



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

**CIVIL REVISION APPLICATION NO.132 OF 2014**

M/s. Arihant Construction,  
Mahesh Nagar, Jalna Road,  
Aurangabad,  
Through its Partner  
Shri Lalit s/o Vasantlal Gandhi,  
Age-42 years, Occu:Business,  
R/o-Plot No.18, MaheshNagar,  
Jalna Road, Aurangabad.

**...APPLICANT  
(Orig. Defendant No.3)**

**VERSUS**

1) Shri Subhash Kesharmal Barlota,  
Age-Major, Occu:Advocate  
Through his Power of Attorney Holder  
Mr. Mohd. Abdul Shakeel  
s/o Mohd. Abdul Sami,  
Age-49 years, Occu:Business,  
R/o-Block No.16, Model Colony,  
Opp. Himayat Baugh, Delhi Gate,  
Tq. & Dist-Aurangabad.

**(Orig. Plaintiff)**

2) The Municipal Corporation,  
Aurangabad, Through  
its Commissioner at Aurangabad,

**(Orig. Defendant No.1)**

3) The Assistant Director of Town Planning,  
Municipal Corporation,  
Aurangabad.

**(Orig. Defendant No.2)**

**...RESPONDENTS**

...  
Mr. A.B. Kale Advocate for Applicant.  
Mr. D.P. Palodkar Advocate h/f. Mr. Abhishek  
C. Deshpande Advocate for Respondent No.1.  
Mr. C.V. Thombre Advocate for Respondent Nos.  
2 and 3.

...

**CORAM: A.I.S. CHEEMA, J.**

**DATE OF RESERVING JUDGMENT : 24TH FEBRUARY, 2015.**

**DATE OF PRONOUNCING JUDGMENT: 20TH MARCH, 2015.**

**JUDGMENT :**

1. Heard learned counsel for the Applicant, learned counsel for Respondent No.1 and learned counsel for Respondent Nos.2 and 3 finally with consent.

2. Respondent No.1 (original Plaintiff - hereafter referred as "Plaintiff") has filed Regular Civil Suit No.41 of 2014 before Civil Judge, Senior Division, Corporation Court, Aurangabad against Planning Authority Respondent Nos.2 and 3 (original Defendant Nos.1 and 2 -

hereafter referred as "Defendant Nos.1 and 2") and present Applicant, arrayed in the Suit as Defendant No.3 (hereafter referred as "Defendant"). The Suit filed is for suspension/cancellation of permission of construction issued by the Municipal Corporation and Assistant Director of Town Planning (Defendant Nos.1 and 2) in favour of the Defendant No.3 on 21st March 2014. The Plaintiff claimed suspension/cancellation of the permission of construction and consequential relief of mandatory injunction to demolish the construction made in view of the permission and also has claimed perpetual injunction that Defendant No.3 should not carry out any construction over the suit plot. Plaintiff filed application for temporary injunction also. Defendant No.3 filed written statement and inter-alia claimed that the suit was barred in view of Section 149 of the Maharashtra Regional and Town Planning Act, 1966 ("the Act" in brief). In view of the question of jurisdiction of

Civil Court being raised, trial Court framed preliminary issue - Whether the Civil Court is having jurisdiction to decide subject matter of the present suit. The trial Court answered the same in the affirmative holding that it has jurisdiction and held that the suit can proceed further. Against the said impugned order of the trial Court dated 6th August 2014, the present Revision has been filed.

3. To put it in nutshell, the objections raised by the Defendant No.3 are that the Plaintiff is trying to say that the Plaintiff has title to the suit property and thus the Municipal Corporation should not have granted the permission of construction and the Suit has limited prayer for cancellation of the permission and consequential reliefs sought are of mandatory and permanent injunction and thus it is claimed that the Suit is not maintainable in view of Section 149 of the Act.

