

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

SECOND APPEAL NO. 409 OF 2012

Shri. Gopal Krushna Kadam	..Appellants
v/s.	
Warad Gramastha Sangh-Mumbai	
(Through Trustee)	..Respondent

Mr. Anilkumar Patil, for the Appellants.

None for the Respondents.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 15th JUNE, 2022.

P.C.

1. The Appellants herein are Defendants Nos. 3 to 5 in the Regular Civil Suit No.32 of 1998 filed before the C.J.J.D. Malwan by Respondent No.1-Trust challenging validity of resolution dated 06/12/1996 and Notice dated 12/08/1997 passed by Respondent No.15-Zila Parishad.

2. The Trial Court after considering the evidence on record declined to grant declaratory relief but granted relief of perpetual injunction against Respondent No.15-Zilla Parishad and its Chief Executive Officer (Respondent No.16) and thereby restrained them

from demolishing the school building standing in the suit land under Survey No.75 (51B) of village-Warad, Taluka-Malwan.

3. The Respondent No.1-Trust challenged the said judgment in Regular Civil Appeal No.110 of 2006. The Appellants herein filed cross objection challenging the findings of the Trial Court that the title of the land was not transferred to Zilla Parishad. The Respondent No.1-Trust/ original Plaintiff withdrew the appeal. By the impugned judgment dated 03/10/2011 the learned District Judge dismissed the cross objections filed by the Appellants/Defendant Nos.3 to 5 in the Suit. Being aggrieved by this order the Appellants have filed this appeal under Section 100 of the CPC.

4. Heard, Mr. Anilkumar Patil, learned counsel for the Appellants and perused the records.

5. The records indicate that Waradkar family was the owner of the land of Survey No. 75 (51-B), which is recorded in the Survey records in the name of Zilha Parishad, Ratnagiri. The said land was to be used for public purpose, for construction of a school building. It is not in dispute that Waradkar family had handed over possession of the

said land to Zilha Parishad, Ratnagiri, who in turn handover possession of the said land to the Respondent No.1-Trust (Plaintiff) for construction of a school building. Accordingly, the Plaintiff constructed school buildings, which are registered in the Gram Panchayat records under House Record No. 909 and 910. Said school buildings were inaugurated on 08/05/1983. It is on record that the said school buildings were inspected by Education Officer every year. Respondent No.15- Zilha Parishad was well aware that the buildings were being constructed from the year 1979 to 1983. After Having allowed the Plaintiff-Trust to construct the school buildings and to run the school for about 10 years, Respondent No.15-Zilha Parishad issued order of demolition of the said school buildings mainly on the ground that the Appellants/ Defendant Nos. 3 to 5 were using the said property as an access. The Appellants had not set up any plea or had not filed any proceedings seeking right of way through the said property. The trial Court after considering the evidence on record observed that the Respondent No.15-Zilha Parishad cannot be permitted to demolish the said school buildings, after having allowed the Plaintiff-Trust to construct the school building. Hence, the Trial Court restrained the Respondent Nos.15 and 16 -Zilha Parishad and its Chief Executive Officer from demolishing the school building situated

in Survey No. 75 (51-B) Warad, Sindhudurg.

6. The dispute was predominantly between the Respondent - Trust and the Zilha Parishad. The Respondent No.1-Trust withdrew the appeal filed before the District Court. The cross objections have been dismissed *inter alia* on the ground that the impugned Judgment only restrains the Respondent Nos.15 and 16 from demolishing the school buildings. No relief was granted in favour of the Plaintiff-Trust as against these Appellants. The Trial Court has also not recorded any adverse findings against these Appellants. It was under these circumstances that the learned Judge dismissed the cross objections. Having gone through the records, in my considered view the appeal does not raise any substantial question of law. Hence, the Appeal is dismissed.

(ANUJA PRABHUDESSAI, J.)