

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

911 SECOND APPEAL NO.299 OF 2016

Municipal Council, Amalner
Through its Chief Officer,
Municipal Council, Amalner,
Tq. Amalner, Dist. Jalgaon.

... Appellant.

... **Versus** ...

Saraswati Keshav Pol,
deceased through her L.Rs.

- 1 Arvind Keshav Pol,
Age 68 yrs., Occ. Business,
R/o Near Tahsil Office,
Opp. Raj Bhawan, Dhule Road,
Amalner, Dist. Jalgaon.
- 2 Suresh Keshav Pol,
Age 66 yrs., Occ. Business,
R/o Near Tahsil Office,
Opp. Raj Bhawan, Dhule Road,
Amalner, Dist. Jalgaon.
- 3 Ramesh Keshav Pol,
Age 64 yrs., Occ. Business,
R/o Near Tahsil Office,
Opp. Raj Bhawan, Dhule Road,
Amalner, Dist. Jalgaon.
- 4 Madhav Keshav Pol,
Age 63 yrs., Occ. Business,
R/o Near Tahsil Office,
Opp. Raj Bhawan, Dhule Road,
Amalner, Dist. Jalgaon.

5 Narayan Keshav Pol,
Age 59 yrs., Occ. Business,
R/o Near Tahsil Office,
Opp. Raj Bhawan, Dhule Road,
Amalner, Dist. Jalgaon.

... **Respondents.**

...

Mr. G.S. Rane, Advocate for the appellant

Mr. S.B. Tiwari & Mr. D.D. Deshmukh, Advocates for the respondent

Nos.1 to 5

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 28th FEBRUARY, 2019

ORAL JUDGMENT :

1 Present appeal has been filed by the original defendant challenging the Judgment and Decree passed in Regular Civil Appeal No.26/2008 by District Judge-1, Amalner, Dist. Jalgaon, whereby the present appellant's appeal came to be dismissed on 08.01.2015. In the said appeal, the Judgment and Decree passed by learned Civil Judge Junior Division, Amalner in R.C.S. No.49/1998 dated 16.04.2008 was challenged. Present respondents' predecessor had filed the said suit for declaration and injunction. It came to be decreed on 16.04.2008.

2 The original plaintiff had come with the case that she is the owner and possessor of CTS No.3282/A admeasuring 70 x 65 feet a constructed premises situated in Amalner. She was running a restaurant by name 'Saraswati Restaurant' in the said suit property and was also residing there since 1966 with her five sons and their families. It is stated that the defendant Municipal Council had reserved the said area in the year 1973 for the purpose of Octroi Naka. She had moved application to withdraw the said reservation. Thereafter, on her request the Municipal Council had deleted the suit property from the reservation and communication to that effect was made to her by letter dated 10.03.1975. She has further come with a case that the Chief Officer of the Municipal Council went to the suit property around 7.00 p.m. on 27.06.1998 and directed her to vacate the suit premises within 24 hours, claiming that there is reservation by this Municipal Council. When she tried to persuade, he did not listen and affixed the notice regarding vacating the property on the conspicuous part of the property and therefore she filed suit.

3 The suit was resisted by filing written statement. It was admitted that the plaintiff was the owner of the suit property since 1966 and she is running a restaurant as well as she is residing in the said

property. However, the said property is reserved in the development plan of 1970 under the Town Planning Scheme. However, it was denied that the reservation was deleted on the request of the plaintiff. It was contended that the suit property has been acquired for the public purpose as per Amalner Town Planning Scheme No.1 and the final scheme has been sanctioned by the State Government on 15.12.1970. Plaintiff had knowledge about the same, however, she denied her unauthorized occupation in the suit property. Under that circumstance, notice came to be issued to her on 27.06.1998 for vacating and handing over the possession of the suit property to the defendant, and on this ground it was prayed that the suit should be dismissed.

4 Taking into consideration those rival contentions, issues came to be framed, parties have led oral as well as documentary evidence. Taking into consideration the evidence on record and heard both sides, the suit came to be decreed. It was declared that the notice dated 27.06.1998 is illegal. The defendant was restrained from dispossessing the plaintiff from the suit property in said premises on the basis of said notice, without following due procedure of law.

5 The original defendant preferred appeal bearing R.C.A. No.26/2008 and it came to be dismissed after hearing both sides on

08.01.2015 as aforesaid. Hence, the original defendant intends to file this Second Appeal.

