



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO. 111 OF 2004

Sau. Smita W/o Hemant Mohod,
Aged about 46 years, Occu. : Service,
R/o. Tope Nagar, Amravati,
Tq. and Dist. Amravati.

.... **APPELLANT**

// VERSUS //

1) Sau. Rajani W/o Dnyaneshwar Kalane,
Aged about 46 years, Occu. : Household,
R/o. Tope Nagar, Amravati,
Tq. and Dist. Amravati.

2) The Amravati Housing and Area
Development Board,
Through its Chief Officer,
Maltekadi Road, Amravati,
Tq. and Dist. Amravati.

.... **RESPONDENTS**

Mrs. Radhika Raskar, Advocate for Appellant.
Mr. Shantanu Khedkar Advocate for Respondent No.1.
Mr. Hitesh Verma, Advocate for Respondent No.2.

CORAM : SANJAY A. DESHMUKH, J.

DATE OF RESERVING THE JUDGMENT : 23.08.2024.

DATE OF PRONOUNCING THE JUDGMENT : 26.09.2024.

JUDGMENT.

1. This appeal is preferred against the Judgment and decree passed by the learned Joint District Judge, Amravati in Regular Civil

Appeal No.37 of 1999, dated 21.11.2003. It was preferred against Judgment and decree passed by Joint Civil Judge, Junior Division, Amravati in Regular Civil Suit No.775 of 1993, dated 21.01.1999.

2. Brief facts of the case are as under :

(i) The Plaintiff and defendant No.1 are residing in the adjacent houses situated on the Blocks/plots of Maharashtra Housing Area Development Authority situated at Amravati (for short "MHADA Authority"). They are neighbourers of each other. The plaintiff owns Block No. 4/6 and defendant No.1 owns Block No.4/2 situated at Tope Nagar, Amravati. The flat of the plaintiff is at upper side and the flat of defendant No.1 is at lower side. There is open space to the eastern and northern side of the building. It is alleged that illegal construction of a permanent nature is raised by defendant No.1 over that open space near the house of plaintiff, which is subject matter of the suit. It is shown in the measurement map annexed with the plaint. The plaintiff applied to the defendant No.2 MHADA Authority to remove that illegal construction as his right to light, air and water-tap is affected. But it did not respond to it. Therefore, suit was filed for mandatory injunction to remove that illegal construction.

(ii) Defendants denied the claim of the plaintiff and strongly opposed the suit by contending that defendant No.2 had approved that construction. It is further contended that she had every right to make construction and due to alleged construction, right to light, air and water-tap of the plaintiff's property is not affected. The Civil Court's jurisdiction is barred. The suit is not maintainable. It is lastly prayed to dismiss the suit.

3. Learned trial Court held that illegal and unauthorized construction of defendant No.1 is proved. The inconvenience and loss is caused to the plaintiff's property. The decree of mandatory injunction as well as perpetual injunction were granted in favour of the plaintiff. The defendants are directed to remove that illegal construction. It held that jurisdiction of Civil Court is not barred as per Section 71 of the Maharashtra Housing Area Development Act, 1977 (for short "MHADA Act").

4. Learned first appellate Court dismissed the appeal and held that the appellant had raised that illegal construction.

5. This second appeal was heard by my learned predecessor on the point of the jurisdictional bar. It held that the Civil Courts

jurisdiction is barred. The second appeal was allowed and the suit was dismissed by judgment dated 11.12.2019.

6. The plaintiff approached to the Hon'ble Supreme Court by filing Civil Appeal No. 5216/2022. The Hon'ble Supreme Court by its judgment dated 08.08.2022 held that Civil Court has jurisdiction to try the said suit. It remanded the appeal and directed to decide this appeal as expeditiously as possible on the other substantial question of law, if any.

7. This Court formed following substantial question of law :

Can any construction which is otherwise permissible but is carried out without obtaining prior permission, ipso facto, constitute nuisance or violation of a right of privacy of a person who could have otherwise not obstructed such construction?

8. In addition to synopsis of argument, learned Advocate for the appellant submitted that subsequent event is occurred that this appellant applied to the MHADA Authority for regularization of the said construction. The said construction is now partly regularized by the MHADA Authority – respondent No.2 and the application was partly allowed. She further submitted that considering this aspect,

being subsequent event, this Court has to take cognizance of it and dismiss the suit as cause of action is not in existence now. She filed an application for adducing that additional evidence of communication made by respondent No.2. It is strongly opposed. The production of said documents is allowed partly as this Court can take note of subsequent events. However, it is clarified by this Court that production of those documents of subsequent events is partly allowed in respect of communication of order of regularization of the disputed construction. It is lastly prayed that to remand matter to decide the rights of the parties in view of subsequent event of regularization part of the said construction.

