

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 41 OF 2006

Liyakat Ali Ismail Muniwale,
Age 42 years, R/o Gawalipura, Karanja,
Tah. Karanja, District-Washim.
(Original Plaintiff on R.A.)

..... APPELLANT

...V E R S U S...

- 1] Chief Officer, Municipal Council,
Karanja, District-Washim.
- 2] Sub-Divisional Officer, Karanja,
Tah. Karanja, District-Washim.
- 3] State of Maharashtra,
through the Collector, Washim, Tahsil
and District Washim
(Original Defendant Nos. 1 to 3 on R.A.)

... RESPONDENTS

Shri A.M.Ghare, counsel with Shri O.A. Ghare, counsel for the appellant.
Shri D.M. Surjuse, counsel for the respondent No.1.

CORAM: **PUSHPA V. GANEDIWALA, J**
DATED : **24/01/2020.**

ORAL JUDGMENT :

The appellant/plaintiff has challenged the judgment and decree dated 23.08.2005 passed by the First Appellate Court in Regular Civil Appeal No. 151/2003, whereby the First Appellate Court reversed

the judgment and decree of the trial Court thereby restraining the respondent/defendant No.3- Municipal Council, Karanja from disturbing the peaceful possession of the appellant/plaintiff over the suit property without following the due procedure of law.

2. While admitting this Second Appeal on 10.03.2008, this Court has framed the following substantial question of law :-

“Whether the Municipal Council has an authority to evict a person where encroachment is found to be beyond the Road, Gadar, Drainage, Sewage, Acqueduct in such street” ?

3. I have heard Shri A.M.Ghare, learned counsel alongwith Shri O.A. Ghare, counsel for the appellant. Shri D.M. Surjuse, learned counsel for the respondent No.1.

4. At the outset, the cause of action to file the suit for permanent injunction is the notice dated 25.05.2000 issued by the respondent/Municipal Council, Karanja under Section 179 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short “the Act”) directing the plaintiff to remove the structure of the shop in question within 24 hours.

5. The description of the suit property is as under :-

Nazul Plot No. 230, Sheet No. 180, ad-measuring 80 Sq.Ft.

Area of land bounded towards :-

East	:	Road.
West	:	Open space of Nisar Mohd.
North	:	Lane
South	:	Shop of Gullumal.

6. It is the case of the plaintiff that he is carrying on the business of repairing Tape-Recorder and Audio Cassettes under the name and style of "Dilkash Musics", in the suit shop and paying municipal taxes regularly since 1984. The respondent No-1/Municipal Council resisted the suit vide its written statement below Exhibit-16.

7. The learned trial Court decreed the suit vide judgment and decree dated 15.12.2001 in Regular Civil Suit No. 327/2000 on the ground that the plaintiff could prove his legal possession over the suit premises. While, the judgment and decree of the trial Court was reversed by the First Appellate Court vide the impugned judgment by holding the appellant/plaintiff as an encroacher for want of any authentic document to show his legal possession.

8. The learned counsel for the appellant/plaintiff drew attention of this Court to the relevant documents from the evidence of

the plaintiff to show the possession of the appellant/plaintiff since 1984 over the suit property, which mainly includes Tax Receipts, Electricity Bills, No objection letter etc., and submitted that the appellant/plaintiff is occupying the suit land with sanction by the respondent/defendant. The Respondent No.1/Municipal Council preferred not to examine any witness.

9. Considering the pleadings of the parties and evidence of the plaintiff, there is absolutely nothing on record to show that any construction is made on any public street or in open Drain, Gutter, Sewer or Aqueduct , in such street as contemplated under Section 179 of the said Act.

10. Section 179 (1) of the said Act prohibits surface projections / obstructions and encroachments in respect of public streets which reads thus:-

179. Surface projections, obstructions and encroachments in respect of public streets. - (1)

No person shall, except with the written permission of the Chief Officer under sub-section (4) -

(a) build or set up, any fence, rail, post, stall, platform or any projecting structure or thing, or make any other encroachment or obstruction;

(b) place or deposit or cause to be placed or deposited any box, bale, package, or merchandise or any other thing;

in any public street or upon any drain, gutter, sewer or aqueduct in such street”.

11. It is nobody's case that the suit property is a public street requiring permission of the Chief Officer under Sub-Section (4) of Section 179 of the said Act for erection on any public street. On perusal of the impugned notice Exhibit-36, it does not show the description of the suit property and the reason for such eviction. At the same time, respondent No.1 / Municipal Council, in its written statement does not dispute that the plaintiff is running a business of repairing Tape-Recorders and Sale of Audio Cassettes at Nazul Plot No. 230, Sheet No. 18 D at Karanja. The respondent No.1 / Municipal Council also does not dispute that the plaintiff was given no-objection for getting electricity supply to the said premises.

12. In the absence of any concrete evidence on record to show that the plaintiff's stall on the suit land is on the public street as contemplated under Section 179 of the said Act, the settled possession of the plaintiff cannot be taken away by issuing 24 hours notice under Section 179 of the said Act.

13. For the reasons aforestated, the substantial question of law has to be answered in the negative. The respondent No.1/Municipal Council has no authority to evict a person without following due process of law.

14. In the circumstances, I am inclined to allow the Second Appeal and the same is accordingly allowed.

The impugned judgment and decree of First Appellate Court is quashed and set aside while judgment and decree of the trial Court dated 15/12/2001 is restored. Parties to bear their own costs.

JUDGE

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