



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

SECOND APPEAL NO. 40 OF 2026

- 1] Zilla Parishad Office,
Through Chief Executive Officer,
Zilla Parishad Office,
Nanded, Dist. Nanded.
- 2] Zilla Parishad Central Primary School,
Ratnali, Tq.Dharmabad
Through Head Master, Zilla Parishad
Central Primary School Ratnali,
Tq. Dharmabad, Dist. Nanded. .. **APPELLANTS**
[Org. Defendant no.3 & 4]

VERSUS

- 1] Balasaheb s/o.Datrao Dongre,
Age: 68 years, occu. : Agri.,
R/o. : Ambegaon, Tq. Ardhapur,
Dist. Nanded.
- 2] Zilla Parishad Central Primary School,
Ratnali, Tq. Dharmabad,
Through President, Educational
Management Committee Zilla Parishad
Central Primary School Ratnali,
Tq.Dharmabad, Dist. Nanded.
- 3] Dharmabad Municipal Council,
Through Chief Officer, Municipal Council,
Dharmabad, Tq.Dharmabad, Dist. Nanded.
- 4] The State of Maharashtra,
Through District Collector, Nanded.
- 5] Anilkumar s/o. Gangadharrao Bhojraj

Age: 53 years, Occu. : Agri.,
R/o. : Ratnali, Tq. Dharmabad, Dist.Nanded.

.. RESPONDENTS

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Mr.Radhakrushna Ingole, Advocate for the appellants
Mr.A.S.Shinde, AGP for the respondent-State
Mr.H.V.Patil h/f. Mr.D.Y.Nandedkar, Advocate for the
respondent no.1.

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CORAM : MEHROZ K. PATHAN, J.

DATE : 05.02.2026

ORDER :

1] Vasudeo Pandurangrao Ratnalikar was the owner of the field Survey No.186/1 admeasuring 1 H. 55 R. 1 H. 21 R. out of 1 H. 55 R. of Survey No.186/1, situated at village Ratnali, Taluka Dharmabad was sold to the plaintiff Balasaheb Dongre. The remaining 34 R. portion of the said Survey No.186/1 was purchased by defendant no. 6 – Anilkumar Bhojraj.

2] As the defendant nos.1 to 3 were obstructing possession of the plaintiff by making construction towards southern side and encroaching 20 R. portion out of 1 H. 21 R. of the plaintiff, the plaintiff has filed a suit for perpetual

injunction, mandatory injunction for removal of illegal construction and for recovery of possession. The plaintiff gave complaint to the Superintendent of Police, Nanded and Police Station, Dharmabad against illegal construction. However, no cognizance was taken and as such the plaintiff was required to issue notice to the defendant nos.1 to 3 to stop their illegal construction on 06.03.2013. However, as they have refused to stop the construction and as such the plaintiff was constrained to file civil suit.

3] The defendants have filed their written statement. The defendant nos.1 and 2 pleaded that Ambadasrao, Pandurangrao and Vasudeorao Rantlikar were the original owners of the suit land and that there is Zilla Parishad Primary School on the suit land and they were carrying out new construction of school building on the said land. The defendant nos.1 and 2 disputed the suit boundaries and claimed that 1 H. 50 R. portion of field Survey No.186/1 of village Ratnali was reserved for public purpose by the Dharmabad Municipal Council and as such

the sale deed of plaintiff pertaining to the suit land is illegal. It was further claimed that the Zilla Parishad was running a Primary School on field Survey No.186/1 since last more than 20 years without any objection from the original land owners and there was no instructions from the Municipal Council to stop the construction or to take permission for carrying out construction and that they were making construction of school building on the suit land by utilizing government funds sanctioned by Municipal Council, there was no reason to obtain permission for carrying out the construction from the Municipal Council. The defendant no.3 Zilla Parishad, Nanded claimed that the suit land was gifted by the previous owner of the said land to them for running a primary school at village Ratnali and the school was constructed 50 years ago and since then they were in possession of the suit land.

4] The learned trial Court has framed the issues and answered accordingly. The issue about ownership of the suit land of the plaintiff was answered in the

affirmative. The issue about encroachment of the defendant nos. 1 to 3 on the disputed portion of the suit land was also answered in the **affirmative.** The issue about the defendant nos.1 and 2 acquiring right, title or interest on the disputed portion of the suit land by way of adverse possession was answered in the **negative.** The issue about claim of the defendant no.3 that the suit land was gifted to them by the original owner of the suit land was also answered in **negative.** However, the suit was found to be bad in law in view of non-compliance of notice under Section 304 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 against defendant no.4 Dharmabad Municipal Council. The trial Court has found the suit to be bad in law on the ground of non-compliance of notice under section 280 of the Maharashtra Zilla Parishad Act, 1961 [**Act of 1961** for the sake of brevity] and as the plaintiff has failed to issue mandatory notice of one month to the defendant nos. 1 to 3 before filing of the suit. Since the plaintiff could not prove compliance of the said provisions in respect of issuance of notice to the defendant

nos. 1 to 3 and 4, the suit was found to be bad in law.