6 Heard learned Advocate Mr. G.S. Rane for the appellant and learned Advocate Mr. S.B. Tiwari for the respondent Nos.1 to 5. It has been vehemently argued on behalf of the appellant that both the Courts below have not considered the basic point that the suit was not maintainable in view of Section 89 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "MRTP Act"). When the suit itself was not maintainable, as the notice issued by the defendant cannot be questioned in any suit, the only course open to the Courts below was to dismiss the suit. Both the Courts below have not appreciated the provisions of Section 89 of MRTP Act and the Rule 19 in proper perspective. Though it was stated that the plaintiff should vacate the premises within 24 hours, it cannot be said to be illegal, since it had come on record that plaintiff was unauthorizedly possessing the said premises, though she contended that the reservation over the suit property was deleted by the Municipal Council and it was communicated to her by letter dated 10.03.1975. That letter was never produced by the plaintiff during the course of the Trial. Therefore, substantial questions of law are arising requiring admission of the Second Appeal.

7 Per contra, the learned Advocate appearing for the respondents reiterated the reasons, those were given by both the Courts below and submitted that the plaintiff has proved that the notice issued by the defendant was illegal. Under such circumstance, she was entitled to have protection to her possession over the suit premises. The Act itself provides for summary eviction of a person unauthorizedly possessing the property, but that is governed under Section 19 of MRTP Scheme, 1974, which prescribes that the notice should be given and reasonable time should be given in the same, which shall not be less than 30 days from the date of service to vacate the premises. When the notice was not issued, according to the rule, both the Courts below were justified in decreeing the suit and dismissing the appeal respectively.

8 The facts appears to be not in much dispute. Defendant itself is admitting that plaintiff was the owner of the suit property since 1966 and she was running a restaurant as well as she was residing in the said property. However, plaintiff is also admitting a fact that the suit property was acquired for public purpose and it was reserved under the Amalner Town Planning Scheme No.1, which was sanctioned by State Government on 15.12.1970. When plaintiff had come with a case that she had received communication from the defendant informing deletion

of the reservation of the suit property on 10.03.1975, she ought to have produced that document on record. Furthermore, when the final scheme was sanctioned by the State Government, there was no question of deletion of the reservation on its own by the defendant without further having any kind of reference with the State Government. Under such circumstance, both the Courts below have held that plaintiff has failed to prove that her possession over the suit property is lawful. It is also held that the defendant has proved that the suit property has been reserved under the Town Planning Scheme. Important point to be noted is that original plaintiff has not filed any appeal challenging these findings.

9 Plaintiff had come with a case that the notice which was admittedly issued by the defendant on 27.06.1998, is illegal, then it was required to be considered as to under which provisions of law it was issued and whether there is compliance by the defendant regarding the provision as well as the rules. Section 89 of the MRTP Act provides for the power of Planning Authority to evict a person continuing to occupy under the final scheme summarily, but then Section 89 of MRTP Act cannot be read in isolation, it will have to be read along with Rule 19 of Maharashtra Town Planning Scheme Rules, 1974, it provides for eviction under Section 89 by the Planning Authorities, it provides that Planning

Authority shall serve a notice on the person for evicting him to vacate the land within such reasonable time, as may be specified in the notice, which shall not be less than 30 days from the date of the service thereof. Here, in this case, there is absolutely no compliance of Rule 19 referred above. Under that circumstance, both the Courts below have correctly held that the notice issued by the defendant Exh.82 cannot be said to be legal one. Further, as regards Section 149 of MRTP Act, which provides finality to the orders prescribes that every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings. However, it is to be noted that what is protected under this provision, is a legal notice, that means, legal promulgated or issued notice, when it is clear in this case that notice Exh.82 is illegal, then the defendant-appellant cannot seek protection under Section 149 of the MRTP Act to the said notice.

10 It will not be out of place to mention here that as it was proved that the notice is illegal, the possession of the plaintiff is protected and the defendant counsel has been restrained from dispossessing the plaintiff without adopting due procedure of law. That means, the

defendant is not estopped from taking lawful procedure. Under such circumstance, the facts as well as law has been promptly dealt with by both the Courts below and therefore, no substantial question of law is arising. The Second Appeal is hereby dismissed/not admitted.

(Smt. Vibha Kankanwadi, J.)

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