
(1986) 12 CAL CK 0026
In the Calcutta High Court
Case No : C.R. No. 2457 of 1982

Corporation of Calcutta

APPELLANT

Vs

Dhanapati Banerjee

RESPONDENT

Date of Decision : 04-12-1986

Acts Referred:

Calcutta Municipal Act, 1951 — Section 414A

Citation : 92 CWN 21

Hon'ble Judges : Mitra, J

Bench : Single Bench

Advocate : P.K. Ghosh and Barin Banerjee, for the Appellant; B.C. Dutta, Arun Prokash Sarkar, Manjushree Dutta and Archana Manna, for the Respondent

Final Decision : Allowed

Judgement

Mitra, J.—After hearing the learned Advocates for the parties I think that the learned Lower Appellate Court did wrong in holding that the suit as framed by the opposite party in this Rule was maintainable before a Civil Court. The petitioner gave a demolition notice to the opposite party alleging that they had made some unauthorised constructions. Against the said notice the opposite party made objection and the Deputy Commissioner by his order dated 19.2.1976 held that the alleged constructions were unauthorised and also directed the opposite party that such unauthorised construction should be demolished. Aggrieved by the said order passed by the Deputy Commissioner, the opposite party filed Title Suit No. 168 of 1976 before the 4th Court of the learned Munsif at Alipore, 24-Parganas challenging the said demolition order. A preliminary objection" was taken by the Corporation of Calcutta in the said suit regarding the maintainability of the suit and the learned Munsif by his order dated 10th of August, 1981 held that he had no jurisdiction to try the suit and ordered that the plaint be returned to the filing lawyer for presentation to the proper forum. Against the said order an appeal being Misc. Appeal No..512 of 1981 was preferred by the opposite parties before the learned Additional District

Judge, 14th Court, at Alipore, 24-Parganas which was ultimately allowed by the learned Additional District Judge on 24.4.1982 holding that Civil Court had jurisdiction to entertain the suit as filed by the plaintiff. Against the said order by the Appellate Court the Corporation of Calcutta has moved this Court in revision and obtained the present Civil Rule. Mr. P.K. Ghosh, learned Advocate appearing on behalf of the Corporation of Calcutta with Mr. Barin Banerjee, learned Advocate has submitted before me that in view of the provisions of Section 414A of the Calcutta Municipal Act, 1951 an appeal lay before the Building Tribunal against the said order of demolition passed by the Deputy Commissioner and there was an express bar provided under the said Act regarding the jurisdiction of the Civil Court to try suit of the present nature u/s 391(g) of the said Act and as such the opposite parties should have preferred an appeal instead of filing a suit and Mr. Ghosh also submitted a written argument in support of his contentions. Mr. Ghose in his said written argument contended inter alia, that where the statute has provided a remedy and a forum in respect of grievances arising out of the rights and liabilities created by or under the statute, the party aggrieved must first exhaust the statutory remedy. After doing that he may challenge the order of the statutory Tribunal in the Civil Court on the ground that the said Tribunal has acted illegally or in excess of its jurisdiction or in abuse of its jurisdiction. In a sense., the principles which govern the writ of Certiorari would be application of the Civil Court. Mr. Ghose further contended in his said written argument that in the absence of any pleading in the plaint as to the non-compliance of any fundamental provision of statute which renders the demolition order illegal the instant suit is not maintainable in law. The learned Additional District Judge wrongly held that the Civil Court had jurisdiction to try the instant suit. At this state for considering the question of maintainability of the suit, the court can only look into the pleadings and nothing else. The question whether the alleged demolition notice had been served upon the opposite party or not, is a question of fact which could be well agitated before the statutory Tribunal and that question could be decided by the said Tribunal as well. The learned additional District Judge should not have assumed jurisdiction in such a case where the party sought to by-pass the statutory Tribunal in order to agitate a question of fact in a civil suit.

2. Mr. Ghose further contended in his written argument that the Appellate Tribunal, which in this case is the Building Tribunal, can certainly set aside an order of demolition if it is proved that the demolition notice was not given. The Tribunal is also empowered to take evidence as the Tribunal has been clothed with all the powers of the Civil Court and competent to take evidence orally and also empowered to grant stay of operation of the order appealed against. In support of his said contention Mr. Ghose referred to the well-known decision in AIR 1940 105 (Privy Council) where Their Lordships were pleased to observe inter alia, as follows :

It is settled law that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred, but that such exclusion must either be explicitly expressed or

clearly implied. It is also well settled that even if the jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

3. The same "decision was also followed in subsequent decisions of the Supreme Court viz. in the cases of Lala Ram Swarup and Others Vs. Shikar Chand and Another, ; Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, ; Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others Vs. The Administrator, Municipal Committee, Ludhiana, 7; Firm and Illuri Subbayya Chetty and Sons Vs. The State of Andhra Pradesh, and The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, . Referring to the said decisions Mr. Ghose also submitted that until and unless any allegation was made in the plaint regarding non-compliance of any statutory provision of law by a statutory authority the Civil Court has no jurisdiction to entertain the suit challenging the order passed by the statutory authority when under the aforesaid Act the Civil Court's jurisdiction is expressly barred and there is alternative specific and efficacious remedy provided in the statute itself. Mr. Ghose further contended that since in the plaint there is no whisper about the non-service of notice u/s 414 of the Calcutta Municipal Act 1951 it can not be held at all that the suit as framed by the plaintiff/opposite party is maintainable in law because of the specific bar as provided u/s 391(g) of the said Act.

