

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

**SECOND APPEAL NO.33 OF 2018
WITH
CIVIL APPLICATION NO. 38 OF 2018**

Sau. Pramila Suresh Vaidya & Ors. Appellants
(POA) Suresh Gopal Vaidya

Vs.

Shri. Prashant Pannalaji Karnawat Respondents
& Ors.

**WITH
SECOND APPEAL NO.35 OF 2018
WITH
CIVIL APPLICATION NO. 56 OF 2018**

Sau. Manisha Sanjay Patil Appellant
(POA) Sanjay Bapu Patil

Vs.

Shri. Prashant Pannalaji Karnawat Respondents
& Ors.

**WITH
SECOND APPEAL NO.36 OF 2018
WITH
CIVIL APPLICATION NO.40 OF 2018**

Sau. Sulochana Kantilal Shelke Appellants
(POA) Sagar Kantilal Shelke & Ors.

Vs.

Shri. Prashant Pannalaji Karnawat Respondents
& Ors.

WITH
SECOND APPEAL NO.37 OF 2018
WITH
CIVIL APPLICATION NO.59 OF 2018

Sau. Shobha Nanaji Shinde Appellant
(POA) G.P.A. Nanaji Narayan Shinde

Vs.

Shri. Prashant Pannalaji Karnawat Respondents
& Ors.

WITH
SECOND APPEAL NO.38 OF 2018
WITH
CIVIL APPLICATION NO.58 OF 2018

Dilip Dagu Zurade Appellant

Vs.

Shri. Prashant Pannalaji Karnawat Respondents
& Ors.

WITH
SECOND APPEAL NO.40 OF 2018
WITH
CIVIL APPLICATION NO.61 OF 2018

Sau. Indumati Arun Jadhav Appellant
(POA) Arun Bhaurao Jadhav

Vs.

Shri. Prashant Pannalaji Karnawat Respondents
& Ors.

WITH
SECOND APPEAL NO.41 OF 2018
WITH
CIVIL APPLICATION NO.64 OF 2018

Smt. Laxmibai Dattatraya Ghode Appellant
(POA) G.P.A. Darshan Dattatray Ghode

Vs.

Shri. Prashant Pannalaji Karnawat Respondents
& Ors.

WITH
SECOND APPEAL NO.42 OF 2018
WITH
CIVIL APPLICATION NO.60 OF 2018

Rajendra Waman Vaidya Appellant

Vs.

Shri. Prashant Pannalaji Karnawat Respondents
& Ors.

WITH
SECOND APPEAL NO.45 OF 2018
WITH
CIVIL APPLICATION NO.55 OF 2018

Smt. Sumanbai Sarangdhar Shirsath Appellant
(POA) GPA Ravindra Sarangdhar Shirsath

Vs.

Shri. Prashant Pannalaji Karnawat Respondents
& Ors.

WITH
SECOND APPEAL NO.46 OF 2018
WITH
CIVIL APPLICATION NO.54 OF 2018

Lalitkumar Premchand Jain Appellant

Vs.

Shri. Prashant Pannalaji Karnawat Respondents
& Ors.

WITH
SECOND APPEAL NO.47 OF 2018
WITH
CIVIL APPLICATION NO.63 OF 2018

Smt.Sushilabai Waman Vaidya Appellant
(POA) GPA Rajendra Waman Vaidya

Vs.

Shri. Prashant Pannalaji Karnawat Respondents
& Ors.

WITH
SECOND APPEAL NO.48 OF 2018
WITH
CIVIL APPLICATION NO.57 OF 2018

Mr. Pandurang Mahadu Pawar Appellant

Vs.

Shri. Prashant Pannalaji Karnawat Respondents
& Ors.

WITH
SECOND APPEAL (ST) NO.2243 OF 2019
WITH
CIVIL APPLICATION NO.197 OF 2019

Smt. Punjabi Ramchandra Pagar & Ors. Appellants

Vs.

Nashik Municipal Corporation Respondents
Thru' The Commissioner

WITH
SECOND APPEAL (ST) NO.2251 OF 2019
WITH
CIVIL APPLICATION NO.196 OF 2019

Kishor Tejuma Bajaj & Ors. Appellants

Vs.

Nashik Municipal Corporation Respondents
Thru' The Commissioner

.....

Mr. Milind M. Sathaye i/by Mr. Sanjay Prabhakar Shinde for appellant/
applicants in all matters.

Ms. Pranjali M. Bhandari for Respondent no.1 in Second Appeals and
for Respondent no. 2 in SAST No. 2251 of 2019.

Mr. Murlidhar Laxman Patil for Respondent no. 7 and 8 in Second
Appeals and for Respondent no.1 in SAST No. 2251 of 2019.

Mr. Mahendra Agvekar a/w Ms. Shraddha Chavan i/by Mr. Sachin
Gorwadkar for Respondent nos. 3 to 5 in SAST No. 2243 of 2019.

Coram : NITIN W. SAMBRE, J.

