

MHAU130001302015



Presented on : 24-08-2015
Registered on : 24-08-2015
Decided on : 01-03-2019
Duration : 3 years, 6 months, 5 days

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION
(CORPORATION COURT), AURANGABAD
(Presided over by Smt. A.S. Badgujar)

Special Civil Suit No.21/2015

Exh.No.48

1. Shaikh Khaleelullah s/o. Shaikh Barkatulla,
Age :- 58 Years, Occu. :- Business, ...Plaintiffs.
R/o.:- Bungalow No.23, Cantonment,
Aurangabad.
2. Shaikh Majeedulla s/o. Shaikh Barkatulla,
Age :- 53 Years, Occu. :- Business,
R/o.:- As above.
3. Shaikh Kaleemulla s/o. Shaikh Barkatulla,
Age :- 60 Years, Occu. :- Private Service,
R/o.:- As above.
Through General Power of Attorney Holder
Abdul Rehman s/o. Abdul Rahim,
Age :- 63 Years, Occu. :- Business,
R/o.:- Kaziwada, Aurangabad.

VERSUS

1. Aurangabad Municipal Corporation ...Defendants.
Aurangabad Through its, Commissioner.
2. Administrative Officer,
Municipal Corporation Aurangabad.

Claim :- Suit for recovery of amount of Rs.25,00,000/-.

Advocate for plaintiffs	:	Shri. Y. B. Pathan
Advocate for defendant	:	Shri. V. D. Kadam

JUDGMENT

(Delivered on : 01.03.2019)

1. This is a suit for direction to defendants to restore the original position of the building and to pay Rs.26,000/- per month as a rental compensation from February 2012 till construction of the building with the amount of Rs.25,00,000/- as the valuation of the building bearing CTS No.18270 admeasuring 52.7 squ.mtr. at Kokanwadi, Aurangabad (hereinafter referred as "suit property").

2. Brief facts of plaintiff's case are as under:-

Plaintiffs inherited the suit property from their father Shaikh Barkatulla and it is recorded in the city survey record. Plaintiff no.3 is employed in private company at United States Of America and he is represented by the G.P.A. holder Abdul Raheman Abdul Rahim. In the year 1993 the plaintiffs applied for sanctioning the plan of construction which was sanctioned by the town planning department and on 31-05-1993 defendant has issued commencement certificate and plaintiffs constructed four stored building. In the year 2011 plaintiffs inducted tenants namely Damodar Gonde, Santosh Aadhav, Khaled Mehaboob, Yusuf Narayanpurkar and Abdul Raheman, for commercial purpose vide rental agreement and earned Rs.26,000/- per month till January 2012. Defendants without issuing any notice and without following the due procedure of law demolished the entire structure under the garb of road widening in the month of February

2012. The basement is intact and no portion has been demolished and no road has been widened till today. One of the reason stated orally by the defendants that due to dilapidated condition the said property has been demolished but the RCC construction constructed in the year 1995 to 1998 can not be said in dilapidated condition. Plaintiffs received the copy of panchanama shown on 09-01-2012 which is incorrect and also reveals that said property belongs to Shaikh Barkatulla and the other contents reveals the RCC structure. Defendants without acquiring the property as per provisions of Land Acquisition Act had demolished the same. Even though plaintiffs property is not affected in development and revised development plan defendant demolished the suit property.

3. Defendants contested the suit by filing their written statement vide Exh.11. They denied the allegations made in the plaint and contended that, the suit property as per the revenue records is standing in the name of Barkatulla Azimulla and General Power Of Attorney has not mentioned the date from which legal heir of Barkatulla is out of India after 1998 and plaintiffs have not obtained heirship certificate. CTS No.18270 is created on 17-07-2000 so the source of ownership of Barkatulla is not clear. Plaintiffs have not supplied the copy of map which is a part of commencement certificate and the year of completion is not mentioned by the plaintiff. A portion which is appearing to be encroaching was demolished on 09-01-2012 and it was complained by nearby locality residence that remaining portion of the damaged building was appearing to be highly dangerous and remove the hazard of accidental collapsed of the in balanced structure. The dilapidated portion of the construction was removed on 24-03-2013 after affixing notice on the premises on 22-03-2013. The

construction on CTS No.18270 was an encroachment upon the pavement for the road and said encroachment was removed therefore there was no need for land acquisition proceeding. It was not road widening but encroachment remover due to which the plaintiffs premises was demolished. There was no reason for the plaintiff to wait for three long years to file a suit which is barred by limitation. In the development plan the construction of CTS No.18270 was affected by 24 meter wide road passing through the Kokanwadi to Panchawati.