4. Mr. Dutta, learned advocate appearing on behalf of the opposite party with Mr. Sarkar also filed a written argument supporting the order of the lower appellate Court. Mr. Dutta's contentions as well as the contentions of Mr. Sarkar were that pre-condition to the issuance of a notice u/s 414(i) of the Calcutta Municipal Act, 1951 was the satisfaction of the Commissioner that the alleged construction was unauthorised and illegal and the lower appellate Court also came to a clear finding that Calcutta Municipal Corporation failed to serve a proper notice on the plaintiff/opposite party in the matter. Mr. Dutta and Mr. Sarkar also submitted that in the plaint the plaintiff had pleaded the non-compliance of statutory provisions of law by the statutory authority and as such the suit as framed by the plaintiff was quite maintainable in law. In support of the said contention Mr. Dutta and Mr. Sarkar also relied upon the decision of the Privy Council in Secretary of State v. Mask & Company's case (supra) and also cited the decisions in Desika Charejulu v. State of A.P., reported in AIR 1964 SC 808 and the decision reported in Shree Raja Kandregula Srinivasa Jagannatha Rao Pantulu Bahadur Garu Vs. State of Andhra Pradesh, , which reiterated the principles of law laid down by the Privy Council in Secretary of State v. Mask & Company's case (supra) and Manick Chandra Nandy Vs. Debdas Nandy and Others, . According to Mr. Dutta and Mr. Sarkar, therefore, the order of the lower appellate Court does not suffer from any material irregularity or want of jurisdiction and this Court sitting in revision should not interfere with the said order.

5. Having heard the learned Advocate for the parties and going through their

written arguments and also the records of the it appears to me that there is much force in the submissions made by Mr. Chose, learned Advocate appearing on behalf of the petitioner. Indeed, in the plaintiff/opposite party has not pleaded specificity about the non-service of notice Section 414 of the Calcutta Municipal Act 1951 or that there, has been any non-compliance of any statutory provisions of law by the Calcutta Municipal Authority. In paragraph 9 of the plaint it was merely stated that in utter violation of the principles of natural justice and fair play the defendant No. 3 on being inspired by the plaintiff's brother Sanat Kumar Baherjee all on a sudden on 19th February, 1976 decided arbitrarily, illegally and without any jurisdiction whatsoever to demolish certain portions of the suit premises on the fantastic pica that the same were unauthorisedly constructed in deviation from the sanctioned building plan No. 374 dated 12th August. 1961 and the plaintiff did not know under what provision of law the defendant No. 3 passed the said order dated 19th February, 1976 and the same was without jurisdiction and void and not binding upon the plaintiff.

6. It is well settled law that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if the jurisdiction is so excluded the Civil Courts have jurisdiction to examine cases where the provisions of an Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. (vide observations made by the Privy Council in case of AIR 1940 105 (Privy Council)) which observation still holds the field and also have been followed by the Hon'ble Supreme Court in its various decisions. But it is also well settled that in the plaint specific averments regarding non-compliance of any statutory provisions is to be pleaded in order to bring the suit within the jurisdiction of the Civil Court in order to overcome any statutory bar to file a suit against an order passed or act done under the statute by the statutory authority. In the present case however, such pleading is totally absent. In such view of the it cannot be held that the suit as framed by the plaintiff/opposite party is maintainable in law against the demolition order passed by the Deputy Commissioner, Calcutta Municipal Authority. An appeal is provided under the statute itself against such order and the appeal is to be preferred before the Building Tribunal u/s 400(3) of the Calcutta Municipal Corporation Act 1980 (old section 414A of the Calcutta Municipal Act: 1951) and the Civil Court is precluded from entertaining suits challenging such demolition order in view of section 400(5) of the Calcutta Municipal Corporation Act 1980 [old Section 391(g) of The Calcutta Act 1951]. No doubt, inspite of such statutory bar, any person aggrieved by the demolition order passed by the Deputy Commissioner, can file a suit, in the Civil Court provided he makes out a specific case in the plaint that in passing such demolition order the statutory authority has not followed the specific statutory provisions of law but as such specific pleading is lacking in the plaint as stated by me hereinbefore, the suit as framed by the plaintiff/opposite party in the present case can not be held to be maintainable in law. The decisions cited by Mr. Dutta

and Mr. Sarkar also do not come to their aid in any manner in the facts and circumstances of the present case. 1, however, give liberty to the plaintiff/opposite party to prefer an appeal before the Building Tribunal within a month from date and if such an appeal is preferred the Calcutta Municipal Authority will not be allowed to take the plea of limitation in the matter as debatable question arose in the present Civil Rule about the maintainability of the suit. The Building Tribunal is also directed to dispose of the said appeal if preferred by the plaintiff/opposite party preferably within two months from date of filing of the said appeal and the Building Tribunal is also to be at liberty to grant stay in the matter. The Rule is accordingly made absolute and the impugned order is set aside. Operation of this order however, will remain stayed for the period of six weeks from date. There will be no order as to costs. The learned Advocates for both the respective parties are at liberty to take the gist of this order and communicate the same to the Building Tribunal. Let the records be sent down forthwith. This order should also to be communicated to the Building Tribunal without any delay and the Deputy Registrar, Appellate Side, will give a report within ten days, from date about communication of such order.