5] Being aggrieved by the dismissal of suit and dissatisfied by the findings about non-compliance of the notice under Section 304 of the Act of 1965 and Section 280 of the Zilla Parishad Act, 1961, the plaintiff has preferred Appeal before the District Judge-1, Biloli, which was registered as Regular Civil Appeal No.24/2017. The findings as regards ownership of the plaintiff being held in affirmative as well as claim of the defendants about adverse possession and gift being held in negative were not challenged by the defendant-Zilla Parishad or Municipal Council, by filing an independent Appeal. The Appeal filed by the plaintiff was, thus, adjudicated only on the point of mandatory compliance under Section 304 of the Act of 1965.

6] The learned First Appellate Court, vide its judgment dated 12.01.2024, has, therefore, considered the provisions of Section 304 of the Act of 1965 and Section 280 of the Act of 1961 in the Appeal only filed by the

plaintiff and after detail consideration of the provisions governing the same as well as the judgments on the said issue was pleased to allow the Appeal in favour of the plaintiff, thereby holding that the compliance of the notice of one month before filing of the suit by the plaintiff under Section 280 of the Z.P. Act, 1961 was not necessary and as such the civil suit filed by the plaintiff was decreed by modifying the reliefs. The defendants were directed to initiate acquisition proceeding in respect of the disputed encroached portion within 6 months from the date of passing of the decree. Failing which the defendants were directed to remove the encroachment and hand over the vacant encroached portion to the plaintiff. Upon failure, the plaintiff was entitled to demolish the construction and take possession of the suit property. Thereafter the defendants would be perpetually restrained from causing obstruction or interference to the possession of the plaintiff over the suit property.

7] Being aggrieved by the aforesaid judgment, the

Zilla Parishad, Nanded and Zilla Parishad Central Primary School, Ratnali have thus filed the present Second Appeal, on the following substantial questions of law :

A. Whether the learned Appellate Court is justified in reversing the discretion exercised by the learned trial court, while directing the defendant to initiate the acquisition proceeding in respect of the disputed property within 6 months from the date of impugned judgment and decree?

B. Whether the learned Appellate Court is justified in not considering the provision i.e. Sec. 280 of The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.? That Section 280 of the Act speaks that before filing any suit against the Zilla Parishad or any of its officers or servants a one month prior notice is required to be given to them in writing.

When the learned Appellate Court has framed and considered the points about the maintainability of the suit under the provision of "The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961', whether the subsequent aspects can be brushed aside by erroneously observing that the Defendant has burden of proof to prove that he has not encroached the land?

C. Whether the learned First Appellate Court was justified in not considering the fact that the land admeasuring 15 R to 17 R was originally gifted to the present Appellant and by utilizing public fund; the Appellant had constructed the school and has been running the same school since last 50 years which means the Appellant has been in possession of the gifted land since 50 years continuously?

8] The learned counsel Mr. Ingole for the appellants submits that the learned First Appellate Court has failed to consider provisions of Section 280 of the Z.P. Act of 1961, which mandates one month's previous notice in writing of the intended suit nor after three months from the date of the act complained of. It is further submitted that the disputed portion was gifted by the previous owner to the present appellants and by utilizing public fund the appellants had constructed the school and has been running the same since last 50 years.

9] Thus, the substantial question of law (B) which arises for consideration firstly by this Court is whether the provisions of Section 280 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 has been properly appreciated by the First Appellate Court, as the finding of facts, which are already arrived at in favour of the plaintiff and against the defendants by the learned trial Court, was not even challenged by the Zilla Parishad by filing any First Appeal against the judgment of the trial Court.

10] Perusal of the provisions of Section 280 (1) of the Act of 1961, which reads as under :

280. Limitation of suits, etc. — (1) No suit shall be commenced against any Zilla Parishad or against any officer or servant of, or working under, a Zilla Parishad or any person acting under the orders of a Zilla Parishad or Panchayat Samiti for anything done, or purporting to have been done, in pursuance of this Act, without giving to such Zilla Parishad officer, servant, or person one month's previous notice in writing of the intended suit nor after three months from the date of the act complained of. The notice shall state the cause of action, the nature of the relief sought, the amount of compensation claimed and the name of place of abode of the person who intends to bring the action.

