before 15 years ago. Obviously, this is not the justification for construction of illegal structure. It is not, as if, 15 years ago, there was no requirement of obtaining sanctioned plans and licenses for putting up such structures. Merely because, structure, is a religious structure, that does not obviate the necessity of compliance of the provisions of law, including in particular, municipal laws, which requires approval, sanctioned plans, permissions, etc. This is a sufficient reason to dismiss this appeal. No protection can be granted in respect of such structures merely because they were erected 15 years before.

5 There is no infirmity in the order appealed against. Hence, this appeal is dismissed. There shall be no order as to costs.

M.S.SONAK
JUDGE

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