4. I have heard counsel for both sides. The counsel for Applicant - original Defendant No.3 claimed that the Suit filed by the Plaintiff refers to an old litigation relating to properties of Salarjung and Plaintiff claims to have acquired title on the basis of purchase of decree which was not executed. According to learned counsel, the Defendant No.3 purchased the suit property from one Mrs. Jayashree Admane, member of Venkateshnagar Co-operative Housing Society. The C.T.S. records for last many years showed clear title and there was no litigation about the title and Defendant No.3 had purchased suit property after verifying title. The present dispute has been raised only when Defendant No.3 applied for permission of construction. According to the learned counsel, the Suit filed by the Plaintiff does not claim declaration of title of the Plaintiff. The Suit does not show that the Plaintiff was in possession before or when the

Suit was filed. The Suit does not even claim possession and according to the counsel, the only relief sought is cancellation of the permission of construction and the Suit is thus, according to him, not maintainable. Under Section 149 of the Act there is finality to the orders passed by the Planning or Development Authority under this Act and grant of commencement certificate is under Section 45 of the Act and thus Civil Court has no jurisdiction to consider whether or not the order granting permission of construction is correct, legal or proper.

5. Against this, learned counsel for Respondent No.1- Plaintiff has claimed that the Suit as has been filed, is maintainable in the Civil Court. According to him, the Plaintiff has title to the property and Defendant does not have title. The Defendant and his predecessors claimed title through the earlier Pattedars who were not entitle to retain possession in view of the

earlier litigation. The counsel submitted that the Plaintiff need not claim his own title and without claiming his own title, the Plaintiff can maintain the Suit questioning the title of Defendant No.3. According to him, even when Defendant No.3 moved for permission to construct, Plaintiff had objected and the Municipal Corporation sent letter to the Plaintiff asking him to go to the Court. The Corporation considered only revenue entries while considering the grant of permission to construct. The counsel submitted that Plaintiff has sought mandatory and perpetual injunction which can be granted only by the Civil Court and thus the Suit is maintainable. Against permission under Section 45 of the Act only the Applicant who applied for the permission, can go in Appeal under Section 47 of the Act and thus according to the counsel, the Plaintiff, if he wants to challenge the permission to construction, has no other option but to file the present Suit. The counsel for Respondent No.1 – original Plaintiff wants the

Revision to be dismissed.

6. Question before me is – Whether the impugned order is illegal or suffers from material irregularity?

7. Looking to the controversy, it would be appropriate to consider the Suit as has been brought.

(A). Copy of the plaint is available at Exhibit A in the Revision Application. In the initial part, in bold, the plaint mentions that the claim in the Suit is for :

**"1) Cancellation/ Suspension of permission of construction in file no.1045/17/2013-14, dt.21-03-14, granted by defendant no.1 and 2 on plot no.20 bearing C.T.S. No. 12486/1, situated at Venkateshnagar, Baijipura, Aurangabad, in favour of defendant no.3 in contravention of settled norms and without verifying the valid title and competency of defendant no.3.**

2) **Mandatory Injunction, thereby directing the defendant no.3 to demolish the entire construction carried on over the suit plot in pursuance of permission of construction in file no. 1045/17/2013-14, dt.21-03-14 sought by misrepresentation besides being illegal, invalid and vitiated by fraud and misrepresentation.**

3) **Perpetual injunction, restraining the defendant no.3 from carrying out or erecting any construction over the suit plot and/or changing the nature of the suit plot by any mode whatsoever and creating any sort of charge, encumbrance or third party interest over the suit property."**

(B). The recitals in the plaint then refer to the Suit property as C.T.S. No. 12486/1 corresponding to Plot No.20 at Venkateshnagar, Baijipura, Aurangabad admeasuring 322.01 sq. mtrs. The plaint gives boundaries and adds that the suit plot partially falls in Survey No.14 and partially in Survey No.15. The Plaintiff has then claimed that he is one of the joint owners along with six others, of Block No.5 situated at Baijipura and gives reference of three registered sale deeds of 1984 claiming that "by virtue of the Sale Deed the

Plaintiff and other co-owners were put in possession of the purchased properties by the respective vendors".

