

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**SECOND APPEAL NO. 168 OF 2020
WITH CIVIL APPLICATION NO. 3948 OF 2020**

Mr. Kunwarsingh Umravsingh Pardeshi,
Age : 61 years, Occupation : Business,
R/o. Pachora, Taluka Pachora,
District : Jalgaon.

... APPELLANT
(Original Plaintiff)

VERSUS

Pachora Municipal Council, Pachora,
Taluka : Pachora, District Jalgaon,
Through its' Chief Officer.

... RESPONDENT
(Original Defendant)

WITH
**SECOND APPEAL NO. 172 OF 2020
WITH CIVIL APPLICATION NO. 3950 OF 2020**

Mr. Prakash Ganpat Marathe (Patil)
Age : 57 years, Occupation : Business,
R/o. Pachora, Taluka Pachora,
District : Jalgaon.

... APPELLANT
(Original Plaintiff)

VERSUS

Pachora Municipal Council, Pachora,
Taluka : Pachora, District Jalgaon,
Through its' Chief Officer.

... RESPONDENT
(Original Defendant)

WITH
**SECOND APPEAL NO. 213 OF 2020
WITH CIVIL APPLICATION NO. 4178 OF 2020**

Mr. Suresh Hiranman Jalatkar,
Age : 73 years, Occupation : Business,
R/o. Pachora, Taluka Pachora,
District : Jalgaon.

... APPELLANT

(Original Plaintiff)

VERSUS

Pachora Municipal Council, Pachora,
Taluka : Pachora, District Jalgaon,
Through its' Chief Officer.

... RESPONDENT
(Original Defendant)

Mr. S. V. Suryawanshi, Advocate for the appellant
Mr. D. B. Thoke Patil, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 18/04/2023

JUDGMENT :-

1. These appeals are against the concurrent findings of Trial Court and First Appellate Court whereby RCS No. 27/2007, 28/2007 and 26/2007 were dismissed. Parties are referred to by their nomenclature in the suit.

2. Since common questions of facts and law are involved in these appeals, they are declared by common judgment.

3. Plaintiff filed aforesaid suits for injunction against defendant Municipal Council from disturbing his possession over the suit property. It is the case of the plaintiff that suit land is owned by defendant Council and that he is tenant in respect of the same. It is stated that after seeking all permissions he has carried out construction on the suit land. It is also averred that he is conducting business from the suit property since last 40 to 50 years and that no objection

certificate is issued by the Council for obtaining electricity and water connection. It is averred that Council issued notice dated 03/03/2007 for the removal of the shed. On these averments suit for injunction is sought restraining the Council from disturbing plaintiff's possession over suit property.

4. Defendant Council filed written statement raising objection to the maintainability of the suit under Section 304 of The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short 'Act) for want of statutory notice. It is also stated that plaintiff has encroached on the land belonging to the Council and hence notice was issued for removal of the unauthorized structure.

5. After recording evidence led by both sides Trial court dismissed the suit with observation that there is no evidence of tenancy and that there is no proof of authorization of structure. It is also observed that the notice issued by the Council is not challenged in the suit and that suit is barred for want of statutory notice under Section 304 of the Act. This judgment of dismissal of the suit came to be confirmed in RCA No. 151/2014, 150/2014 and 149/2014 by order judgment and decree dated 15/12/2018.

6. Learned counsel for the plaintiffs states that the Trial Court as well as the First Appellate Court committed error in not considering

the fact that the suit property is not on the street and therefore, the provisions of Section 179 to 181 of Act have no application to the present case. It is stated that both Courts erred in not appreciating evidence of rent receipts issued by Council in favour of plaintiff and that since the plaintiff is tenant he cannot be said to be an encroacher. According to him for the purpose of filing of the suit it was not necessary for the plaintiff to challenge to the notice issued by the Council. To support his submission he placed reliance on judgment of this Court in case of ***Liyakat Ali Ismail Muniwale Versus Chief Officer, Municipal Council and others in Second Appeal No. 41/2006 dated 24/01/2020***. He also contended that no issue was raised before both Court below regarding the maintainability of the suit for want of challenge to the notice. Thus, according to him it is a fit case wherein the judgment impugned are quash and set aside and suit is decreed.

