

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.155 OF 2011
WITH
CIVIL APPLICATION NO.296 OF 2011

Ramesh Shankarlal Bhandari
Age:45 Occ: Business,
Residing at Bungalow No.4,
Elphinstane Road, Pune-411 001

...Appellant.

Versus

1.Pune Cantonment Board, a Board
constituted under the provisions of
the Cantonments Act, 1924, now the
the Cantonments Act, 2006, having its
Office at Golibar Maidan, Pune

2. Director, Defense Estates,
Pune Cantonment Pune -411 001

...Respondents.

Mr. J. D. Khairnar a/w. Mr. Mufeez Ansari for the Appellant.
Mr. K. J. Presswalla a/w. Tushad Kakalia a/w. Mr. D. J. Kakalia and Mr.
Paresh Patkar and Ms. Bhavna Singh Jaipuria i/b Mulla and Mulla &
Craigie Blunt and Caroe for the respondents.

Coram : Sharmila U. Deshmukh, J.

Reserved on : 4th April, 2024.

Pronounced on : 16th April, 2024.

JUDGMENT :

1. The Appeal is at the instance of original plaintiff who is dissatisfied by the judgment dated 25th November 2010 passed by the Appellate Court in Civil Appeal No.602/2007 reversing the judgment

and decree dated 7th October, 2006 passed in Regular Civil Suit No 781 of 2004 granting permanent injunction. *Vide* order dated 20th January 2012, Second Appeal came to be admitted on the following substantial question of law which reads thus:

“ Whether the notice issued by the Respondent under section 185(1) of the Cantonments Act, 1924 dated 24th June, 2002 was beyond period of limitation ?”

FACTUAL MATRIX:

2. For sake of convenience, the parties are referred to by their status before the Trial Court. RCS No.781/2004 was instituted against the Pune Cantonment Board seeking permanent injunction restraining the defendants from demolishing the construction in pursuance of the notice issued under Section 185 (1) of the Cantonments Act 1924. The Plaintiff is one of the holders of occupancy rights/lessee in respect of the property being Bungalow No.4 situated at Elphinstone Road, Pune-411 001 within the limits of the Pune Cantonment Board. The construction of Bungalow No.4 Elphinstone Road, Pune was carried out as per the building plan sanctioned in the year 1935. On 8th June 2001 the Pune Cantonment Board issued him and Smt. Sonabai Bharucha a notice calling upon them to demolish the unauthorized construction. The Notice was

replied by the Plaintiff stating that Sonabai Bharucha had expired and that he is only carrying out repair work of plastering the walls and replacing the roof which did not require any permission. Again the Pune Cantonment Board issued a notice invoking Section 185 (1) of the Cantonments Act, 1924 calling upon the Plaintiff to remove all unauthorized construction.

3. An Appeal was preferred by the Plaintiff under Section 274 of the Cantonments Act, 1924 before the Defendant No.2- Director-Defence Estate Pune Cantonment, Pune challenging the notice on the ground of nullity and being barred by limitation. The Appeal was dismissed by the Defendant No 2 on 14th February, 2004. The Suit was thereafter filed raising the same grounds seeking restraining orders against the Defendant No 1-Pune Cantonment Board from acting upon the notice issued Section 185(1) of the Cantonments Act on the ground that the notice is illegal.

4. The Pune Cantonment Board filed its written statement and admitted the issuance of the notice. It was further contended that the notice dated 8th June, 2001 was legal and the Pune Cantonment Board is empowered to issue notice and demolish the unauthorized construction. The Plaintiff did not comply with the notice and sent

reply on 16th June, 2001. The Board took the decision to issue the second notice under Section 185(1) of the Cantonments Act, 1924 and second notice was issued on 24th June, 2002. The Defendant No 1 contended that the Plaintiff had carried out unauthorised construction and therefore suit is liable to be summarily rejected. The written statement of Pune Cantonment Board was adopted by the Defendant No.2.

5. The parties went to trial. The Trial Court on consideration of evidence though finding force in submissions of the Learned Counsel for the Defendant No1 held that the Defendant No 1 has not taken action within the period of limitation as required under Section 185(1) of the Cantonments Act, 1924 i.e. within one year from completion of the erection or re-erection and hence decreed the suit vide judgment dated 7th October 2006.

