

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

**SECOND APPEAL NO.117 OF 2022
WITH
INTERIM APPLICATION NO.713 OF 2022**

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Smt. Savitri Shankar Dalavi ..Appellant
Versus
City and Industrial Development Corporation Ltd. ..Respondent

Mr. Mahesh V. Rawool, for the Appellant.

Mr. Rohit Sakhadeo i/by Sakhadeo & Associates, for the Respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : 10th OCTOBER, 2022

PC.

1. The appellant/plaintiff claims to be owner of land Survey Nos.47/2, 3/4 and 56/1 at village Sanpada. It is case of the appellant that aforesaid lands were acquired by the defendant/Corporation vide Award No.183, 156 and Unit case No.40 and 15. Alleging that the appellant is entitled to 220 sq.mtrs. of developed plot under the 12.5% scheme from the respondent/defendant/CIDCO, the appellant allegedly claim that he was given 40 sq.mtrs. of short area.

It is further claimed that the respondent on 9th October, 2013 issued notice under Sub-Section (1) of Section 53 of the MRTP Act directing appellant/plaintiff to remove the suit structure

standing in Survey No.54. It is claimed that said notice was initially resisted vide reply dated 14th October, 2013, thereby seeking regularization of the suit structure i.e. house situated on land Survey No.54.

2. Subsequent thereto again the appellant/plaintiff was allegedly served with notice on 28th November, 2018 issued under Sub-Section (1) of Section 53 of the MRTP Act thereby directing the appellant/plaintiff to remove the suit structure situated on land at Survey No.54.

3. As a sequel of above, the appellant feeling aggrieved preferred suit for declaration and permanent injunction being RCS No.378 of 2018.

4. The respondent/defendant resisted the suit claim by filing application under Order VII Rule 11 of the CPC for rejection of plaint as it is claimed that there is no cause of action accrued in favour of the appellant/plaintiff. The said application Exh.19 came to be allowed vide order dated 2nd January, 2020 passed by Civil Judge, Junior Division, Washi. As a sequel of above, the plaint came to be rejected. Since the said order amounts to passing of decree, Regular Civil Appeal No.20 of 2020 came to be preferred by the appellant which was also dismissed vide judgment and order dated 28th October, 2021 passed by District Judge-8, Thane. As such, this Second Appeal.

5. The question of law which the appellant intend to canvass is, whether the Courts below committed an error in rejecting the plaint in absence of the availability of evidence so as to justify the existence of structure of land being Survey No.56/1 at Sanpada village.

6. As far as the aforesaid submissions are concerned, it is the case of the appellant that he was owner of land Survey No.56/1 along with other two lands as referred to hereinabove which were acquired by the respondent.

7. As against aforesaid acquisition proceedings, the entitlement of the land to the extent of 220 sq.mtrs. is an independent issue which can be dealt with in an independent proceedings in accordance with law.

8. The cause of action is in regard to the situation of illegal structure in land Survey No.54 and not 56/1. As far as land Survey No.54 at Sanpada is concerned, admittedly appellant is not owner of the said property. As such, applying the principle that the respondent's defence need not be taken into account at the stage of deciding application preferred under Order VII Rule 11 of the CPC for rejection of plaint, the Courts below considered the plaint pleadings to be correct at its face value and noticed that no cause of action has accrued to the appellant in relation to the land which was earlier owned by him being Survey No.56/1. The Court noticed that

the impugned notice issued under Section 53(1) of the MRTP Act pertains to the illegal structure located in land Survey No.54 situated at Sanpada.

9. In the backdrop of findings recorded hereinabove, as is noticed in the impugned orders, in my opinion, no question of law is involved.

11. The Second Appeal as such stands dismissed.

12. In view of dismissal of appeal, pending interim application also stands disposed of.

[NITIN W. SAMBRE, J.]