

(1986) 03 DEL CK 0058

In the Delhi High Court

Case No : Second Appeal No. 182 of 1978

Arjan Singh and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 07-03-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Land Acquisition Act, 1894 — Section 4, 5A, 6

Citation : AIR 1987 Delhi 165

Hon'ble Judges : D.K. Kapur, C.J

Bench : Single Bench

Advocate : R.S. Narula, with D.S. Narula, for the Appellant; Kadambini Sharma, for the Respondent

Final Decision : Allowed

Judgement

D.K. Kapur, C.J.—This is a regular second appeal arising from an injunction suit. The plaintiff had filed the suit claiming that an award under Land Acquisition Act was ultra vires and void, (a) because the acquisition was made for a purpose other than a public purpose and (b) certain conditions precedent like publication of notice u/s 4 at convenient places had, in fact, not been made in the locality of the suit property. It was further claimed that the plaintiffs were in physical possession and that cause of action against the intended dispossession was a continuing one. The prayer in the suit was that the defendant be restrained from taking possession of the suit land.

2. In the written statement a number of preliminary objections were taken, one of which was that a notification u/s. 4 could only be challenged within one year and secondly the proper defendant in the case was Union of India through the Administrator, Lt. Governor, and the suit was barred by law and hence the plaint was liable to be rejected under O. 7, R. 11(d). There was a further pleading that the plaint was vague and therefore, also the plaint had to be rejected under O. 7, R. 11(d) of the Code of Civil Procedure.

3. A number of issues were framed in the suit. The two relevant issues being the preliminary issues were :

(1) whether the suit is within limitation? and

(6) Whether the notice u/s. 80, C.P.C. is invalid?

4. These two issues were tried as preliminary issues and the learned Judge held that the 6th issue was to be decided in favour of the plaintiff as notice u/s. 80 was valid but on the first issue it was held that the plaintiff had the full knowledge of the acquisition proceedings and of the award dated 10-1-1973. The plaintiff having failed to challenge the notification u/s 4, could not challenge the same in the suit and hence the suit was barred by time and the plaint was liable to be rejected under O. 7, R. 11.

5. On appeal, this conclusion was upheld. There is considerable discussion in the judgment of the Appellate Court regarding whether Art. 110 of the Limitation Act is applicable or any other Article.

6. Having heard the Learned Counsel for the parties I am of the view that the suit could not have been decided in this way nor could the plaint have been rejected under O. 7, R. 11. The reason for this is available in O. 7, R. 11, CPC itself. This provision allows a plaint to be rejected in certain circumstances. It is unnecessary to deal with sub-cl. (a)(b) and (c) of the rule. Sub-rule (d) is involved which reads as :

(d) where a suit appears to be barred by any law.

7. Normally, a plaint has to be rejected not by taking evidence, or reading the written statement, but by finding out what is contained in the plaint itself. So, we have to see in this case whether there is a statement in the plaint which shows that the suit is barred by law. There are two statements in the plaint which are of any relevance in this behalf. One is that there has been an award but the date is not mentioned. Let us take it that the award is dated 10-1-1973 and we can assume for argument's sake that this date is specified in the plaint. The next paragraph of the plaint states that this award is a nullity because (a) the purpose specified is not of public purpose and (b) the condition precedent being the notification under S. 4 has not been specified in accordance with law. For purpose of seeing whether a plaint is within time or not every allegation of the plaint has to be assumed correct. Therefore, we assume that the award is invalid for the purpose of determining whether the suit is within time. If there is an invalid award which is being acted upon and the plaintiff claims that he has also to be dispossessed in furtherance of the same, so the respondent should be restrained from dispossessing him, a question arises what is the limitation period. A suit for injunction, in my view, can be brought before the act is committed. It does not become barred by time because the act which is sought to be restrained is yet to be carried out. The allegation in the plaint was as follows :

The plaintiffs being in physical possession of the suit property the cause of action for their intended dispossession from it arises every moment from day to day.

8. I think this statement of law is correct because an injunction from its very nature is preventive relief granted before the actual dispossession takes place. The result would be that if you take the fact that the award is invalid and dispossession has not yet taken place, the suit would be held to be barred by time on the basis of the statement in the plaint. Therefore, the plaint was wrongly rejected by the trial court and the confirmation of the same by the lower appellate court is invalid.

9. I must here say that this does not mean that I hold that the suit is within time. The suit appears to be within time because of the way the plaint has been worded. A number of other things can follow. For instance, (a) the dispossession may already have taken place before the suit was instituted, in which case the suit would not be maintainable for preventive relief; (b) the award may not be a nullity in which case there would be no cause of action. There may be other defects which I need not detail but, this would involve some evidence and some conclusion.

10. It was urged before me that perhaps Article 100 of the Limitation Act applies in this case and when a notification is issued u/s. 4 and not challenged for a period of one year, it cannot be invalid at a subsequent date. Therefore, the challenge to the award could not be made a basis of the suit. This is an interesting argument because it presupposes that a person will have to file a suit concerning a notification u/s 4 which is innocuous in itself, and cannot challenge the actual order which is the one acquiring the land which has necessarily to be passed much later. It is clearly the procedure under the Act, that a Section 4 notification may be followed by objections u/s 5A and a declaration u/s 6, and later on an acquisition by means of an award which finally ends in dispossession, after the award is given. There is an alternative which I need not analyse naturally but if there is a notification u/s 4 which is not acted upon, there is no question of filing a suit. If there is a declaration u/s 6 that may or may not necessitate a suit but the real question or cause of action is that the land is about to be taken away. At least some physical dispossession is involved only at the stage when the Government wants to take the possession of the land so the real threat to the party arises at that time. Learned Counsel for the appellant cited a judgment of Bombay High Court in *Lady Dinbai Dinshaw Petit and Others Vs. The Dominion of India and Another*, where some such question arose. There it was pointed out that if the order was invalid to start with, for example, if it was based on some wrong basis, then it was not necessary for the party to apply to have the same invalidated. The statement of law in that judgment seems to be entirely correct. It is as follows :

Obviously, the article applies only to those acts or orders which are valid until they are set aside. Therefore, if an order is bad from its inception, Art. 14 would not apply to such an order because it would be unnecessary for the plaintiff to

get the order set aside. The question, therefore, we have to consider in this appeal is whether the two orders which the plaintiffs challenge, if their challenge is successful, are valid till they are set aside or they were invalid from their very inception.

11. The real point in this case would be whether the acquisition in the present case is valid from its very inception and has to be invalidated or whether it was invalid from its very inception. This leads, as it happens, to some controversy. If the notification u/s 4 was not issued in accordance with law, it may be that the acquisition was invalid from its very inception but, if the notification was made in accordance with law, then it could not be invalid. This involves the question which has to be tried. The question of limitation, which depends on these other facts, therefore, cannot be tried as such independently of the other facts.

12. This discussion was meant to show that this question of limitation raised by reason of the statement in the written statement is different from the limitation involved in rejecting the plaint. If the plaint itself shows that the claim is barred by time, then the plaint can be rejected. However, if the real question of limitation is connected with the merits of the claim in the suit then it has to be tried along with other issues. I would accept this appeal only to the extent that the plaint could not be rejected but, I direct that this issue of limitation should be tried along with other issues in the suit because, notwithstanding what is said above, the suit may still be barred by time. The result would be that the suit will be decided on merits and the issue of limitation will also be re-decided, if necessary. I leave the parties to bear their own costs.