6. As against the judgment of the Trial Court, the Pune Cantonment Board preferred Civil Appeal No.602/2007. The Appellate Court framed and answered the following points for determination while allowing the Appeal:

Sr. No.	POINTS	FINDINGS
1.	Whether respondent No.1 proves	In negative.

	that the notice served upon him under Section 185(1) of the Cantonments Boards Act, 1924 was unwarranted and bad in law ?	
2.	Whether appellant proves legality for aforesaid notice ?	In affirmative.
3.	Whether notice under Section 185(1) of the Act is within limitation ?	In affirmative.
4.	Whether suit is bad in law for want of prior notice under Section 273 of the Cantonments Act, 1924 ?	In negative.
5.	Whether appellant proves that suit is bad in law as decision in appeal achieved finality ?	In negative.
6.	Whether Judgment and decree under challenge is justified ?	In negative.
7.	What order ?	...As per final order.

7. The Appellate Court re-appreciated the evidence and noted that the Plaintiff has failed to produce the sanction plan and plan showing the present condition. The Appellate Court noted that under the provisions of Section 185(1) of the Cantonments Act, 1924 the notice is required to be issued within period of one year on completion of such unauthorised erection or re-erection and that the first notice was issued when work was in progress and second notice on completion of the unauthorised work. The Appellate Court held

that as the Plaintiff had not informed about carrying out the construction or completion of construction, the exact date of completion of construction is not available. The Appellate Court noted the evidence of Defendant's witness stating that at the time of issuing first notice work was in progress and within few days the work would be completed. The Appellate Court held that in absence of exact date of completion of work under reference it must be held that the action taken by the Appellant was immediately upon completion of work.

SUBMISSIONS:

8. Mr. Khairnar, learned counsel for the appellant would submit that the notice issued under Section 185(1) was barred by limitation as it was issued beyond prescribed period of 12 months. Pointing out to the judgment of the Appellate Court, he would submit that the Appellate Court has noted the admission of Pune Cantonment Board's witness that at the time of issuing the notice the work was in progress and for finishing the said work couple of days was required. He submits that the same was in context of the first notice which was issued on 8th June 2001 and the second notice was issued on 24th June 2002. According to him as the witness has himself stated that the work would take only a couple of days to be completed the notice issued on 24th June 2002 was barred by

limitation. In support he would rely on the decision of ***Cantonment Board Meerut and Anr vs Afzal (AIR 2019 Supreme Court 5610)***.

9. *Per contra*, Mr. Presswalla learned counsel for the Pune Cantonment Board would submit that on 8th June 2001 the first notice under Section 185 of the Cantonments Act, 1924 was issued which was received on 14th June 2001 by the appellant to which reply was sent on 16th June, 2001. He submits that the provisions of Section 185(1) prescribe period of limitation of 12 months from the date of completion of construction. He would urge that the date of completion was within the knowledge of the Plaintiff who has failed to lead any evidence to show the date of completion and in absence of any such evidence it cannot be held that the notice was barred by limitation. He would further submit that the question of limitation being mixed question of fact and law does not give rise to substantial question of law. In support he relies upon the following decisions:

- 1.Santosh Hazari v. Purushottam Tiwari by Lrs., AIR 2001 S. C. 905;***
- 2.Kondiba Dagadu Kadam vs. Savitribai Sopan Gujar and Ors., (1999) 3 Supreme Court Cases 722.***

REASONS:

10. As the issue involved is of limitation prescribed under Section 185(1) of the Cantonments Act 1924, it would be relevant to reproduce the said Section which reads as under :

"185. Power to stop erection or re-erection or to demolish.-(1) A [Board] may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the [Board] considers that such erection or re-erection is an offence under section 184 and may in any such case [or in any other case in which the Board considers that the erection or re-erection of a building is an offence under section 184, within [twelve months] of the completion of such erection or re-erection], in like manner direct the alteration or demolition, as it thinks necessary, of the building, or any part thereof, so erected or re-erected:

Provided that the [Board] may, instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such sum as it thinks reasonable: [Provided further that the Board shall not, without the previous concurrence of the Officer Commanding-in-Chief, the Command, accept any sum by way of composition under the foregoing proviso in respect of any building on land which is not under the management of the Board.]"

11. Perusal of Section 185 of the Cantonments Act, 1924 indicates that the said section provides for issuance of notice by the Board, when it considers the erection or re-erection as offence under

Section 184, in two situations firstly when the erection or re-erection is under progress in which case the notice calls for stoppage of work and secondly upon the completion of such erection or re-erection in which case the notice directs the alteration or demolition as thought necessary. The notice seeking alteration or demolition is required to be issued within period of 12 months of completion of such erection or re-erection.

