



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

906 SECOND APPEAL NO.806 OF 2022
WITH
CA/17273/2022 IN SA/806/2022

ASIF HARUN BEG
VERSUS
AHMEDNAGAR MUNICIPAL CORPORATION AND ORS

...
Advocate for Appellant : Mr. Anand Wagh h/f Mr.Chondhekar
Balaji S.
...

CORAM : KISHORE C. SANT, J.

DATE : 06.12.2023.

PER COURT :

1. Heard. This appeal is filed by the original plaintiff challenging the judgment and order passed by the learned District Judge -3, Ahmednagar in RCA No. 359 of 2016 dated 29.04.2022, by which an appeal came to be dismissed. An appeal was filed against the judgment and order passed by the learned C.J.S.D, Ahmednagar in RCS No. 471 of 2010 dismissing the suit as well as counter claim filed by defendant No.2.

2. The facts in short are that the plaintiff/appellant had obtained permission for construction of a building from

respondent No. 1 Corporation/Original defendant No. 1. However, later on it was found that the plaintiff has made excess construction. The Corporation therefore issued notice on a complaint by respondent No. 2/Original defendant No. 2 who is the owner of adjacent plot for demolition of excess construction than permissible. It is the case of the plaintiff that there is no excessive construction carried out by the plaintiff. A notice dated 06.10.2010 is illegal and sought perpetual injunction restraining defendant No. 1 from demolition of alleged excessive construction. Defendant No. 2 filed a counter claim seeking demolition.

3. The learned trial Court recorded finding that none of the parties could adduce evidence in support of their case and dismissed the suit as well as the counter claim.

4. In the appeal filed, there against the learned District Judge also confirmed the said finding. It is specifically recorded that the plaintiff has committed an encroachment. The Court found that there is no encroachment on the plot of defendant No. 2 as alleged by him. The learned appellate Court specifically considered the case and found that the plaintiff converted some

of the portion un-authorisedly into rooms. Both the Courts have come to the conclusion that the construction is carried out in excess. The further aspect is also considered that the plaintiff has not prayed for the relief of declaration that the notice is illegal or unlawful & only sought an injunction. It is further observed that the plaintiff was given notice on 25.08.2009 by the Corporation for unauthorized construction. The said notice was replied by the plaintiff. Thereafter the plaintiff was directed to appear for hearing, however he could not attend the hearing on 20.10.2009 and a last chance was given by adjourning hearing on 05.11.2009. The plaintiff remained absent even on that date. Thus the Corporation thereby held that the construction as alleged under notice dated 25.08.2009 is illegal and directed the plaintiff to demolish the same and in case of failure it will be done by the authorities and thereafter the notice was issued. This Court finds that no fault can be found in reasoning and finding recorded by both the Courts which are concurrent on the facts.

5. In the appeal, however, now it is sought to be agitated that the Unified Development Control and Promotion Regulations for Maharashtra State came into force in the year

2022. In view of this, new rules now construction can be regularized. Though oral statement is made to that effect, however there is no any application filed either with the Corporation for regulation nor any application is made to that effect in the Second Appeal. Though an appeal is filed on 21.06.2022, no attempt was made to circulate the matter.

6. Yesterday it was mentioned that tomorrow is the date fixed for demolition of the excess construction. A photo copy is also produced in the Court of the communication dated 21.11.2023 issued by a ward officer to the Superintendent of Police, Ahmednagar requesting to provide police force for demolition of construction on 7.12.2023. Now a request was made for stay the action. This Court, therefore, granted circulation and the matter was circulated today considering urgency.

7. This Court records dis-satisfaction in the manner in which the matters are circulated at the 11th hour and to gather sympathy of the Court. When attempt is made to obtain stay or interim reliefs no attempts are made to bring sufficient pleadings and material on record.

8. This Court therefore, today considered the Second Appeal on merits and found that no substantial question of law is involved. If the appellant is entitled to get regularization in view of the Unified Development Control and Promotion Regulations for Maharashtra State, he is at liberty to make an application to the authorities in view of the said rules. So far as the Second Appeal is concerned this Court has already recorded that no substantial question of law is involved and therefore, the Second Appeal deserves to be dismissed and the same is hereby is dismissed.

9. Since the Second Appeal is dismissed nothing survives in the application, the same is also dismissed.

(KISHORE C. SANT)
JUDGE