4. My learned predecessor had framed the following issues for determination vide Exh.14 and my findings are against each for the reasons stated below :

Sr. No.	ISSUES	FINDINGS
1.	Whether General Power of Attorney of plaintiff has right to file suit ?	In the negative.
2.	Whether plaintiff proves that they have make construction over the property mentioned in clause one of the plaint as per commencement certificate dated 31-05-1993?	In the negative.
3.	Whether defendant proves that construction over CTS 18270 demolished due to encroachment ?	In the affirmative.
4.	Are plaintiff entitled for relief of restoration of construction and Rs.25,00,000/- towards valuation of the building and Rs.26,000/- per month towards rental compensation as prayed ?	In the negative.
5.	What order and decree ?	As per final order.

REASONS

AS TO ISSUE NOS.1 TO 3 :-

5. These issues being interlinked, hence taken up for discussion together

to avoid the repetition. Plaintiff no.1 Shaikh Khalleelullah deposed in his evidence vide Exh.17 that suit property is inherited by plaintiffs from their deceased father Shaikh Barkartulla and it is recorded in the CTS record and plaintiffs are paying electric bills and municipal property tax. He further deposed that, in the year 1993 plaintiffs have applied for sanctioning the plan and construction of building was sanctioned by the Town Planning Department and defendant has issued commencement certificate on 31-05-1993. He further deposed that, father of plaintiffs had constructed basement, ground floor, mezzanine and first floor on the suit property.

6. P.W.2 Santosh deposed in his evidence vide Exh.18 that he had taken a shop on lease and no notice was given by the municipal corporation in respect of demolition of the suit property. He further submitted that, being an technician in the field of construction and as per his opinion suit property was in good condition. He stated in his cross-examination that, he does not know whether the defendant corporation issued a notice to the owner.
7. D.W.1 Sudhir deposed in his evidence vide Exh.25 that Town Planning Department was asked to mark the portion of construction affected by 24 meter wide road as per the approved development plan. He further deposed that, at the time of marking of C.T.S. No.18270 said premises was partly affected by 24 meter wide Kokanwadi to Panchawati road and the DP plan was approved in the year 2002.
8. D.W.2 Avinash deposed in his evidence vide Exh.27 that, suit property was demolished to the extent of marking on 09-01-2012 and remaining dilapidated portion on 24-03-2013. He further deposed that, commencement certificate dated 31-05-1993 was given to the plaintiff on various conditions and plaintiffs started using the

premises without obtaining occupancy certificate as mentioned in the condition no.4. He further deposed that, plaintiff was unauthorisedly using the suit premises.

9. D.W.4 Chabulal deposed in his evidence vide Exh.38 that, suit property was demolished to the extent of marking on 09-01-2012 and remaining dilapidated portion was demolished on 24-03-2013. He further deposed that, the notice under Section 264(1), 265 and 246 of B.P.M.C. Act dated 22-03-2012 was tried to be served on the plaintiff who was not present in the building and notice was affixed on the door of the plaintiff by preparing panchanama on 22-03-2013. He stated in his cross-examination that, he made joint measurement of CTS No.18270 for road widening purpose.
10. One important aspect has to be considered here in respect of G.P.A. Present suit is filed by plaintiff no.3 through his General Power Of Attorney namely Abdul Raheman Abdul Rahim. In such backdrop it is necessary to look into issue that whether G.P.A. of plaintiff has right to file the suit. It is pertinent to note here that, plaintiffs have not filed any documentary evidence of G.P.A. Plaintiffs have filed 7/12 extract of CTS No.18270 which depicts name of Shaikh Barkatulla as a owner for the area admeasuring 52.7 squ.mtr. Plaintiffs have not filed heirship certificate on record.
11. Plaintiffs have not filed completion certificate on record. Plaintiffs have not filed any documentary evidence which shows year of completion of construction and no construction plan filed on record. There is no documentary evidence showing that plaintiffs earned Rs.26,000/- per month till January 2012. As per the version of the defendant portion of construction affected by 24 meter wide road as per the approved development plan. The notice under Section 264(1),

265 and 246 of B.P.M.C. Act dated 22-03-2012 was tried to be served on the plaintiff who was not present in the building and notice was affixed on the door of the plaintiff. Copy of development plan filed on record vide Exh.44 and 45. Notice under Section 264(1), 265 and 246 of M.M.C. Act issued to Shaikh Barkatulla is at Exh.47. Valuation certificate is at Exh.43 but there is no evidence on record that construction over suit property is legal one. Hence, I answer issue nos.1 and 2 in the negative and issue no.3 in the affirmative.