Date : 18th February, 2020

P.C.:

1. The appellant initiated Regular Civil Suit No. 457 of 2016 on the file of Civil Judge, Senior Division, Nashik claiming therein a decree for declaration of the settled possession of the plaintiff over the suit property and the order of injunction against the defendant-Corporation restraining it from demolishing the suit structure and further declaration that the notices issued to the respondent-Corporation on 14th March, 2016 and 23rd June, 2016 are without authority of law.

2. By consent, the group of appeals are being heard together. Facts in Second Appeal No. 33 of 2018 are taken into consideration as a lead case so as to decide the common issue involved in all these appeals.

3. The said suit being Regular Civil Suit No. 457 of 2016 came to be dismissed by the judgment and order dated 7th January, 2017 passed by Joint Civil Judge, Senior Division, Nashik with an observations that the suit is barred by the provisions of Section 433(A)

of the Maharashtra Municipal Corporations Act. The appeal, at the behest of the present appellant being Civil Appeal No. 37 of 2017 arises out of the same judgment. As such, these appeals.

4. Learned counsel for the appellant while questioning both the judgments of the Courts below would try to urge following question of law :

“Whether the Courts below have committed an error apparent on the face of record in dismissing the claim of the appellant as barred by the provisions of Section 433(A) of the Maharashtra Municipal Corporations Act.?”

5. It is the case of the appellant that the property in question was initially owned by Smt. Heerabai Krishna Badade i.e. defendant no.7, who inturn executed long term lease of 99 years in favour of Sau. Mangala Sudhir Shelke. The appellant/plaintiff claimed that sometime in 2007, they were inducted in an structure over the suit property and as such are continuously enjoying the said structure since 2007 onwards.

6. In the aforesaid background, it is claimed that the notices are issued by the respondent-Corporation on 14th March, 2016 and 23rd June, 2016 are nullity, as same are contrary to the very provisions of the Maharashtra Municipal Corporations Act and the Maharashtra Gunthewari Developments (Regulation, Up-gradation And Control) Act, 2001.

7. Learned counsel so as to substantiate his claim submits that the bar under Section 433 of the Corporation Act is not attracted in the case in hand. According to him, the erstwhile owner namely Mangala Shelke has applied under Gundhewari Act for regularisation of the structure and the said proceedings are pending till date. As such, according to him, there is corresponding lawful duty on the respondent-Corporation, who is a competent authority under the Gunthewari Act to deal with the application for regularisation to take final decision on the same. As such, he would urge that on one hand, the Corporation is not deciding the claim of the appellant/erstwhile owner, who has applied under Gunthewari Act for regularisation and on the other hand seeking demolition of the structure without any

authority of law. By relying on the judgment of this Court in the matter of the **Commissioner, Akola Municipal Corporation Vs. Bhalchandra s/o Govind Mahashabde** delivered in Civil Revision Application No. 14 of 2013 decided on 29th April, 2013 at Nagpur Bench. The submissions are merely because there is a statutory embargo on maintainability of the suit, inherent powers of the Civil Court to entertain the suit will not be affected. In addition, the submissions are, the notices which are issued under Sections 260 and 267 of the Corporations Act are nullity and also against fundamental judicial procedure and that being so the suit was very much maintainable inspite a statutory bar.

8. The learned counsel would also draw support from the judgment of this Court in the matter of **Yogesh Megaji Gada Vs. Municipal Corporation of Greater Mumbai and Anr**, in Writ Petition No. 2243 of 2013 with connected Writ Petitions decided on 10th April, 2014. According to him, paragraph 20 of the said judgment reads thus :

“20. All these decisions would show that the suit would be maintainable in cases where there is a jurisdictional error. In the case of Shiv Kumar Chadha (supra) the Apex Court was specifically considering the statute dealing with an unauthorized construction and the bar of jurisdiction of civil court. The Apex Court laid down that a suit can be maintainable if a court is prima facie of the opinion that the order is nullity in the eyes of law or there is an jurisdictional error in exercise of a power by the Commissioner or that the order is outside the scope of Act. The Apex Court took note of the fact of interpretation given to the word "jurisdiction" by House of Lords in the case of Neville vs. London "Express" Newspaper Ltd., and in the case of Anisminic Ltd., vs. Foreign Compensation Commission, wherein the House of Lords held that not only the tribunal should have jurisdiction to enter upon an enquiry, but it has does or fails to do something, in the course of such enquiry, which is of such a fundamental nature, then that its decision also becomes a nullity.

9. As such the submissions are, both the Courts below have committed an error in holding that the suit itself was barred pursuant to the provisions of Section 433(A) of the Corporations Act.

10. As far as Second Appeal Nos. 48 of 2018, 35 of 2018, 37 of 2018 & Second Appeal (ST) no.2243 of 2019 are concerned, learned counsel for the appellant would urge that Gunthewari Act prescribes a procedure for regularisation of unauthorised properties at the behest of holder of such unauthorised plots/structures. According to him, amongst other, concerned plot holder is required to place on record documentary proof of ownership or lawful possession of plot, existing lay out plan, plan of existing construction of such plot, rectification plan, an undertaking by the applicant to rectify uncompoundable infringements and demand draft of scheduled bank to cover the amount due as compounding fee and development charges. According to him, as far as appellants in the aforesaid four appeals are concerned, appellant has submitted an application for compounding alongwith location plan of the proposed site and also deposited the amount of compounding fees as is acknowledged by receipt no.1896 issued on 21/01/2010.