9. Learned Advocate for the appellant further submitted that the appellant had filed an application for regularization of said construction and it is regularized by MHADA Authority. There is no any evidence of causing of nuisance to the plaintiff by the said construction. Therefore, this Court has to allow the appeal by setting aside impugned judgments of both Courts.

10. Learned Advocate for the plaintiff/respondent No.1 submitted that there is concurrent findings of both Courts on the facts that illegal construction made by defendant No.1 is proved as per

measurement map. Inconvenience caused to the plaintiff is also proved. Therefore, this Court has no scope to interfere in the impugned judgments and decrees of both the Courts. He submitted that the MHADA Authority cannot regularize the illegal construction against the judgments of the learned trial Court as well as learned first appellate Court holding that it is illegal construction.

11. Perused the impugned Judgments of both the Courts and written arguments of both sides.

12. As far as causing of nuisance to the plaintiff is concerned, it is established by the additional documentary evidence of the appellant that part of the disputed construction is regularized. It means, part of the disputed construction is not legal. Thus, part of illegal disputed construction can not be allowed to continue, which part of it is illegal is not clarified in these documents. It means, it violates law. It is averred in the plaint as well as there is oral evidence of the plaintiff that his right of storage of water is suffered. It also affects the right to light and air of the plaintiffs' house. The learned trial Court rightly held that due to shifting of water-tap pipeline to another place, plaintiff's right to storage of water and getting of light and air is suffered. Further as regard to light and air, it has observed

and held by the trial Court in its judgment para 28, that it will affect if illegal construction is allowed to continue. It is upheld by the first appellate Court also. While deciding the point No.2, the first appellate Court also held that inconvenience and loss is caused to the plaintiff. There are thus concurrent findings against the defendant No.1 that by the said construction nuisance and inconvenience is caused to the plaintiff. It is also supported by the additional documentary evidence of the appellant that, it is partly illegal and hence, it cannot be regulated.

13. The evidence is properly appreciated and re-appreciated by both the Court. No any perversity or illegality is pointed out in the said judgments. There are concurrent findings of both the Courts. Therefore, there is no scope for interference in it, unless inherent illegality which goes to the root of the matter is pointed out or that evidences are shown to have been not properly appreciated. This Court cannot interfere in the both judgments in view of the precedential law laid down by the Hon'ble Supreme Court in case of ***Gurnam Singh (Dead) by legal representative and others Vs. Lehna Singh (Dead) by legal representatives***, reported in ***(2019) 7 SCC 641***. Therefore, substantial question of law is answered in the 'affirmative'.

14. The MHADA Authority during pendency of civil lis cannot decide legality of such construction contrary to the decision of Civil Court and regularize it. No such go-bye can be given to the said judgments of Civil Courts. It is not permissible to the MHADA Authority by any law. Therefore, such regularization of part of illegal construction is not useful for the appellant/defendant No.1.

15. As held above, the subsequent event of regularization of the said construction on the part of the concerned MAHDA Authority is itself illegal and not sustainable. It will not prevail over the judgments of both Courts. Therefore, there is no scope for interference in the impugned judgments and decrees of both Court. Therefore, no such substantial question of law regarding regularization of construction arises for determination and it need not be formulated for decision. For the reasons discussed above, the argument of learned Advocate for appellant is not acceptable that the disputed construction is partly regularized by the MHADA Authority therefore no such cause of action remains.

16. The appellant filed this appeal without any substance, the respondent No.1 must have incurred some amount to face this appeal from the year 2004. Respondent No.1 is, therefore, entitled for costs

of Rs.10,000/-. The appeal deserves to be dismissed. Hence the following order :

ORDER

- (i) The Second Appeal is **dismissed**.
- (ii) The appellant is directed to pay costs of **Rs.10,000/-** (Rs. Ten Thousand only) to respondent No.1 within four months. If the appellant fails to pay it, she has to pay 9% interest from the date of this judgment on the said amount.
- (iii) Record and Proceedings be sent back.
- (iv) The appeal is disposed of.
- (v) In view of disposal of second appeal, the pending application/s, if any, is/are disposed of.

(SANJAY A. DESHMUKH, J.)