(C). The plaint then mentions that the village Baijipura was private property of late Salarjung Bahadur and was included in the properties in the dispute in Civil Suit No.13 of 1958 for distribution amongst LRs and successors of late Salarjung. Various paragraphs of the plaint then refer to the litigation of 1958 and the orders passed by the Andhra Pradesh High Court as well as subsequently by this High Court. After referring to the long history, Paragraph No.12 mentions that as per Application No.377 of 1961 in Civil Suit No.13 of 1958 properties of Aurangabad such as Baijipura, Maljipura (etc.) including suit property were distributed by the Receiver-cum-Commissioner amongst the heirs of Salarjung such as Turab Yar Jung group, Plaintiff's group and One Ana's group and Two Ana's group. It is claimed

that different groups of heirs of Salarjung were put in possession of the property and thus suit property Survey No.14 in suit Plot C.T.S. No. 12486/1 came in share of Turab Yar Jung group. It is claimed that as the property was taken over by the Receiver-cum-Commissioner for distribution and Receiver-cum-Commissioner distributed the property amongst the heirs of late Salarjung, concept of Pattedar came to an end and that even otherwise the Pattedar has no nexus over the ownership and title of the property.

(D). It is claimed that Plaintiff under the sale deeds mentioned, purchased entire Block No.5 from the group of Turab Yar Jung. Plaintiff claims that Plaintiff and six others have right to deal with the property. The plaint refers to the earlier Pattedars and then it is claimed that bogus and fake persons alienated part of the land Surve No.14 of Baijipura in favour of Venkateshnagar Co-operative Housing Society vide

sale deed dated 3<sup>rd</sup> May 1975. The said purchaser without title and competency prepared lay out and laid plots over the land Survey No.14. Suit claims that Defendant No.2 – Assistant Director of Town Planning did not inquire and verify the title as well as competency and blindly sanctioned the lay out. One Mrs. Jayashree Admane appears to have purchased suit plot and from her Defendant No.3 purchased the suit plot. The plaint further mentions that the Pattedars laid out plots over adjoining land of Survey No.14 i.e. part of Survey No.15 and had got lay out sanctioned from the Municipal Corporation.

(E). According to the Plaintiff, he had objected on 28<sup>th</sup> February 2014 for grant of permission of construction to Defendant No.3 but the same was not accepted. According to him, the Corporation without proper scrutiny granted permission of construction and the Municipal Corporation Authorities are guilty of non

discharge of statutory and official duties. Property Card of C.T.S. Office or revenue record (7 X 12 Extract) are not conclusive proof of ownership of title or rights. Title of properties can only be decided by competent Civil Court. According to the Plaintiff, Municipal Corporation should have looked into the matter of illegality committed by Defendant No.3 and his predecessors-in-title. Without giving opportunity to Plaintiff on the point of objection, the objection was rejected.

(F). Perusal of the plaint shows that for the purpose of Court Fees and Jurisdiction, the claims are as under:

"A) For the Relief of Cancellation and Suspension of construction permission in file no. 1045/17/2013-14, dt.21-03-2014; the relief is also being non-suspectable to monitory evaluation, the relief is valued of Rs.2000/- and fixed court fees of Rs.200/- is also paid herewith.

B) For the Relief of Mandatory Injunction,

being a consequential relief, based on the reliefs of suspension and cancellation. The same need not to be valued and no separate court fees is required. However, to avoid any technicality, the relief being non-suspectable to monetary evaluation, the relief is valued of Rs.2000/- and fixed court fees of Rs.200/- is paid herewith.

C) For the Relief of Perpetual Injunction, the relief is valued at Rs.2000/- and fixed court fees of Rs.200/- is paid herewith. Thus, the total court fees of Rs.600/- is paid herewith, which is sufficient."

(G). It would be appropriate to refer to the prayers made in the Suit also. It has been prayed:-

"1. The suit of the plaintiff may kindly be decreed.

2. The permission of construction, granted by the defendant no.1 & 2, in favour of the defendant no.3 in and or vide file no. 1045/17/2013-14, dt.21.03.2014 for proposed construction over the suit plot, be suspended and cancelled, being contravention of the settled norms and without verifying the valid title and the competency of defendant no.3.

3. In consequences of cancellation / suspension, the construction carried-out in pursuance of the impugned permission challenged, may kindly be ordered to be

demolished, by the defendant no.3, in the event of the failure of defendant no.3 to comply the order, the said construction may kindly be ordered to be demolished by the defendant no.1 and 2.

4. The defendant no.3 may kindly be restrained by way of decree of perpetual injunction restraining them from carrying out the erection of any construction over the suit plot and/or changing the nature of the suit plot by any mode, whatsoever and creating any sort of charge, encumbrance or third party interest over the suit property.

