

(1953) 08 GUJ CK 0003
In the Gujarat High Court

Case No : Civil Revision Application No"s. 40 and 41 of 1953

Chital Municipality

APPELLANT

Vs

Vora Isubbhai Amadbhai and Another

RESPONDENT

Date of Decision : 05-08-1953

Acts Referred:

Bombay District Municipal Act, 1901 — Section 167, 167A
Bombay Municipal Boroughs Act, 1925 — Section 206
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1953) 08 GUJ CK 0003

Hon'ble Judges : Shah, C.J

Bench : Single Bench

Advocate : T.U. Mehta and H.I. Bhatt, for the Appellant; M.U. Shah, for the Respondent

Final Decision : Allowed

Judgement

Shah, C.J.—The common question involved in these revision applications is whether the Plaintiff can sue the municipality without giving a notice u/s 167A, Bombay District Municipal Act, 1901, as adapted and applied to the State of Saurashtra.

The municipality having served the Plaintiff, in each of these applications, with a notice requiring the removal of an otta in front of his property and threatening that in default the municipality would proceed to demolish it, the Plaintiff brought the suit for art injunction to restrain the municipality, In Civil Revision Application No. 40 of 1953 the facts are slightly different in as much as pending the suit, and because no injunction had been obtained from the Court within time, the municipality demolished the otta. The Plaintiff then amended the plaint and asked for a mandatory injunction enjoining on the municipality to construct the otta at its expense, However that does not make any vital difference to the material point at issue.

The learned Judge below has held that the statutory notice u/s 167 is not

necessary in the case of a suit" for an injunction. The section referred to by the learned Judge is however not correct, and the proper section is Section 167A, Bombay District Municipal Act as applied to Saurashtra. Section 167 provides for an immunity from suits against the Municipality, its officers and servants for acts done in good faith. Section 167A differs slightly from the corresponding Section 167, Bombay District Municipal Act and Section 206, Bombay Municipal Boroughs Act in as much as it omits the words "or purporting to have been done" which occur in the two other enactments.

However the omission of these words is immaterial for the purpose of the present case since the act complained of here is an act done by the municipality, and it is not necessary to have recourse to the alternative clause "or purporting to have been done". The words "act done" do not merely imply a completed act only and they include a threatened action.

2. In holding that a notice is not necessary in the case of a suit for injunction against the municipality, the learned Judge appears to have accepted the view taken by the Bombay High Court in its earlier decisions, though he does not say so in terms. However since the decision of the Privy Council in - AIR 1927 176 (Privy Council) , the position has altered completely and the view taken by the Bombay High Court in its earlier decisions is no longer good law. That was no doubt a case falling u/s 80, Code of Civil Procedure, but the same principle applies to suits against municipality which are governed by Section 167, Bombay District Municipal Act, Section 167A of the said Act as applied to Saurashtra, and Section 206, Bombay Municipal Boroughs Act.

The question is concluded by authority and I need only refer to - Vithoba Babaji Narote Vs. Sholapur Municipality, in which the suit was for an injunction, where Sen J. has reviewed at great length the entire position and has held, following Bhagchand's case , (A)", that there was no material difference as to the principle involved between the wordings of Section 80, Code of Civil Procedure, and Section 206, Bombay Municipal Boroughs Act; and he has further held that the notice, resolution and the subsequent letter of the Municipality sent to the Plaintiff were, within the meaning of Section 206, acts done or purporting to have been done in pursuance of" the Act.

"Bhagchand's case (A)", was also followed in - "Daily Gazette Press v. Karachi Municipality AIR 1932 Sind 104 (C), where it was held that a notice u/s 167 was essential before instituting a suit against a Municipality for an injunction restraining it from doing a certain thing. The position thus being very clear, it is unnecessary to consider it in any detail, and with respect I agree with the view taken in the two cases referred to above.

3. On the reasoning employed in the above cases, the service of the notice on the Plaintiff by the Chital municipality to remove the otta is "an act" done within the meaning of Section 167A. It is not disputed that the notice has been given by the Municipality in pursuance of the Act. That being so, the suit cannot be

instituted without giving the statutory notice u/s 167A, and the notice not having been given the suits are liable to fail. Accordingly I allow these revision applications and dismiss the suits. The Plaintiff in each case will pay the Defendants costs in the Court below as also in this Court and bear his own.