

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

**SECOND APPEAL NO.943 OF 2015
WITH
CIVIL APPLICATION NO.2028 OF 2015
IN
SECOND APPEAL NO.943 OF 2015**

Shri.Ramdas Narayan Davate ...Appellant
Versus
The State of Maharashtra
Through the Collector, Nashik & Ors. ...Respondents

Mr.Sachin Gite for the Appellant.

Mr.Yogesh Dabke, AGP for Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.

DATE : 21st FEBRUARY 2018

P.C.

1. Heard Mr.Gite, the learned counsel for the appellant and Mr.Yogesh Dabke, the learned counsel for the respondents.

2. Mr.Gite, the learned counsel for the appellant submits that in this case, the substantial questions of law referred to in Clauses (C),(D),(E) and (F) of the Memo of Appeal arise for determination.

3. Mr.Gite, submits that in terms of Government Resolution dated 29-09-1999, the appellant, is entitled to have the structure in his occupation regularized. He submits that till date the inquiry in relation to such regularization is incomplete. He submits that until such inquiry is completed, there is no question of respondents taking any action against the appellants structure.

4. Mr.Gite, submits that in terms of decree dated 09-02-2010 in RCS No.139/2008, the learned Trial Judge has already held that structure is beyond the distance of 20 meters from the building line and the center of State Highway No.23. Mr.Gite, submits that by totally ignoring these facts, the Trial Judge has recorded a finding that the structure is within 20 meters from the building line and the center of the State Highway No.23.

5. Mr.Gite, submits that the appellant, has been bequeathed this property by Narmadabai, wife of Parashuram who had been allotted the structure on lease basis by the respondents. Mr.Gite, submits that substantial questions as aforesaid therefore arise in this Appeal.

6. Mr.Dabke, AGP points out that the lease in favour of

Parashuram expired after 7 years from the date of initial grant. The appellant is trespasser and there is no right of regularization. He points out that the inquiry is complete and regularization has been rightly declined. He submits that suit was frivolous and intended only to continue with the encroachment. He points out that from the record it is quite clear that more than one proceedings have been initiated by the appellant only to resist action against the encroachment. He submits that no questions of law or at least substantial question of law arise in this Appeal. He submits that this appeal may therefore, be dismissed with costs.

7. In this matter, even in terms of the case set out by the appellant the suit property was initially given on lease for 11 months to Parashuram. Thereafter, this lease was extended by seven years. Admittedly, there is no further extension of lease. Upon the demise of Parashuram, it is pleaded that his wife Narmadabai applied for regularization of the structure on the property. The appellant claims that the Narmadabai has bequeathed this property to him. The issue as to whether right to pursue the application for regularization can be bequeathed or not is itself a doubtful issue. However, since, the appellant, has not been non-suited on this ground there is no necessity to go into this issue at

this stage.

8. The appellant, has taken contradictory stands both in the first appeal as well as the second appeal. On one hand it is submitted that the inquiry as to whether or not the structure/occupation should be regularized or not is incomplete. On the other hand it is urged that the decision of the Additional Collector refusing to regularize the encroachment on the ground that the suit property is situated at the distance of 20 meters from the building line and the center of the State Highway No.23 is incorrect. The Appeal Court has quite correctly held that the inquiry is complete and in any case there is no question of any right to insist upon regularization by the appellant.

9. The Trial Court in this case, had not correctly appreciated the scope and import of the GR's in relations to regularizations of encroachment on Government Lands. The Appeal Court was entirely right in interfering with the order of the learned Trial Court. From the record, it is quite clear that the appellant has initiated multiple proceedings only to obstruct action against his encroachment. In the pleadings, the appellant, has failed to demonstrate any right vested in him to insist upon regularization of

the structure. The Appeal Court has held that the structure is located adjacent to State High Way and in a busy locality. Such finding of fact is backed by evidence and therefore there is no perversity. Even the GR dated 29-09-1993 creates no right to claim regularization. The public property cannot be appropriated in this manner.

10. In the facts and circumstances of the present case none of the questions proposed by Mr.Gite can be styled as question of law. In any case, such questions, are not substantial questions of law. Accordingly, this appeal is liable to be dismissed and it is hereby dismissed.

11. There shall be however no order as to costs.

12. The Civil Application does not survive and the same is disposed of.

(M. S. SONAK, J.)