
(1976) 11 GUJ CK 0002
In the Gujarat High Court

Anjar Municipality

APPELLANT

Vs

Ruparel Dharamshi Naranjl

RESPONDENT

Date of Decision : 20-11-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Gujarat Municipalities Act, 1963 — Section 81, 81

Citation : (1978) 19 GLR 58

Hon'ble Judges : A.N. Surti, J

Bench : Single Bench

Judgement

A.N. Surti, J.—By the impugned order passed by the learned Civil Judge (J.D.) Anjar (Kutch), the application of the petitioner-defendant was rejected. The petitioner-defendant had filed an application Ex. 24 slating that the Civil Court has no jurisdiction to try the suit in question. The Petitioner-Municipality stated in its application Ex. 24 that the opponent-plaintiff had filed a suit on an allegation that the suit lands and the structures standing thereon belonged to him and had filed a suit for damages. The Petitioner-Municipality denied that the suit land belonged to the opponent-plaintiff. It is also stated in Ex. 24 that the dispute between the parties is in respect of the ownership rights in regard to the suit land, and the trial Court had raised issue No. 1 in regard to the same. It is further stated in Ex. 24 that if there is any dispute between any person and the Municipality in regard to the ownership right of the land situated within the Municipal limits, then the Civil Court has no jurisdiction to decide the suit till the competent officer first decides the issue in question. Under the circumstances, in Ex. 24, the Petitioner-Municipality prayed that the plaint filed by the opponent-plaintiff should be rejected by the Trial Court under Order 7 Rule 11 of the Civil Procedure Code, 1908. The application was resisted by the opponent-plaintiff and the learned trial Judge took the view that the jurisdiction of the Civil Court is not ousted under the circumstances of the case.

2. It is under these circumstances that the Petitioner-Municipality was aggrieved by the impugned order and has filed the present revision application in this Court.

3. Y.S. Mankad, learned Advocate appearing on behalf of the Petitioner-Municipality invited my attention to Section 81 of the Gujarat Municipalities Act, 1963 which is in the following words:

81(1) In any municipal borough to which a survey of lands, other than lands ordinarily used for the purposes of agriculture only, has been or shall be extended under any law for the time being in force, where any property or any right in or over any property is claimed by or on behalf of the municipality, or by any person as against the municipality, it shall be lawful for the Collector after formal enquiry, of which due notice has been given to pass an order deciding the claim.

(2) any suit instituted in any civil court after the expiration of one year from the date of any order passed by "the Collector under sub-section (1), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined, according to Section 204 of the Land Revenue Code, shall be dismissed (although limitation has not been set up as a defence) if the suit is brought to set aside such order or if the relief claimed is inconsistent with such order provided that the plaintiff has had due notice of such order.

(3)(a) The power conferred by this section on a Collector may also be exercised by an Assistant or Deputy Collector or by a Survey Officer as defined in the Land Revenue Code.

(b) The formal enquiry referred to in this section shall be conducted in accordance with the provisions of the aforesaid Code.

(c) Any person shall be deemed to have had due notice of an enquiry or order under this section if notice thereof has been given in accordance with rules made in this behalf by the State Government.

4. Mr. Mankad submitted, that in the instant case, it was the case of the petitioner-Municipality that the land in question belongs to the Petitioner-Municipality and that if any right in or over the suit lands is claimed by or on behalf of the Municipality, or by any person as against the Municipality, the Collector is the only proper forum which should firstly be approached for the purpose of deciding the claim. He stated that by virtue of the provisions contained in Sub-section (1) of Section 81 of the aforesaid Act, the jurisdiction of the Civil Court is barred by necessary implication, and hence, it was the duty of the Civil Court to stay the hearing of the suit till the claim was decided by the Collector and till the final decision is arrived at by the machinery provided u/s 81 of the Act.

