
(2015) 11 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil First Appeal No. 306/2015

CEE ESS Mines Pvt. Ltd. and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-11-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2015) 11 RAJ CK 0006

Hon'ble Judges : Bela M. Trivedi, J.

Bench : Single Bench

Advocate : R.K. Agarwal, Sr. Advocate and Bipin Gupta, for the Appellant; N.S. Choudhary, Deputy Govt. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Bela M. Trivedi, J.—The present first appeal under Section 96 of CPC is directed against the judgment and decree dated 30/5/2015 passed by the Additional District Judge No. 1, Alwar (hereinafter referred to as "the Trial Court"), whereby the Trial Court has dismissed the suit of the appellants-plaintiffs, seeking declaration to the effect that the show cause notice dated 27/1/2004 (wrongly mentioned as 27/1/2003) was illegal, without authority of law and that the respondents-defendants had no right to recover the penalty as mentioned therein. The appellants-plaintiffs had also sought permanent injunction for restraining the respondents-defendants from recovering the amount of penalty mentioned in the said show cause notice.

2. The appellants-plaintiffs had filed the suit alleging inter alia that one mining lease was allotted to the plaintiffs at the Village Jhiri, Tehsil Thanagaji, District Alwar having M.L. No. 218/89 (R) for the area of 1000 ft. in length and 500 ft. in width shown by red colour in the map annexed to the plaint. The said mining lease was initially allotted to Gujarmal Mahajan, father of the plaintiff No. 2- Chandra Shekhar on 19/2/1970, and thereafter was allotted to the plaintiff-company for doing business of excavating marble stones. The said mining lease

was renewed from time to time by the respondent department. The respondents-defendants on 8/10/2002 had given the notice to the appellants-plaintiffs to the effect that they had encroached upon the area of 54 meter in length and 2 meter in width beyond the sanctioned lease, to which reply was filed by the plaintiffs. However, the defendants had issued the demand notice of Rs. 3,03,771/- on 17/7/2003 against the plaintiff-company by way of penalty. Thereafter the respondents-defendants, without getting any Panchnama drawn in presence of the plaintiffs, again gave notice dated 27/1/2003, received by the plaintiffs on 3/2/2004, calling upon the plaintiffs to show cause as to why the amount of security deposit should not be forfeited and ten time royalty should not be raised for the unauthorized excavation having been carried out by the plaintiffs. The said notice according to the appellants-plaintiffs having been given with malafide intention, was challenged by the appellants by filing the suit.

3. The said suit was resisted by the respondents-defendants denying the allegations made in the plaint, and further contending inter alia that the very fact that the appellants-plaintiffs had earlier deposited the penalty amount for making encroachment beyond the sanctioned mining lease established that they had made illegal encroachment. However, on 25/12/2003, a Panchanama was drawn by surveyor Narayan Lal in presence of the plaintiff No. 2, and thereafter the show cause notice was issued on 27/1/2004. It was also contended that the plaintiffs could have filed the appeal/revision before the State Government and the suit was not maintainable.

4. It appears that the appellants-plaintiffs had filed the applications seeking temporary injunction which was dismissed by the Trial Court vide order dated 25/11/2004, against which S.B. Civil Misc. Appeal No. 2576/2004 was preferred before this Court. In the said appeal, the Court by way of interim order dated 7/1/2005, had with the consent of learned counsels for the parties, directed Shri S.K. Verma, Retired Mining Engineer to conduct the survey and submit the report. Thereafter the said appeal was disposed of by the Court by giving the following directions vide order dated 1/5/2015:-

"1. the trial court is directed to dispose of the underlying suit for permanent injunction laid by the plaintiffs against the show cause notice dated 27.1.2004 within a period of twelve months from the presentation of a certified copy of this order. When any request is made for an adjournment it should be only entertained on an application in writing with reasons set out. The trial court may thereupon adjourn the matter as warranted for maximum of three or four days in its discretion judicially exercised.

(2) the trial court shall dispose of the said suit on its own merit with reference to evidence led before it in accordance with law without being influenced in any manner whatsoever -by the Local Commissioner's report dated 18.10.2008 which shall only be treated as another piece of evidence along-with objections thereto filed by the respondent department before this Court.

(3) The trial court shall not be influenced in its conclusions by the interim order passed by this Court on 7.1.2005 and confirmed on 10.7.2008 and shall be free to reach its own conclusions in the suit on the basis of overall evidence led before it and applicable law.

(4) Status quo shall be maintained qua the show cause notice dated 27.1.2004 till the decision in the suit before the trial court.

(5) In the event of the suit not being finally adjudicated within 12 months from the presentation of a certified copy of this order before the trial court, the defendant department shall be at liberty to approach this Court for modification/recall of the order of this Court."

5. The Trial Court thereafter had framed the following issues from the pleadings of the parties:-

6. The Trial Court after appreciating the evidence on record decided all the issues against the appellants-plaintiffs and dismissed the suit vide the impugned judgment and decree.