11] The learned counsel for the appellants submits that the First Appellate Court has wrongly shifted the burden of proving that the act of the Zilla Parishad was an act done or purported to be done in accordance with Act of 1965. The learned First Appellate had further shifted burden on the defendants-Zilla Parishad to prove that the alleged encroached portion was gifted to the Zilla Parishad. Thus, the other substantial questions of law involved in the

present Second Appeal, also calls for interference of this Court and as such the judgment passed by the First Appellate Court shall be interfered with by this Court in exercise of powers under Section 100 of the Civil Procedure Code.

12] As against this, the learned counsel for the plaintiff vehemently submits that the learned First Appellate Court has rightly appreciated the fact that when defence had taken that a particular act was done or purported to have been done under authority granted by the concerned statute, same is required to be specifically pleaded and proved and when such a stand is sought to be set up by way of defence and the plaintiff is sought to be non-suited on the technical plea regarding failure to issue a statutory notice, burden was on the defendants to plead and prove that the act committed by them resulting in encroachment was the consequence of an act that was done or purported to have been done in pursuance of the provisions of the Act of 1961. The impugned judgment is, therefore, just and

proper and does not call for any interference of this Court as no substantial question of law is involved in the present Second Appeal.

13] I have gone through the judgment dated 18.04.2017 passed by the Civil Judge Senior Division, Biloli in RCS No.32/2013 filed by the plaintiff, namely, Balasaheb Datrao Dongre. I have also gone through the judgment dated 12.01.2024 passed by the District Judge-1, Biloli in RCA No.24/2017. The following substantial question of law appears for consideration in the present Second Appeal :

I] Whether the First Appellate Court has committed an error in decreeing the suit despite of there being no notice issued by the plaintiff under Section 280 (1) of the Act of 1961?

II] Whether the First Appellate Court was justified in holding that defendant has failed to prove that the act of encroachment was an act done or purported to be done in pursuance of the Act of 1961, suit cannot be held to be bad in law for want of notice under Section 280 (1) of the Act of 1961 ?

14] The said question as to whether notice under Section 280 of the Act of 1961 for removal of the encroachment done by the Zilla Parishad, can be said to be a mandatory, was dealt with by the Division Bench of the Bombay High Court in the case of **Jalgaon Borough Municipality Vs. Khandesh Spinning & Weaving Mills Co. Ltd.** reported in MANU/MH/0108/1953, as under :

The acts which would fall within the category of those "done or purporting to have been done in pursuance of the Act" could only be those which were done under a vestige or semblance of authority, or with some show of a right. If an act was outrageous and extra-ordinary or could not be supported at all, not having been done with a vestige or semblance of authority, or some sort of a right invested in the party doing that, it would certainly not be an act which is "done or purports to have been done in pursuance of the Act". The distinction is really between ultra vires and illegal acts, on the one hand, and wrongful acts, on the other -- wrongful in the sense that they purport to have been done in pursuance of the Act; they are intended to seem to have been done in pursuance of the Act and are done with a vestige or semblance of authority, or sort of a right invested in the party doing those acts.

15] Relying upon the aforesaid observation of the Division Bench of the Bombay High Court in the case of *Jalgaon Borough Municipality* [supra], the Single Bench of

the Bombay High Court in the case of **Zilla Parishad Nagpur Vs. Shrirang Wadguji Wanjari & others** reported in MANU/MH/0778/2015=2016 (1) ALL MR 711 was pleased to hold as under :

"20. From aforesaid discussion, it is clear that the appellant failed to plead and prove that while constructing the primary school building adjacent to Khasra No. 34/3 which was an act done under provisions of the Act of 1961, the same resulted in encroachment to the extent of 0.05.58 hectares. As it has failed in proving so, the resultant act of encroachment cannot be saved on the ground that it was an act done by the Zilla Parishad in pursuance of the provisions of the Act of 1961. It was necessary for the Zilla Parishad as a public body to have clearly pleaded and proved the manner in which such activity was undertaken in a bonafide manner which ultimately resulted in encroachment having been committed."

16] From the record it can be seen that the plaintiff has failed to plead or set up a defence that their action of encroachment on the disputed portion of the suit property was an act, which was done or purported to have been done in pursuance of the Act of 1961. In the absence of any pleadings or evidence to that effect, the defendants cannot be allowed to take benefit of the provisions of Section 280 of the Act of 1961. It is specifically held in the aforesaid two

judgments that when a defence was specifically taken by the defendant that an act was done or purported to have been done in pursuance of the Act of 1961, it would be incumbent upon the defendant to set up a defence and lead evidence to that effect so as to substantiate their claim. The learned Appellate Court has rightly held that the encroachment was an illegal act, which cannot fall in the definition of an act done or purported to have been done in pursuance of the Act of 1961 and hence decreed the suit. I do not see any illegality or error in the findings arrived at by the learned First Appellate Court in the Appeal, which was filed only by the plaintiff against the judgment by the trial Court dismissing the suit on the ground of non-compliance of mandatory provisions of Section 280 of the Act of 1961.

