

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 452 OF 2011

Shripad Gajanan Mule V/s Union of India and Cantonment Board,
 Bhingar.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. P.P. Dawalkar, Advocate for the Appellant.

Mr. Alok Sharma, Asstt.Solicitor General for the respondent.

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CORAM : S.V.GANGAPURWALA, J.

DATE : 31/07/2012.

PER COURT :

1. The present respondent had issued notice U/s 185 (2) of the Cantonment Act [For short, ' said Act '] to the present appellant for demolition of the construction over the suit property contending that the same is unauthorized.

2. The present appellant/plaintiff filed Suit bearing R.C.S. No. 617 of 2001 for declaration and injunction. The trial Court dismissed the Suit. Aggrieved thereby the appellant filed Appeal before the District Court. The District Court also dismissed the Appeal

confirming the Judgment and decree passed by the trial Court. The plaintiff has assailed the said concurrent findings in the present Second Appeal.

3. Mr. Dawalkar, learned counsel for the appellant strenuously contends that the respondent while issuing notice has not followed the procedure as is laid down under the statute. According to the learned counsel, the construction in question was carried out by the father of the plaintiff as per the prescribed rules of the said Act and without verifying the fact and without visiting the constructed area, issued the impugned notice. The learned counsel further contends that the statute prescribes personal hearing to be given prior to the issuance of the notice. No such personal hearing was given. In view of that, the notice stands vitiated.

4. According to the learned counsel, the Courts below have perversely dealt with the matter and thereby have arrived at erroneous conclusion.

5. Mr. Alok Sharma, learned Assistant Solicitor General for the respondent supports the Judgment and submits that the construction in question is unauthorized. A valid notice U/s 185 (2) of the said Act has been issued. Both the Courts have appreciated the said fact.

6. With the assistance of the learned counsel, I

have gone through the Judgments.

7. Section 185 (2) of the said Act empowers the Cantonment Board to direct the occupier of the land in the cantonment area to stop the erection or re-erection of a building under the circumstances enumerated therein. A notice was given for demolition of the erected portion which was constructed by the plaintiff without prior sanction of the Board. There is nothing on record to show that the plaintiff had been accorded any prior sanction. The provisions of Section 185 (2) of the said Act have been adhered. The Court has also considered the other aspects of the matter. Both the Courts on appreciation of evidence have dismissed the Suit.

8. The Second Appeal does not involve any substantial question of law, as such is dismissed. No costs.

9. In view of dismissal of the Second Appeal, the Civil Application does not survive and stands disposed of.

10. At this stage, Mr. Dawalkar, learned counsel for the appellant submits that the appellant may file an application for regularization before the Cantonment Board under proviso to Section 185 (1) of the said Act.

11. The appellant may file such an application, which application the authorities/Board would consider on its own merits.

[S.V.GANGAPURWALA, J]

KNP/S.A. 452.2011