

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

**SECOND APPEAL NO.261 OF 2018
ALONG WITH
CIVIL APPLICATION NO.1719 OF 2017**

Liyakat Abdulkarim Sayyed & Anr. .. Appellants/Applicants
Vs.
Pune Municipal Corporation & Anr. .. Respondents

ALONG WITH

**SECOND APPEAL NO.260 OF 2018
ALONG WITH
CIVIL APPLICATION NO.1720 OF 2017**

Mohan Khushaldas Vishnani .. Appellants/Applicants
Vs.
The Commissioner,
Pune Municipal Corporation & Anr. .. Respondents

Mr.Nitin P. Deshpande for the appellants/applicants in both the matters.
Mr.R.M. Pethe for the respondents in both the matters.

**CORAM : R.D.DHANUKA, J.
DATE : 14th October 2019**

P.C.:

. By these second appeals filed under Section 100 of the Code of Civil Procedure, 1908, the appellants (original plaintiffs in both the second appeals) have impugned the judgment and decree dated 1st September 2017 passed by the District Judge-7, Pune in Regular Civil Appeal No.442 of 2014 and confirming the judgment and decree dated 5th July 2014 passed by the Civil Judge, Junior Division, (PMC) Pune.

2. The appellants in both the second appeals have filed a suit inter alia praying for declaration and permanent injunction against the respondents. The appellants had applied for declaration that the construction of the flat nos.5 & 6 on 4th floor was legal and valid as per the provisions of Bombay Provincial Municipal Corporations Act, 1949 (for short “the said Act) and that the notice dated 16th December 2010 issued by the respondents was null, void, ab-initio and beyond the provisions of law. The suit was resisted by the respondents by filing written statement. The appellants had led oral evidence before the learned trial Judge. The respondents did not lead any oral evidence. The trial Court framed 5 points for determination.

3. After considering the oral and documentary evidence produced by the appellants, the trial Court rendered a finding that the appellants had failed to prove that the construction of flat nos.5 & 6 on 4th floor was legal and authorised. The appellants had also failed to prove that the notices dated 16th December 2010 and 18th December 2010 were illegal and the suit was maintainable for want of notice under Section 487 of the said Act.

4. The lower appellate Court independently considered the evidence produced by the appellants after framing 5 points for determination. The lower appellate Court had rendered a finding that

there was no permission accorded to the appellants for construction of the flat nos.5 & 6 on 4th floor of the building and thus the construction was illegal. The appellants were only permitted to construct three floors and was issued commencement certificate dated 27th September 2000, however, the appellants had raised one more floor i.e. flat nos.5 & 6 on 4th floor which was clearly in contravention of provision of Section 207 of the said Act.

5. Mr.Deshpande, learned counsel for the appellants submits that his clients be granted an opportunity to apply for regularisation of the structure at this stage. This request of the learned counsel is vehemently opposed by the learned counsel for the respondents on the ground that the General Body Resolution sought to be placed in service by the appellants dated 25th May 2011 and the Office Circular dated 16th June 2011 permitting such regularisation of the structure on certain terms and conditions have been set aside by this Court by a judgment dated 3rd April 2019 in Writ Petition No.7706 of 2012.

6. Be that as it may, in the facts and circumstances of these appeals, the two Courts below having rendered finding of fact that the construction of flat nos.5 & 6 on 4th floor being totally unauthorised and having been constructed though the permission was granted only to construct three floors, I am not inclined to accept the submission made

by the learned counsel for the appellants at this stage to grant an opportunity to make an application for regularisation of unauthorised structure. The finding of fact rendered by two Courts below being concurrent and not being perverse cannot be interfered with by this Court under Section 100 of the Code of Civil Procedure, 1908. No substantial question of law arises in these second appeals. The appeals are devoid of merit and are accordingly dismissed. In view of dismissal of the second appeals, pending civil applications do not survive and are accordingly dismissed. No order as to costs.

R.D.DHANUKA, J.