

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 199 OF 2016**

Poona Amusement Limited thru
Director Shri Rajesh Subhash Mehta .. Appellant
Versus
Municipal Corporation of City
of Nashik .. Respondent

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Mr.A.G. Damle, Sr. Counsel i/b Mr.Prashant P. Kulkarni for the
appellant.

Mr. J. Shekhar with Advocate Sairuchita Chowdhary I/b
J.Shekhar & Co. for respondent No.1. Corporation

CORAM: BHARATI DANGRE, J.

DATED : 25th FEBRUARY, 2020.

P.C:-

1 Being desirous of developing an amusement park, the
Nashik Municipal Corporation invited a tender for development
of a central amusement park. In response to the tender notice,
the appellant company i.e. Poona Amusement Ltd submitted a
tender which was accepted. An agreement came to be executed
between the appellant Company and the defendant no.1 for a
period of 20 years and by the said agreement the appellant

undertook to develop central amusement park in the name of 'Pelicon Park' and the work was to be executed in four phases. The appellant had also agreed to pay lease amount of Rs.5,000/- per annum and to pay Rs.1.25 receipt on each ticket to the Municipal Corporation of Nashik.

2 The suit land where the park was to be located belong to CIDCO. Though the appellant completed the first phase as per the agreement and also received some response but the earlier footfall to the Pelican Park becoming dismal, it was not possible for it to continue with the project. Since the work did not progress, the defendant construed the same as breach of terms and conditions and the notice was issued on 15/11/2003 asking the appellant to remain present on the site for handing over the possession.

3 Being aggrieved by the said notice, the appellant approached the Civil Judge, Sr. Division by instituting RCS No.573/2003 seeking a perpetual injunction and for mesne profits.

4 Perusal of the said suit instituted by the applicant would reveal that the relief sought was restricted in the nature of a perpetual injunction not to obstruct the appellants peaceful

possession and enjoyment of the suit property and restrain the defendants from dealing with the suit property in any manner without due process of law.

5 Prayer clause (d) though roughly sought a prayer for mesne profits from the date of suit till the obstructions are removed by the defendants including the liability of the repayment to defendant no.4. The Suit mainly proceeded on prayer clause (a). By judgment dated 14th December 2012, Civil Judge, Sr. Division dismissed the Suit.

6 On an Appeal being carried to the District Court at Nashik in form of Civil Appeal No.31/13 it met with the same fate and the findings of the Court below being concurred with, the Appeal came to be dismissed.

7 In the Second Appeal assailing the said judgment the question of law that it sought to be argued by the learned Senior Counsel is as regards the finding recorded by the Courts below in respect of non-compliance of the notice contemplated under section 487 of the Bombay Provincial Municipal Corporation Act and another ground being an arbitration clause being in existence the suit was not maintainable.

8 The learned counsel for the Corporation when inquired about the progress of the work informs that the Corporation has floated some tender for an activity akin to an amusement park but in form of garden and recreation, meaning necessarily that the Corporation do not intend to continue with the work which was allotted in favour of the appellant in form of the Amusement Park.

9 In such circumstances, though a substantial question of law would arise in the Second Appeal, no fruitful performance would be solved by answering the same since for all practical purposes the claim of the appellant do not survive for the reason that the suit of the Appellant was restricted to an injunction of perpetual nature and no other monetary claim was staked. Necessarily, Second Appeal deserves a dismissal.

SMT. BHARATI DANGRE, J