5. The cost of the suit may kindly be awarded.

6. Any other equitable relief which this Hon'ble Court deems fit may kindly be awarded in favour of the plaintiff."

8. Keeping the above Suit filed by Respondent No.1 - Plaintiff in view, if the impugned permission to construct is perused, it shows that the permission was granted on 21<sup>st</sup> March 2014 (Page No.248 of the Petition). Inter-alia the Commencement Certificate relies on Section 45 of the Act and in addition to other conditions, it has been added that if there is any dispute regarding ownership, the same would be

responsibility of the Applicant (i.e. Defendant No.3), to whom the permission was given.

9. With reference to the objections raised by the Plaintiff Subhash, the Municipal Corporation informed him vide letter dated 15<sup>th</sup> March 2014 (Page No.252 of the Petition) that he has filed objections. Corporation mentioned that for building permission, Property Card, sale deed, documents relating to title are filed by the parties. The objection of the Plaintiff was regarding title. The Corporation is concerned whether or not the permission sought is as per the Development Plan and the Corporation informed the Plaintiff that regarding his objection, he may move the concerned authorities or Court. The corporation informed the Plaintiff that they have considered the sale deed in favour of Defendant No.3 and the Property Card, measurement map etc. and the property was standing in the name of Defendant No.3. There was no suit pending with

reference to the property and the record showed the title for more than twelve years and considering the title deeds and the possession, the permission was given and his objection was being disposed of.

10. Record shows that Defendant No.3 filed written statement and claimed that the Plaintiff is in no way concerned with the suit plot. Defendant purchased the plot from Jayashree Admane. Earlier on 29<sup>th</sup> June 2013 public notice was given calling objections regarding the sale but Plaintiff did not file any objections. This Defendant obtained search reports from 1984 till 2013 and found that there was no dispute. Referring to an earlier dispute with one Sanjay Bassaiye, Defendant claimed that in view of that dispute, compound wall was constructed by Smt. Admane after taking permission from Municipal Corporation. The permission was granted after measurement was carried out by Town Planning

Officer. After the wall was constructed, the Defendant No.3 purchased the property and applied for permission to construct, which has been granted. Defendant claimed that Plaintiff has not shown his possession or title over the suit property and not filed any document to show the same. Name of Plaintiff was not at all shown in any of the documents between 1984 to 2014. The suit was not maintainable in view of Section 149 of the Act. Venkateshnagar Co-operative Housing Society has not been added as party. The Plaintiff has not prayed for declaration of ownership and title over suit property and Suit merely claiming injunction is not maintainable.

11. Before referring to the Rulings relied on by the counsel for both sides, in order to appreciate the relevant provisions, the same need to be reproduced for the sake of convenience. Section 45 to 47 of the Act read as under:

**"45. Grant or refusal of permission**

(1) On receipt of an application under section 44 the Planning Authority may, subject to the provisions of this Act, by order in writing -

(i) grant the permission, unconditionally;

(ii) grant the permission, subject to such general or special conditions as it may impose with the previous approval of the State Government; or

(iii) refuse the permission.

(2) Any permission granted under sub-section (1) with or without conditions shall be contained in a commencement certificate in the prescribed form.

(3) Every order granting permission subject to conditions, or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(4) Every order under sub-section (1) shall be communicated to the applicant in the manner prescribed by regulations.

(5) If the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within sixty days from the date of receipt of his application, or within sixty days from the date of receipt of reply from the applicant in respect of any requisition made by the Planning Authority, whichever is later, such permission shall be deemed to have been granted to the applicant on

the date immediately following the date of expiry of sixty days:

**Provided that,** the development proposal, for which the permission was applied for, is strictly in conformity with the requirements of all the relevant Development Control Regulations framed under this Act or bye-laws or regulations framed in this behalf under any law for the time being in force and the same in no way violates either the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under this Act:

**Provided further** that, any development carried out in pursuance of such deemed permission which is in contravention of the provisions of the first proviso, shall be deemed to be an unauthorised development for the purposes of sections 52 to 57.

(6) The Planning Authority shall, within one month from the date of issue of commencement certificate, forward duly authenticated copies of such certificate and the sanctioned building or development plans to the Collector concerned."

#### **46. Provisions of Development Plan to be considered before granting permission**

The Planning Authority in considering application for permission shall have due regard to the provisions of any draft or final plan or proposal, (published by means of notice) submitted or sanctioned under this Act.