7. The said contention is opposed by the learned counsel for the defendant stating that the suit is not tenable in view of Section 304 of the Act as prior notice is mandatory for the purpose of maintaining the suit against the Municipal Council. According to him in this case no such notice was issued and hence each suit is rightly dismissed. On the point of merit of the suit it is contended that there is specific notice issued by the Council alleging that the structure of the plaintiff is

unauthorized and for want of showing authorization of suit structure, there is not infirmity in the notice. He further contends that since the said notice is not challenged, the suit could not have been decreed.

8. These suits are for injunction against the Municipal Council restraining the defendants from obstructing the use, occupation and possession of plaintiff over the suit property and not to cause damage to the structure. Plaintiff claims that after obtaining all permissions construction is carried out on the land belonging to defendant Council and that he is the tenant of the Municipal Council. The initial burden therefore would lie on the plaintiff to prove these facts.

9. Plaintiff examined himself and has relied upon documents such as, notice, Shop Licence, property extract, electric bill and tax receipts in support of oral evidence. Though this evidence is sought to be placed on record, the same is not sufficient to hold that the plaintiff has carried out construction of the suit property after obtaining permission from the Council. Plaintiff has further accepted that he has not produced any copy of rent agreement entered into with defendant. The Council being a statutory body, it is not possible to execute oral tenancy agreement. In absence of any document to show that the plaintiff is tenant of the suit property or the land beneath it, the said issue could not have been held in favour of the plaintiff. Plaintiff has

admitted receipt of notice from Council calling upon him to remove illegal shed standing on the suit land. In this regard when the plaintiff claims that the shed was constructed after obtaining all permissions, burden lies on him to prove the same. There is absolutely no evidence on record to show that the shed i.e. suit structure is authorized one. Reliance placed by the plaintiff on electricity bill and NOC for obtaining electricity and water connection cannot prove authorization of the structure and hence these documents do not help plaintiffs to substantiate his case.

10. On the other hand hand defendants examined Rajendra to support it's contention. This witness has claimed that plaintiff did not issue notice under Section 304 of the Act and hence the suit is liable to be dismissed. He further claimed that since there was encroachment on the land belonging to the Municipal Council, notices were issued for removal of unauthorized structures standing thereon.

11. The aforesaid evidence clearly shows that the defendant by examining witness as proved the factum of issuance of the notice for removal of structure. On the other hand the plaintiff has failed to show that he is tenant of the suit property and that the structure is erected with proper permissions. In the light of this fact it becomes material that the plaintiff though has filed suit seeking injunction against the

Council from disturbing his possession over the suit property and demolition of the suit property but conspicuously plaintiff has not challenged the notice issued by the Council. Once there is no challenge raised to the notice in the plaint, it is not open for the counsel for the plaintiff to claim that the notice is not tenable under provisions of Section 179 to 181 of the Act. In any case to succeed in seeking injunction against the Council the plaintiff ought to have proved his case about the tenancy as well as authorization of the suit structure and since plaintiff has failed to prove the same, suit is rightly dismissed.

12. Section 304 of The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 reads thus:

"304. Limitation of suits against Council, its committees, officers and servants for acts done in pursuance of execution of this Act.

(1) No suit shall lie against a Council or against any committee constituted under this Act, or against any officer or servant of a Council in respect of any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act-

(a) unless it is commenced within six months next after the accrual of the cause of action"

13. This provision is mandatory in nature and for maintaining a suit against the Municipal Council and servants, issuance of notice is must. Admittedly in this case no notice was issued by the plaintiff against the defendant Council before filing of the suit and as such the suit is not tenable for want of notice under Section 304 of the Act.

14. For want of challenge to notice issued by Council, it can be permitted to argue that the action of defendant is not in execution of the Act, to exempt application of Section 304 of the Act. This suit is not tenable on this ground. Considering the facts and circumstances of the case and evidence on record each plaintiff has failed to make out any case for grant of injunction against defendant Council. Merely because plaintiff conducts business in the suit structure for years that does not entitle him to retain the suit structure which is unauthorized one. This court therefore finds no infirmity in the judgment and decree passed by the Trial Court which is confirmed by the First Appellate Court.

15. For want of involvement of any substantial question of law, appeals deserve to be dismissed. Hence appeals stand dismissed with costs.

16. Pending civil applications, if any, stand disposed of.

(R. M. JOSHI, J.)

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