

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

**SECOND APPEAL (ST.) NO. 21295 OF 2018
WITH
CIVIL APPLICATION NO. 1003 OF 2018**

Raghubahadur Ramsingh Yadav	...	Appellant
V/s.		
Mira-Bhayander Municipal Corporation	...	Respondent

- Mrs. Neeta Karnik for the Appellant.
- Mr. N. R. Bubna for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 8th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for the Respondent.

2] This Second Appeal is directed against the concurrent finding of the fact, as recorded by both the Courts below whereby the suit filed by the present Appellant for declaration and injunction restraining the Municipal Corporation from taking any action in respect of the suit structure, came to be dismissed.

3] As per the Appellant, he has constructed the suit structure in the year 1978-1979 after getting the plan sanctioned from the then

Group Grampanchayat Navghar and since then, he is in possession thereof. Only some portion of the structure was demolished in the year 2004, as it was obstructing the work of road widening; otherwise he still continues in possession of the remaining portion and hence, the notice issued by the Respondent-Municipal Corporation under Section 260(1) and (2) of the Bombay Provincial Municipal Corporation Act calling upon to demolish the structure on the ground that it is unauthorised is not legal and correct.

4] In this respect, the trial Court had considered that the resolution by which the plan for sanction of the suit structure was passed is not found in the proceeding book (Exhibit-94). Hence, it was held that there is nothing on record to show that the construction of the suit structure is legal.

5] Secondly, it was also found that the order dated 17/05/2007 was passed by the Municipal Commissioner and under the police protection on 15/06/2007 the suit structure was demolished. There is evidence of D.W.1 Umesh to that effect along with the Note-sheet (Exhibit-83). In view thereof, there hardly remains any substance in the Second Appeal. No substantial question of law otherwise also, raised in the Second Appeal.

6] In view thereof, this Second Appeal stands dismissed.

7] At this stage, learned counsel for the Appellant submits that there is a stay granted by the Appellate Court to the impugned notice issued by the Respondent, which is in force upto 3rd September, 2018. In view thereof, it is requested that the said stay be extended for further six weeks.

8] Learned counsel for the Respondent strongly resists the same and in my considered opinion rightly so, as no ground is made out to extend the said stay. As the construction is illegal and Second Appeal is also dismissed finding no substantial question of law involved therein, there is no ground made out for extending the stay. Therefore, the said prayer stands rejected.

9] In view of dismissal of the Second Appeal, nothing survives in the Civil Application and hence, it stands disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]