**47. Appeal**

(1) Any applicant aggrieved by an order granting permission on conditions or refusing permission under section 45 may, within forty days of the date of communication of the order to him, prefer an appeal to the State Government or to an officer appointed by the State Government in this behalf, being an officer not below the rank of a Deputy Secretary to Government; and such appeal shall be made in such manner and accompanied by such fees (if any) as may be prescribed.

(2) The State Government or the officer so appointed may, after giving a reasonable opportunity to the appellant and the Planning Authority to be heard, by order dismiss the appeal, or allow the appeal by granting permission unconditionally or subject to the conditions as modified."

. Then there is Section 147 of the Act which says that no suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or in rules or regulations made thereunder.

. Section 149 of the Act reads as follows:

**"149. Finality of orders**

Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings."

12. Counsel for Applicant – Defendant No.3 relied on the case of **Smt. Sujala Yeshwant Nitsure and others vs. The Municipal Corporation of City of Pune and others**, reported in 1996(2) Bom.C.R. 503. That was matter which related to challenge to sanction for construction of Mangal Karyalaya in residential area by the Municipal Commissioner under his discretionary powers. It was Second Appeal before the High Court. Suit had been brought by Plaintiff in that matter in representative capacity claiming that the permission granted by the Municipal Corporation to the plot holders for construction of Mangal Karyalaya was illegal, ultra vires. In such suit, injunction was claimed that the construction work

should be stopped. This Court considered the facts and circumstances of that matter and observed in Para 70 as follows:

"70. Therefore, taking into consideration all the facts and circumstances as obtained in the matter herein and the findings rendered herein above, I do not find any merits in the appeal. The 1st Appellate Court has dismissed the appeal although reasoning assigned were different to certain extent as have been clarified in the Judgment herein above. In as much as, the bar of suit under section 149 of the M.R.T.P. Act was not argued over before the trial Court or before the 1st Appellate Court. But same being a point of law, this Court has allowed the parties to address it on the said point. The plaintiffs have failed in the said legal point and as the same goes to the root of the matter the suit of the plaintiffs consequently has to be dismissed."

13. Learned counsel for Applicant – Defendant No.3 further relied on the case of **Kalyan Dombivli Municipal Corporation, Through Commissioner vs. Prakash Mutha, reported in 2008(3) Bom.C.R. 720.** In that matter the plaintiff and other persons had raised objections to the development plan. It was claimed that the draft development plan was not

prepared as per the procedure laid down under the M.R.T.P. Act. Mainly relief sought was of declaration of the draft development plan to be illegal, ultra vires of the M.R.T.P. Act. In that matter the Civil Judge, Junior Division held that the suit was not barred under Section 149 of the Act. However, this Court found that the suit was barred under Section 149 of the Act.

14. The learned counsel for Applicant further relied on the case of **Bales Sardara Paracha vs. Municipal Corporation of Greater Bombay and another, reported in 2005(4) Bom.C.R. 577**. That was a matter in which notice under Section 55(1) of the Act had been issued. Section 55 deals with removal or discontinuance of unauthorized temporary development summarily. The notice issued was challenged by way of suit. Objection of jurisdiction was raised and after considering the material and evidence, the suit was dismissed for want of jurisdiction by the City Civil Court and

the appeal was carried to this Court. Dispute was raised in the High Court that M.R.T.P. Act does not make provision under which notice under Section 55(1) of the Act could be challenged and thus it was claimed that Civil Court's jurisdiction will not be excluded. This Court referred to the case of **Dhruv Green Field Ltd. vs. Hukam Singh and others, reported in 2002 (6) Supreme Court Cases 416** and observed in Paragraphs 18 and 19 as under:

"18. In Dhruv's case (supra), on which the learned Counsel has placed reliance, the Supreme Court was dealing with section 13 read with section 10-A of the Punjab Village Common Lands (Regulation) Act, 1961 (-the Act-, for short). A suit was filed by the respondent therein, challenging the validity of the lease of land granted by Gram Panchayat Madnaka for a period of 10 years in favour of the appellant on 1st October, 1997. The question was whether in view of section 13 read with section 10-A of the Act, a civil suit could be entertained. After taking a resume of the relevant cases on the point, the Supreme Court stated the principles which a Court has to follow while ascertaining whether Civil Court's jurisdiction is excluded or not. I may quote the principles enunciated

by the Supreme Court:-

- (1) If there is express provision in any special Act barring the jurisdiction of a Civil Court to deal with matters specified thereunder the jurisdiction of an ordinary Civil Court shall stand excluded.

