

Pooja K.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 798 OF 2012
WITH
CIVIL APPLICATION NO. 13968 OF 2012
WITH
CIVIL APPLICATION NO. 15078 OF 2019
IN
SECOND APPEAL NO. 798 OF 2012

Latabai Girdhar Waghmare

... Appellant

Versus

The State of Maharashtra

Thr Collector and Ors.

... Respondents

...

Mr. A.R. Rathod – Advocate for Appellant

Mr. B.S. Deshmukh – Advocate for Respondent Nos. 7 to 9

....

CORAM : GAURI GODSE, J.

DATE : 1st February, 2023

PER COURT :

1. The Second Appeal is preferred by the plaintiff for challenging concurrent decree passed dismissing the suit filed by the present appellant. The appellant claims to be in possession of the suit property on the basis of resolution dated 24th February, 2004 passed by the respondent no.4. It is the case of the present appellant that, the suit property was in fact allotted to the appellant on the basis of said resolution hence, the appellant filed Regular Civil Suit No. 527 of 2004 praying for recovery of

possession as well as injunction. The learned Civil Judge Senior Division, Jalna by judgment and decree passed on 30th July, 2008, dismissed the suit by holding that appellant is not in lawful possession over suit property. During the pendency of the suit the construction is also demolished. Thus, the right of appellant claimed on the basis of the said resolution is not accepted and the suit filed by the appellant was dismissed.

2. The appellant preferred Regular Civil Appeal No.175 of 2008 for challenging the dismissal of her suit. By judgment and decree dated 4th October, 2012, the learned District Judge -1, Jalna, dismissed the appeal and confirmed the judgment and decree of the trial court. Hence, present Second Appeal.
3. Learned counsel for the appellant submits that, there is a valid allotment letter pursuant to the resolution passed by the respondent no.4. It was further case of the appellant that, she was also permitted to run the Balwadi on the suit land by the respondent no.4. Learned counsel for the appellant thus submits that, under Section 92 of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (Act of

1965), respondent no.4 was entitled to allot the suit land to the appellant and hence, in view of the allotment by the respondent no.4 the appellant is in lawful possession of the suit land and as she was permitted to run Balwadi, she is entitled to protection as claimed in the suit. Learned counsel thus submits that, the present Second Appeal deserves consideration with respect to the right of the appellant on the basis of the allotment letter and Second Appeal needs to be admitted on the said point.

4. Though, admittedly there was a resolution passed by respondent no.4 making recommendation in favour of the appellant, there is no valid allotment letter pursuant to the resolution. Perusal of the resolution shows that, by the said resolution there was a recommendation made for the purpose of allotment of suit land in favour of the appellant. The resolution itself states that, the suit land was recommended to be allotted to the appellant and the further proceedings may be carried out by further sanction by the C.E.O. As per the provisions of the Act of 1965, any transfer of the property of Municipal Council can be done only by sanction of the State Government. There appears to be a

proposal for granting lease in favour of appellant. However after said proposal, there is no sanction granted by the State Government and there is no execution of any lease document or any valid allotment. The trial court has thus considered the case of the present appellant with respect to the resolution that has been passed, as well as considered the construction that was carried out by the appellant without any permission in her favour. Thus, after considering the documents produced on record as well as supporting evidence, the trial court has recorded a finding that, the appellant is not in lawful possession of the suit property and hence, the suit is dismissed. This finding is confirmed by the first appellate court by examining the documents and evidence on record. There is no dispute that there is no allotment letter pursuant to the resolution. In such circumstances, I do not find that any substantial question of law arises in the Second Appeal.

5. In view of dismissal of Second Appeal, pending Civil Applications stand dismissed as infructuous.

[GAURI GODSE, J.]