It would also be pertinent to note that as all other findings are in favour of claim made by the plaintiff and were allowed holding that the plaintiff was owner of the suit property. The trial Court has also given finding that

the defendant nos.1 to 3 were found to have encroached upon the disputed portion and thereafter carried out the construction. The trial Court has also given finding that the defendant nos.1 and 2 i.e. the appellants herein have failed to bring on record that they have acquired any right, title or interest in the disputed suit land by way of adverse possession.

The appellants i.e. original defendant nos.1 and 2 had failed to file First Appeal, challenging the aforesaid findings in favour of the plaintiff and dismissing claim of the defendants by filing any First Appeal. The findings as regards the claim made by the plaintiff, therefore, stands as it is. In the absence of any such First Appeal filed by the defendants, no other substantial question of law is involved in the present Second Appeal.

17] From the aforesaid discussion, it would be clear that since the Appellants–Zilla Parishad has failed to plead and prove that while constructing the primary school on the disputed portion i.e. Survey No.186/1, was an act done

under the provisions of the Act of 1961, and the same resulted in encroachment to the extent of 15 R. in the disputed property. The resultant act of the encroachment of the Zilla Parishad, cannot be saved on the ground that it was an act done by the Zilla parishad in pursuance of the provisions of Act of 1961. Thus, the substantial question of law no.1, framed as above, is answered in the affirmative.

18] Perusal of the impugned judgment shows that the defendant nos.1 to 3 were called upon by the First Appellate Court to address the issue of demolition of the construction, however, the defendants have failed to turn up even though sufficient opportunity was granted by the First Appellate Court to appear before the Court and to make submissions to decide the matter effectively. The First Appellate Court has, thus, relied upon the judgment in the case of **Head Master Vs. Smt. Padminbai in RSA No.200211/2014** decided by the Kalburgi Bench, on 15.02.2022 the issue of demolition of construction of the school building has held that since the plaintiff was

declared to be absolute owner of the suit property and with further declaration that the defendants were in illegal possession on the suit property, under the garb of plea of adverse possession, the relief can be moulded and directions for acquisition of such property to construct a school can be granted. The First Appellate Court has also considered the fact that the relief can be moulded in view of the provisions of Order VII Rule 7 of the Civil Procedure Code and the judgment of the Hon'ble Apex Court in the case of **Kedar Lal Vs. Hari Lal** reported in **AIR 1952 SC 47** and has moulded the relief. It was, therefore, found that taking into consideration the pleadings and the issues and the evidence adduced by the plaintiff and defendant, it was the duty of the Court to grant relief as the circumstances of the case would warrant even though it may not be asked for. The suit was, therefore, decreed, directing the defendants to initiate acquisition proceeding in respect of encroached portion of the disputed property within 6 months from the date of passing of the Appellate Court's judgment.

19] It is further pertinent to note that since there was finding given by the trial Court that the appellants had committed an encroachment, it was not necessary to issue notice under Section 280 (1) of the Act of 1961, hence, the substantial question of law no.2 is answered in the affirmative. In view of the finding above, the substantial question of law no.1 also stands answered. As in the facts of the present case, there was no requirement of filing of the suit within limitation by issuing notice under Section 280 (1) of the Act of 1961.

20] No other substantial questions of law are involved in the present Second Appeal, hence, the Second Appeal is hereby dismissed.

21] In view of dismissal of Second Appeal, pending Civil Application also disposed of accordingly.

22] The directions are already issued by the First Appellate Court to acquire the land within stipulated period i.e. within a period of 6 months from the date of judgment

of the Appellate Court dated 12.01.2024. At this stage, the learned counsel appearing for the Zilla Parishad Mr.Ingole makes a request that 6 months time shall be given to acquire the land in question in taking into consideration the interest of the students, who are taking education in the primary school being run by the Zilla Parishad.

23] Perusal of the Appellate Court's judgment dated 12.01.2024 would show that the period of 6 months was already given to acquire the land to the Zilla Parishad by initiating the aforesaid proceedings in respect of encroached portion of the disputed property from the date of judgment dated 12.01.2024. However, even after the period of 2 years no steps are shown to have been taken by the Zilla Parishad for initiation of the acquisition proceedings to acquire the disputed portion. In absence of any such steps being taken by Zilla Parishad for acquisition of disputed portion of suit land the prayer for grant of 6 months period to acquire the disputed land cannot be granted. However, in the interest of the students, who are taking education in the said school

and the academic year is about to end in the coming months, three [3] months period is granted to the Zilla Parishad to take appropriate steps to initiate acquisition proceedings in respect of encroached portion for running primary school.

[MEHROZ K. PATHAN]
JUDGE

DDC