11. As such, submissions are, the section contemplates corresponding lawful duty on the respondent-Corporation to deal with such request of compounding and issuance of a certificate regularisation under Section 4 of the Act.

12. Learned counsel for the respondent-Corporation, Mr. Patil and other respondents would support the judgment of the Courts below, as according to them, both the Courts below have rightly held that the suit was not maintainable in view of bar under Section 433(A) of the Act.

13. By inviting attention of this Court on the various documents in the backdrop of pleadings, the submissions are, the appellant is trying to take disadvantage of certain procedural steps taken by erstwhile owner. According to him, even if presuming certain steps taken by erstwhile owner under the Gunthewari Act, for regularisation of the structure, the corresponding responsibility and the compliances are not reported. As such, the appellants are trying to take disadvantage of their own fault. As such, it is prayed in the given set of facts and documentary evidence on record, the suit is rightly held to be not maintainable. It is also urged that the law laid down by this Court in the matter of **Akola Municipal Corporation** and **Yogesh Gada** cited supra, will not be attracted in the facts of the present appeals. As such dismissal is sought.

14. Perused the judgment, which are produced on record alongwith various compilations.

15. The appellant has placed on record acknowledgment depicting payment of Rs. 5275/- on 21/01/2010 under the head of Gunthewari for regularisation. However, this Court is required to take note of the fact that predecessor of the appellant on 16/05/2002 was served with a notice to comply with requirement under the Gunthewari Act and subsequent thereto, certain compliance not stricto sense in accordance with under Section 4 of the Act were sought to be relied. It appears that appellant after payment in 2010, has not complied with other terms of Gunthewari Act. Rather the appellant is trying to shift burden on respondent-Corporation to carve out the case of nullity in law for the issuance of impugned notice by the Corporation.

16. This Court has already observed that appellant cannot take undue advantage of its own wrong as appellant was not diligent in pursuing its case of regularisation under the Gunthewari Act.

17. The case of the present appellant about the maintainability of the suit and non-operation of bar under Section 433(a) of the Corporation Act is based on the steps taken by the owner from whom the appellant was put in possession in 2007 of the structure in question for regularisation under the Gunthewari Act.

18. Admittedly, there is no sanction from the Planning Authority i.e. respondent-Corporation to the structure in question and that being so, the appellant has come out with a case that regularisation proceedings were taken recourse to under Gunthewari Act.

19. Such proceedings under the Gunthewari Act are sought to be relied on, so as to claim that it is fundamental and lawful duty of the respondent-Corporation to take the prayer of appellant or its predecessor to logical end of passing of an order for prayer of regularisation of structure.

20. Rather the documents produced on record demonstrates that except moving an application, no further steps are taken by the

appellant. Rather the plans which were called by the respondent-Corporation were not submitted. On one hand, the appellant is not pursuing the claim under the Gunthewari Act and on other hand are trying to take disadvantage of their own shortfall.

21. In the aforesaid background, considering the conduct of the appellant, the claim as is sought to be put-forth, based on the judgment in the matter of **Akola Municipal Corporation and Yogesh Gada** cited supra cannot be termed to be of no assistance. The appellant claimed that the action on the part of the respondent-Corporation is that of nullity or there is lack of compliance of fundamental judicial procedure. The notices issued by the respondent-Corporation which are subject matter of suit are in exercise of statutory powers. The appellant has failed to prima facie demonstrate that either the plot or the structure is regularised under the Gunthewari Act. This Court from the record can prima facie infer that the structure of the appellant was not sanctioned, the long term lease of 99 years was not registered in favour of the appellant.

22 As such the contention of the appellant that impugned notices issued by the Corporation is nullity, cannot be accepted at its face value.

23 As such the claim that respondent has failed to discharge its fundamental duty is not prima facie established by the appellant.

24. Rather the two notices, which are impugned in the plaint, prima facie demonstrates from the pleadings that the respondent-Corporation has granted sufficient opportunity to the appellant to demonstrate that there is compliance of the provisions of Municipal Corporations Act.

25. It is the case of the appellant that the earlier plot holder namely Shelke has applied way-back in 2001 i.e. within the prescribed period under Section 4 of Gunthewari Act

26. In view of the aforesaid observations that the predecessor-in-title of the appellant namely Shelke or the appellant himself has not

complied with further requirement under the Gunthewari Act, the said ground of seeking protection under the Provisions of Gunthewari Act is not available to the appellant.

27. In the aforesaid background, in my opinion, the view expressed by both the Courts below of non-maintainability of suit, in view of statutory embargo under Section 433 (a) of the Maharashtra Municipal Corporations Act appears to be just and proper.

28. No case for interference is made out in these Second Appeals. Appeals as such dismissed.

29. As a consequence of dismissal of the Second Appeals, pending applications also stand disposed.

(NITIN W. SAMBRE, J.)