AS TO ISSUE NO.4

12. Admittedly, suit filed without issuance of mandatory statutory notice under Section 487 of the M.M.C. Act. Section 487 of the Maharashtra Municipal Corporations Act reads as under :

(1) No suit shall be instituted against the Corporation or against the Commissioner, or the Transport Manager, or against any municipal officer or servant, in respect of any act done or purported to be done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act :-

(a) Until the expiration of one month next after notice in writing has been, in the case of the Corporation, left at the chief municipal office and, in the case of the Commissioner or of the Transport Manager or of a municipal officer or servant delivered to him or left at his office or place of abode, stating with, reasonable particularity the cause of action and the name and place of abode of the intending plaintiff and of his attorney, advocate, pleader or agent, if any, for the purpose of such suit, nor

(b) unless it is commenced within six months next after the accrual of the cause of action.

(2) At the trial of any such suit :-

(a) the plaintiff shall not be permitted to go into evidence of any cause of action except such as is set forth in the notice delivered or left by him as aforesaid;

(b) the claim, if it be for damages, shall be dismissed if tender of sufficient amends shall have been made before the suit was instituted or if, after the institution of the suit, a sufficient sum of money is paid into Court with costs.

(3) Where the defendant in any such suit is a municipal officer or servant, payment of the sum or of any part of any sum payable by him in, or in consequence of the suit, whether in respect of costs, charges, expenses, compensation for damages or otherwise, may be made, with the previous sanction of the Standing Committee or the Transport Committee from the Municipal Fund or the Transport Fund, as the case may be.

13.It is clear from the provision of Section 487 of the said Act that, it is prohibitory in terms that no suit can be instituted against a Municipal Corporation or any of its officers in respect of any act done good faith until pre-suit statutory notice in writing has been duly served and delivered at the office of the Municipal Corporation or left at its office. The requirements stated above are mandatory and for the benefit of Municipal Corporation or its Officers to be sued in respect of any act done in good faith. The mandatory requirements of Section 487 of the said Act serves policy of law and a definite public purpose to protect Municipal Corporation from unnecessary, expensive; avoidable and lengthy litigation initiated by means of a civil suit.

14.The mandate under Section 487 of the M.M.C. Act is clear and undeniable creating prohibition for the institution of the civil suit without compliance of conditions precedents stated therein. The civil

suit cannot be entertained against the corporation or its officials for performing their duty in good faith, unless the conditions precedents are complied with by the prospective the plaintiff before the institution of the civil suit. In view of the ruling in **Harkishan Lal vs. State of Jammu & Kashmir reported in (1994) 4 SCC page 422,** *requirement which serves public purpose, cannot be waived. Except in case of urgency it may be excusable in a rare case, when plaintiff is required to be protected against threatened action of demolition of his house or shop as the case may be.*

15. For the reasons adverted above it can be said that the suit is bad for want of notice under Section 487 of the Maharashtra Municipal Corporation Act. As discussed above plaintiffs failed to establish that construction over suit property is legal one. In such circumstances, plaintiffs are not entitled for relief as prayed. Hence I answer issue no.4 in the negative. In view of finding arrived at on issue no.4, the suit deserves to be dismissed. In the result the following order is made :-

ORDER

1. The suit stands dismissed with costs.
2. The decree shall be drawn up accordingly.

Place :- Aurangabad
Date :- 01.03.2019

Sd/-
(Smt. A.S. Badgular)
Civil Judge, S.D.(Corporation Court)
Aurangabad.

CERTIFICATE

I affirm that the contents of this P. D.F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer	: Miss. Manjushri S. Salve.
Court	: C.J.S.D. (Corporation Court), Aurangabad
Date	: 01.03.2019
Judgment signed by the presiding officer on	: 02.03.2019
Judgment uploaded on	: 02.03.2019