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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO. 502 OF 2024
WITH
CIVIL APPLICATION NO. 773 OF 2019
IN
SECOND APPEAL NO. 502 OF 2024**

Habib Ibrahim Khot

.....Appellant

Vs.

The State of Maharashtra and ors

.....Respondents

Ms. Priyanka Acharya a/w Mr. Vasim Siddiqui for the appellant
Mr. D. J. Haldankar AGP for the State

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**CORAM : GAURI GODSE, J.
DATE : 6th SEPTEMBER 2024**

ORDER:

1. Heard learned counsel for the appellant. This second appeal is preferred by the original plaintiff challenging the concurrent Judgments and Decrees dismissing the plaintiff's suit challenging the notice issued by the respondent no. 1 for removal of illegally constructed and occupied structure in the government premises.
2. Learned counsel for the appellant submits that the appellant was granted the permission by the learned Tahsildar for occupation of the structure which is the subject matter of the notice. Learned counsel

relied upon the document of no objection issued by the Tahsildar for carrying out the business of stamp vending. The documents which are relied upon by the learned counsel for the appellant are produced on record by way of a compilation of documents. Learned counsel for the appellant relies upon no objections given in favour of the appellant and a licence issued for carrying out the business of stamp vending. By relying upon these documents, learned counsel for the appellant submits that the second appeal raises substantial questions of law for examining the validity of the suit notice. She submits that necessary permissions were granted to the appellant, both the Courts have failed to appreciate the permissions in favour of the appellant. Learned counsel for the appellant relies upon the government resolution dated 26th May 1997 in support of her submissions that the appellant was permitted to occupy the premises for his stamp vending business in view of no objection issued by the learned Tahsildar. She thus states that the second appeal would require consideration on the aforesaid questions of law.

3. For considering the submissions made on behalf of the appellant, I have perused both the Judgments as well as the additional documents relied upon by the learned counsel for the appellant. A

perusal of the documents relied upon by the learned counsel for the appellant nowhere indicates that there was any valid permission granted to the appellant for occupying any part of any structure of the government premises. It is not in dispute that the subject matter of the suit is a notice issued by the Tahsildar alleging illegal occupation and illegal construction carried out by the appellant in the government premises. It is not in dispute that the notice is concerning the structure which is on the government premises. The government resolution dated 26th May 1997 relied upon by the learned counsel for the appellant does not indicate that any permission was granted to the appellant to occupy any part of the government premises.

4. Both the Courts after examining the pleadings and the evidence on record have concurrently held that the plaintiff has unauthorisedly constructed the structure in the government premises. Both the Courts have concurrently held that the plaintiff was unable to prove that there was any illegality in the suit notice issued against the appellant directing him to remove the illegal structure occupied by him in the government premises. All the documents relied upon by the appellant are considered by both the Courts.

5. I do not find any illegality or perversity in the reasons recorded by both the Courts. Once there is no valid permission in favour of the plaintiff authorising him to occupy in any part of the government premises, the plaintiff would not be entitled to seek any declaration or any relief to protect the structure illegally occupied by him. The second appeal does not raise any question of law.

6. Hence, the second appeal is dismissed.

7. In view of dismissal of the second appeal, Civil Application No. 773 of 2019 is dismissed as infructuous.

8. Learned counsel for the appellant seeks extension of the protection granted by this court for a period of eight weeks to enable the appellant to approach the Apex court.

9. The interim protection is extended for eight weeks from today, subject to the appellant filing an undertaking in this Court, that if favourable orders are not passed by the Apex court, he shall remove the unauthorised structure and vacate the Government premises. Necessary affidavit cum undertaking to be filed within two weeks.

[GAURI GODSE, J.]