(2) If there is no express provision in the Act but an examination of the provisions contained therein leads to a conclusion in regard to exclusion of jurisdiction of a Civil Court, the Court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act; if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the Civil Court is barred. If, however, no such adequate and effective alternative remedy is provided then exclusion of the jurisdiction of the Civil Court cannot be inferred.

(3) Even in cases where the jurisdiction of a Civil Court is barred expressly or impliedly, the Court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity.-

19. From the above observations of the Supreme Court, it is clear that where the bar in the Special Act is express and clear, the jurisdiction of the Civil Court stands excluded. The question of the Court embarking upon any enquiry to find out whether there is any adequate or efficacious remedy provided under the Special Act would arise only when there is no express bar but the examination of the provisions of the Special Act leads to a

conclusion that the Civil Court's jurisdiction is barred. In such cases, availability of effective alternative remedy assumes importance because the legislative intent to bar the jurisdiction of the Civil Court is not explicit. In such cases, on the principle that ordinarily every person has a right to approach a Civil Court to redress his grievance, it becomes necessary to investigate whether other efficacious remedy is available or not. However, in cases where the order complained of is a nullity, even if the jurisdiction of the Civil Court is barred expressly or impliedly, the Court would still retain its power to entertain the suit. There can be, therefore, no doubt that since in the present case, section 149 creates an express bar whether the alternative efficacious remedy is available or not need not be investigated into."

(Emphasis supplied)

. For these and other reasons arising from the facts of that matter it was found that the trial Court had rightly dismissed the suit of plaintiff on the ground that in view of Section 149 of the Act the same could not be entertained. The appeal was dismissed.

15. The counsel for Applicant relied on yet another Judgment in the case of **Mohan N. Bhawe**

**(Dr.) vs. Municipal Corporation of Greater Bombay,**  
**reported in 2005(3) Bom.C.R. 300.** Like the matter  
of **Bales Sardara Paracha** (supra) this was also  
relating to notice under Section 55(1) and it was  
held that Section 149 applies.

16. Relying on the above Judgments, the  
counsel for Applicant has argued that Section 149  
applies in present matter also and the suit should  
have been dismissed as not maintainable.

17. Counsel for Respondent No.1 – original  
Plaintiff relied on the case of **Malad Kokil Co-  
operative Housing Society Ltd. vs. Modern  
Construction Co. Ltd. and others,** reported in  
**2012(6) A.I.R. Bom. R 257.** Referring to Para 50 of  
that Judgment it has been submitted that  
provisions of Section 149 do not bar suit whereby  
a party can be prevented from acting on an action  
and order made under the Act.

. This matter arose in a suit filed by the plaintiff society for decree directing the Defendant Nos.1 and 2 to convey the suit property and for declaration that the concessions/ relaxations granted by Defendant No.7 on the approval report dated 5<sup>th</sup> December 2009 were bad in law, malicious etc. In that suit, plaintiffs further prayed for declaration that the commencement certificate dated 13<sup>th</sup> October 2010 was null and void. Thus, in this matter the suit was mainly for directing Defendant Nos.1 and 2 to convey the suit property and further reliefs were sought regarding the declaration relating to commencement certificate. In that context, in Para 50, the observations appear to be that Section 149 does not bar the suit whereby a party can be prevented from acting on an action and order made under the Act.

. In para 49 of that Judgment, reliance was placed on the matter of **Raja Bahadur Motilal and**

**another vs. State of Maharashtra and others,**  
**reported in 2003 (1) Bom.C.R. 251.** That matter of  
**Raja Bahadur** related to dispute between  
Respondent No.7 and the Petitioner of that matter  
as to who has the right to use the TDR on the  
construction already made by the Petitioner and  
Respondent No.7 and observations were made that  
suit or legal proceedings for quashing deemed  
permission under Section 45(5) was maintainable  
and that even otherwise Section 149 does not bar  
a party from acting on an action and order made  
under the Act.