7. It is sought to be submitted by the learned Senior Counsel Mr. R.K. Agarwal for the appellants that the Trial Court has committed an error in misappreciating the evidence on record and in not following the directions of the High Court contained in the order dated 1/5/2014, while dismissing the suit on the ground of non-maintainability. Relying upon the decision of the Apex Court in case of ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others, , he submitted that the quasi judicial authority while exercising statutory power must act with an open mind while initiating the show cause notice proceedings and the concerned authority against whom the proceedings are initiated should be given reasonable opportunity of making his objections against the proposed charges. According to Mr. Agarwal, in the instant case, the respondents in the show cause notice had already concluded that the appellants had made illegal encroachment and had proposed the penalty without giving opportunity to the plaintiffs to explain about the alleged encroachment. He also submitted that there was no violation of any of the conditions of the lease deed or provisions contained in Rule 48 of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as "the said Rules").

8. However, the learned Govt. Counsel Mr. N.S. Chauhan for the respondents-defendants has vehemently submitted that the suit of the plaintiffs was premature, inasmuch as if the plaintiffs had filed the reply, the concerned authority would have determined the penalty payable by them, or would have dropped the show cause notice. He further submitted that in any case, now after the dismissal of the suit, the respondents had again issued them the notice dated 24/6/2015 raising demand of Rs. 2,21,52,860/-, which was replied by the appellants on 15/7/2015, and that the respondents had passed the final order on 19/8/2015, raising demand of Rs. 1,96,46,039/-. According to the learned counsel for the respondents, in view of the subsequent development, the present

appeal has become infructuous, and therefore deserves to be dismissed.

9. Having regard to the submissions made by the learned counsels for the parties, and to the record of the case, two points fall for consideration before this Court firstly whether the Trial Court has committed any error in dismissing the suit of the appellants-plaintiffs and secondly, whether the present appeal has become infructuous in view of the undisputed subsequent events as contended by the respondents.

10. If the merits of the present appeal are examined, it appears that the suit was filed by the appellants-plaintiffs challenging the illegality and validity of the show cause notice dated 27/1/2004. It is axiomatic that mere show cause notice would not give any rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry, the authority concerned may drop the proceedings. Hence no suit or other proceedings could be filed by the party when there is no infringement of his rights and when the final order has not been passed by the concerned authority. A beneficial reference of the decision of the Supreme Court in case of Union of India (UOI) and Another Vs. Kunisetty Satyanarayana, be made in this regard. In view of the said settled legal position, the Trial Court has rightly held that the suit of the appellants-plaintiffs filed for challenging the impugned show cause notice was premature, and therefore not maintainable. Though, there cannot be any disagreement with the decision of the Apex Court in case of Oryx Fisheries Private Limited vs. Union of India & Ors, relied upon by the learned counsel for the appellants. However, in the instant case, the show cause notice (Ex.44) was given to the appellants for giving him opportunity to file the reply and raise the objection as regards the allegations made in the said notice for being liable to pay penalty for the alleged encroachment made by them beyond the sanctioned lease.

11. As per the case of the appellants-plaintiffs, themselves prior to the impugned show cause notice (Ex.44), the appellants had already paid the penalty for the encroachment having been made by them beyond the sanctioned lease. Thereafter also the Panchnama - Ex.A/1 was prepared by the Surveyor of the office of the respondent department in presence of the representative of the appellants, and it was allegedly found that illegal mining activities were being carried on by the appellants, which resulted into issuance of the impugned show cause notice. Admittedly the appellants instead of giving reply to the said notice, rushed to the trial court for filing the suit. The trial court, under the circumstances, after appreciating the evidence on record rightly concluded that the suit was not maintainable being premature. The Court does not find any substance in the submission of Mr. Agarwal for the appellants that the trial court had not followed the directions of this Court. As a matter of fact, this Court had directed the trial court to dispose of the said suit on its own merit with reference to evidence led before it in accordance with law, which has been done by the

Trial Court.

12. It is not disputed by the learned Senior Counsel for the appellants that after dismissal of the suit, the appellants were served with the notice dated 24/6/2015, calling upon them to show cause as to why the amount mentioned therein should not be recovered, to which they had filed the reply and the respondents also passed the order dated 19/8/2015, raising demand of Rs. 1,96,46,039/-. The said order has been passed pursuant to the show cause notice which was challenged by the appellants-plaintiffs in the suit. Hence the impugned show cause notice dated 27/1/2004 having already been acted upon by the respondents after the dismissal of the suit, the present appeal as such has become infructuous. It is true that this Court vide order dated 2/9/2015 had directed to maintain the status quo with regard to the said show cause notice dated 27/1/2004, however at the relevant time the final order dated 19/8/2015 was already passed by the respondent authority. It is not disputed that the said final order dated 19/8/2015 was also produced by the Government Counsel for the perusal of the Court. Be that as it may, in view of the subsequent events having taken place, the Court is of the opinion that the present appeal has become infructuous.

13. The learned counsel for the appellants having failed to point out any illegality or infirmity in the impugned judgment and decree passed by the Trial Court, the present appeal deserves to be dismissed and is dismissed in limine. By this order, the stay application and other pending application, if any also stand dismissed.