5. In order to justify the submission, Mr. Mankad invited my attention to the reported decision of this Court in Koli Sana Deva v. Shah Samalal Mathurdas 8 G. L.R. 297 wherein the Court was considering the provisions of the Bombay Merged Territories and Areas (Jagirs Abolition) Act and the provisions of Section 85A of

the Bombay Tenancy Act. The relevant head note of the said decision is in the following words:

The question whether any person is a permanent holder would have to be decided by the State Government, or by its officer as contemplated in proviso to Section 2(4) of the Bombay Merged Territories and Area (Jagirs Abolition) Act, 1953. But there is nothing in the Act which says that the jurisdiction of the Civil Court is taken away, in respect of any such land merely because a question such as the one contemplated u/s 2(4) of the Act is raised by the defendants in the suit. The jurisdiction of a Civil Court for entertaining any suit depends upon the averments made in the plaint and the relief claimed therein. It is only when the defendants appear before the Court and raise any of such pleas which affect the jurisdiction of the Court, that the question as to whether the Civil Court can try that issue or the suit would arise. Till any such issue is raised, the jurisdiction to entertain any suit in law is always there unless specifically taken away.

In such cases, the method contemplated u/s 85A of the Bombay Tenancy Act can be adopted. That appears to be perfectly a reasonable way of looking at the matter rather than dismissing the suit outright before knowing as to whether the defendants succeed in their plea about their being permanent holders as contemplated in Section 2(4) of the Jagir Abolition Act.

6. At this stage, I may conveniently refer to Section 2(4) of the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953, which is in the following words:

(4) If any question arises,-

(i) whether a jagir is proprietary or non-proprietary,

(ii) whether any land is Gharkhed or Jiwai, or

(iii) whether any parson is a permanent holder, the State Government shall decide the question and such decision shall be final

Provided that the State Government may authorise any officer to decide questions arising under any of the Sub-Clauses (i), (ii) and (iii) and subject to an appeal to the State Government, his decision shall be final.

7. In the instant case before me, it is conceded by Mr. Mankad that the jurisdiction of the Civil Court is not expressly ousted either by the statutory language employed in Section 81 of the Gujarat Municipalities Act, 1953 or by any other provisions of the said Act. Section 81 merely provides that it shall be lawful for the Collector after formal enquiry, of which due notice has been given, to pass an order deciding the claim as contemplated by Section 81 of the Act. Thus, from the plain language employed by the legislature in Section 81 of the aforesaid Act, it is impossible for me to come to a conclusion that the jurisdiction of the Civil Court is either expressly or impliedly ousted.

8. In the case under the Jagir Abolition Act, 1953, the position is that in the event of any question arising as set out in Section 2(4) of the Jagir Abolition Act,

1953, firstly any officer appointed by the State Government has to decide the question, and thereafter, the order passed by the State Government at the appellate stage should be treated as final.

9. Now in the case before me, there is no such provision under the Gujarat Municipalities Act. Under the circumstances, I am of the opinion that it is open to the Collector to decide the claim as provided u/s 81 and at the same time it is equally open to the Civil Court to decide such a claims.

10. Mr. Mankad also invited my attention to the reported decision of the Supreme Court in *Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana*, . Mr. Mankad read out before me the contents of paragraph 7, which are in the following words:

Under Section 9 of the CPC the Court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. A statute, therefore, expressly or by necessary implication can bar the jurisdiction of Civil Courts in respect of a particular matter. The mere conferment of special jurisdiction on a tribunal in respect of the said matter does not in itself exclude the jurisdiction of Civil Courts. The statute may specifically provide for ousting the jurisdiction of Civil Courts; even if there was no such specific exclusion, if it creates a liability not existing before and gives a special and particular remedy for the aggrieved party, the remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular forum in which the remedy could be had. Even in such cases, the Civil Court's jurisdiction is not completely ousted. A suit in a Civil Court will always lie to question the order of a tribunal created by a statute, even if its order is. Expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions.

10.1 In the case before me, the jurisdiction of the Civil Court is not expressly or impliedly barred. No provision is pointed out to me except the provision of Section 81 of the Gujarat Municipalities Act, 1963 in order to justify the submission that the Gujarat Municipalities Act, 1963 bars the jurisdiction of the Civil Court in respect of the claims contemplated by Section 81 of the Act. In the case before me, the legislature merely conferred the special jurisdiction on the Collector in respect of the said claims and in my opinion, therefore, the same does not exclude the jurisdiction of the Civil Court. Under the circumstances, it is not possible for me to take the view that in the instant case, any error of jurisdiction has been committed by the learned trial Judge.

11. As a result of the aforesaid discussion, I do not see any substance or merit in this revision application, and hence, the revision application fails and the rule is discharged, but I make no order as to costs.