

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

SECOND APPEAL NO. 53 OF 2006

Nagpur Improvement Trust
through its Chairman, Sadar,
Nagpur.

... Appellant

.. Versus ..

1) Smt. Sangeeta Sushilkumar Agrawal,
Aged about 32 years, Occ. Business,
R/o. Jalalpura, Gandhibagh, Nagpur

**2) Umesh @ Ganpatrao Jayantrao
@ Sudhir Buti,**
Aged about 25 years, Occ. Business,
R/o. Buti Bunglow, Civil Lines,
Nagpur

**3) Smt. Indrayani Ujjwal Kirloskar
(Ku. Indrayani D/o. Jayantrao @ Sudhir Buti),**
Aged about 30 years, Occ. Housewife,
R/o. Buti Bunglow, Civil Lines, Nagpur

...Respondents

Shri Sudhir M. Puranik, Advocate for appellant.
Shri S.V.Purohit, Advocate for respondents.

CORAM : SMT. M.S. JAWALKAR, J.

DATED : 09/11/2022

ORAL JUDGMENT

The present appeal is filed by the appellant being aggrieved by the judgment and decree dated 28/01/2004 passed by 3rd Additional District Judge, Nagpur in Regular Civil Appeal

No. 243 of 2001 and judgment and decree dated 14/03/2001 passed by 2nd Joint Civil Judge, Junior Division, Nagpur in Regular Civil Suit No. 188 of 1999.

2] The original plaintiffs (i.e. present respondents) had filed suit bearing R.C.S. No. 188 of 1999 for declaration, permanent and mandatory injunction. It is the case of the plaintiffs that they own and possess the house property bearing T.S. Nos. 25 and 26 specifically described in the suit. They had submitted the drawing in question on 17/01/1998 with the original defendant-Nagpur Improvement Trust (i.e. present appellant) seeking permission to the said drawing for building construction. The plaintiffs had also deposited the amount of Rs. 858/- towards registration fees for that drawing which were duly accepted by the N.I.T. on 17/01/1998. It is further contention that the defendant-N.I.T. had failed to send any communication to the plaintiffs with respect to their submission of drawing for sanction of map for more than 12 months. It has also intimated by the plaintiffs to the N.I.T. vide letter dated 20/04/1998 that they have submitted necessary drawings on 17/01/1998 for building construction on T.S. Nos. 25 and 26.

Despite their repeated enquiries, they were not made aware about the decision. It is also informed that, by virtue of lapse of more than 60 days from the date of submission of drawing, the same is deemed to have been sanctioned and they have right to execute the construction work. In spite of this, no decision was communicated and the plaintiffs started the construction work.

3] The learned counsel for the appellant submitted that the application of the plaintiffs (i.e. present respondents) has been rejected on 29/05/1999. The learned Trial Court after hearing the issues and recording evidence, decreed the suit and it was declared that the drawings submitted by the plaintiff nos. 2 and 3 with the defendant on 17/01/1998 along with letter dated 16/01/1998, with respect to proposed construction on the site of the suit property are deemed to have been sanctioned, and also declared that the defendant has no right and authority to interfere in any manner whatsoever with the proposed construction to be executed by the plaintiff no. 1 on the site of the suit property in accordance with the drawings submitted with the defendant on 17/01/1998. It was further directed that, not to interfere in any way to the proposed construction of the plaintiff no. 1 as well as

it was also directed to handover the drawings submitted by the plaintiff nos. 2 and 3 to the plaintiff no. 1 with an endorsement of sanctioned/deemed sanctioned.

4] The said order was challenged before the learned Appellate Court vide R.C.A. No. 243/2001. The learned Appellate Court confirmed the findings recorded by the Trial Court and dismissed the appeal. There are concurrent findings of trial recorded by both the Courts below.

5] It is not disputed by the learned counsel for the appellant that there was no communication within 60 days from the submission of drawings to the appellant.

6] After going through the provisions of the City of Nagpur Corporation Act, 1948 (i.e. Section 275, sub-section (3) of CNC Act, 1948), it is clear that if there is no communication within 60 days of submission of drawings for sanction, it will deemed to have been sanctioned.

7] The learned counsel for the respondents relied on the judgment of the Hon'ble Apex Court in the case of ***Live Oak Resort (P) Ltd. and another V/s. Panchgani Hill Station Municipal Council and another*** reported in (2001) 8 SCC 329,

wherein it is held that the rejection after expiry of prescribed period for treating as a deemed sanctioned is over, the subsequent rejection cannot be thus affect any work of construction being declared as unauthorized. Here, the communication by the N.I.T. subsequent to the expiry of period of 60 days has no effect on deemed sanctioned. So far as contention about any unauthorized or breach of drawing submitted, the N.I.T. is at liberty to take fresh proceedings against the plaintiffs.

8] The learned counsel for the respondents - plaintiffs relied on another judgment of the Hon'ble Apex Court in the case of *Ramanuja Naidu V/s. V. Kanniah Naidu and another reported in AIR 1996 SC 3021*, wherein it is held that the concurrent finding of fact cannot be interfered with by reappreciating evidence. There is no dispute on the facts.

9] While admitting the appeal, following substantial question of law was framed:

“Whether the trial Court was justified in giving mandatory direction to the Nagpur Improvement Trust to authenticate the map and grant a sanction under the stamp where the plaintiff had claimed that he has had a deemed sanction only?”

However, on perusal of Clause 4 of the order passed

in R.C.S. No. 188 of 1999 dated 14/03/2001, it shows that the defendant was directed by way of mandatory injunction to handover the drawings submitted by the plaintiff nos. 2 and 3 on 17/01/1998 to the plaintiff no. 1 with endorsement of sanctioned/deemed sanctioned. As such, it is not directed to the N.I.T. to grant sanction under the stamp but it is sanctioned/deemed sanctioned. As such, the substantial question of law is answered in the affirmative.

10] The learned counsel for the appellant also concedes that the communication is subsequent to the expiry of period of 60 days. As such, I do not see any reason to interfere in the judgments and decrees passed by the Trial Court as well as the Appellate Court. Accordingly, I proceed to pass the following order:-

ORDER

- (1) The appeal stands dismissed.
- (2) Decree be drawn up accordingly.
- (3) R & P be returned back to the Trial Court.

[SMT. M.S. JAWALKAR, J.]