18. Keeping Rulings referred to by the  
parties in view, when present suit is perused,  
although it refers to an old earlier history of  
litigation, it does not seek declaration of the  
ownership of the plaintiff. It does not even seek  
possession of the property although from the  
plaint itself it can be made out that plaintiff  
was not supported by the revenue entries also

regarding the possession. At the time of argument, I had asked the learned counsel for Respondent No.1 – how plaintiff without seeking declaration of title the plaintiff was claiming mere cancellation of building permission. The counsel submitted that plaintiff was claiming mandatory and perpetual injunction also. The counsel was asked if without seeking declaration of title the suit could be maintained, the counsel submitted that present suit was only to the effect that Defendant No.3 should be restrained from acting on the permission of construction given by the Corporation. According to the counsel, the Corporation had given permission merely relying on revenue entries and he submitted that this was not appropriate. According to the counsel for Respondent No.1, the Respondent No.1 had raised objections but the Corporation still granted the permission. I find that the suit in its present form is hit by Section 149 of the Act. It merely seeks cancellation of the permission of

construction on the basis that the plaintiff had raised question of title before Planning Authority and thus according to the plaintiff the permission should not have been granted. Merely because plaintiff raised dispute of title with the Corporation, would not be sufficient. The commencement certificate dated 21<sup>st</sup> March 2014 issued to the Defendant No.3 and before issuing the certificate, letter dated 15<sup>th</sup> March 2014 issued to the Plaintiff by the Corporation shows that the Corporation considered entries in P.R. Card and sale deed relied on by the Defendant No.3 and measurement map and found that the entries showed title of the Defendant No.3 and accordingly granted permission for construction. Planning Authority cannot sit down and give Judgment on title. The letter dated 15<sup>th</sup> March 2014 clearly informs the plaintiff that when he is asserting title, he may file appropriate suit. The plaintiff has filed the suit but did not claim declaration of his title. Although learned counsel for

plaintiff has argued that the plaintiff can maintain the suit without asking for declaration of his own title but can seek declaration that Defendant No.3 does not have title, even that is not done. The suit does not even seek to set aside Sale Deed relied on by Defendant. I do not find substance in the arguments.

19. It is not a case that while granting the permission, the planning authority did not give regard to the provisions of draft or final plan as is required to be considered under Section 46 of the Act. Even in that case what would be appropriate relief or forum would be matter of consideration. The basic reason for objecting to the building permission given in Plaint is that plaintiff had raised the question of title and so the permission should not have been granted. Looking to the Court Fee clause of the suit as well as the prayers of the suit reproduced above, it is quite clear that the only relief sought is

to cancel the construction permission given to Defendant No.3 and "in consequences of cancellation/suspension" of permission the mandatory injunction to remove structure and further perpetual injunction is claimed that Defendant No.3 should not do any construction at the suit property.

20. I have gone through the impugned order passed by the trial Court. Trial Court referred to the Rulings and in Para 22 of its order, in a cryptic manner observed that the plaintiff was seeking relief in respect of construction permission raising objections in respect of title and not considering the same by Corporation while granting construction permission. Trial Court then went on to observe that the question raised could be decided only by the Civil Court and observed that the Plaintiff is claiming the relief about the title which affects on the construction permission of the suit property. Thus only because

plaintiff refers to his title, the trial Court has presumed that the suit was maintainable without seeing the substance of the Suit and prayer clauses and the fact that the suit did not at all claim declaration of title nor Court Fee was paid by the plaintiff. Thus, I find that the order passed by the trial Court is not maintainable.

21. For reasons mentioned above, the impugned order of the trial Court is found to be illegal and not maintainable. Suit as brought is barred in view of provision of Section 149 of the Act and Plaint deserves to be rejected. I pass the following order:

**O R D E R**

(A) The Revision Application is allowed.

(B) Impugned order of the trial Court dated 6<sup>th</sup> August 2014\* passed below

\*See Speaking to Minutes Order Dt/-30.3.15.

Exhibit 1 in Regular Civil Suit No.41 of 2014 by Civil Judge, Senior Division, Corporation Court, Aurangabad is quashed and set aside.

(C) Regular Civil Suit No.41 of 2014 is not maintainable under Section 149 of the Maharashtra Regional and Town Planning Act, 1996 and Plaint is rejected.

**[A.I.S. CHEEMA, J.]**

asb/MAR15