12. The contention of Mr. Presswala is that the question of limitation being mixed question of fact and law, it is impermissible for this Court to interfere with finding of fact under Section 100 of Code of Civil Procedure, 1908. In **Municipal Committee Hoshiarpur vs Punjab State Electricity Board (2010 13 SCC 216)**, the Apex Court held thus:

“There is no prohibition on entertaining a second appeal even on a question of fact provided the Court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower courts. (Vide: Jagdish Singh v. Natthu Singh, AIR 1992 SC 1604; Karnataka Board of Wakf v. Anjuman-E-Ismaail Madris-Un-Niswakn,

AIR 1999 SC 3067; and Dinesh Kumar v. Yusuf Ali, AIR 2010 SC 2679).

If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eyes of law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide: Bharatha Matha & Anr. v. R. Vijaya Renganathan & Ors. , AIR 2010 SC 2685)”

13. It is settled position in law that in exercise of powers of Section 100 of Code of Civil Procedure, 1908, the Court can interfere with finding of fact if it is demonstrated that the finding is based on no evidence or wrong inference is drawn from proven facts by applying the law erroneously.

14. Coming to the facts of the present case, the first notice was issued on 8th June 2001 and the Pune Cantonment Board's

witness has deposed that at the time when the notice dated 8th June 2001 was issued the work was in progress. It is therefore clear that the first notice of 8th June 2001 was issued for stoppage of the unauthorised construction. The notice which has been put to challenge is the notice below Exhibit 40 which is second notice issued on 24th June 2002. As the second notice has been issued after the completion of the work, it is required to be issued within a period of 12 months from the date of completion of the erection or re-erection.

15. For the purpose of computing the starting period of limitation of 12 months, the date of completion of work is material. In that respect Mr.Khairnar would place reliance on the evidence of witness of Pune Cantonment Board who has deposed that for the purpose of finishing the work only a couple of days would be required. According to him, as the Board's witness himself has stated that the work will be finished in a couple of days, the notice issued on 24th June 2002 is beyond the period of 12 months.

16. The question of limitation in the present case is mixed question of law and fact. The precise date of completion of construction was within the knowledge of the Plaintiff and Section 106 of Indian Evidence Act, 1872 provides that when a fact is

especially within the knowledge of any person, the burden of proving the fact is upon him. At least before this Court nothing has been shown from the material on record that evidence was adduced by the Plaintiff to show the exact date of completion of the construction. For discharging the burden cast upon the plaintiff, reliance placed by Mr. Khairnar upon the deposition of Board's witness is mis-placed as the Plaintiff has to succeed on the strength of its own case.

17. The judgment of the Trial Court does not disclose that evidence has been adduced by the Plaintiff disclosing the date of completion of the erection or re-erection which is determined as unauthorised by the Board. There is no material on record to demonstrate that the Board was informed about the date of completion of construction. For purpose of commencement of one year limitation, the material aspect is the date of completion and the burden was upon the Plaintiff to lead evidence to prove the date of completion. The conclusion of the notice being barred by limitation is dependent upon the date of completion of construction and it was incumbent upon the Trial Court to assess the evidence to determine exact date of completion of construction. In the judgment of the Trial Court, the discussion on this crucial aspect is missing and despite thereof it has held that the Board has not taken necessary steps

within one year from the date of completion of construction.

18. The Appellate Court on re-appreciation of evidence has rightly held that in the absence of exact date of completion of work under reference it needs to be held that the action took by the Appellant of issuing second notice under Section 185(1) of the Act *vide* Exh 40 is immediately on completion of work under reference.

19. As regards the decision of ***Cantonment Board, Meerut (supra)***, in facts of that case, the Apex Court considered that the show cause notice issued to the Respondent was not referred to in the final notice and neither objections were considered. The Apex Court noted that the survey/inspection report was not furnished to the Respondent though the report was relied for rejecting the appeals. The decision of Apex Court was rendered in completely different factual scenario and is clearly inapplicable in the present case where the issue is about limitation.

CONCLUSION:

20. The burden was upon the Plaintiff to lead cogent evidence to establish the exact date of completion of construction,

which date was especially within the knowledge of Plaintiff, for purpose of computing the period of limitation of one year. Without the Plaintiff discharging the burden of establishing the precise date of completion of construction, the notice issued by the Respondent under Section 185(1) of the Cantonments Act, 1924 dated 24th June, 2002 cannot be stated to be beyond the period of limitation.

21. The substantial question of law is accordingly answered against the Appellant. Resultantly, the Appeal stands dismissed. In view of disposal of Second Appeal, Civil Application does not survive for consideration and is accordingly disposed of.

22. At this stage, learned counsel appearing for the Appellant requests for extending interim relief which was operating in his favour for further period of 4 weeks. Said request is opposed by the learned counsel appearing for the Respondent. As there is interim relief operating since long, this Court is inclined to extend the said interim relief for further period of 4 weeks from the date of uploading of this Judgment.

[Sharmila U. Deshmukh, J.]