

(1993) 08 GUJ CK 0021
In the Gujarat High Court

Gujarat Electricity Board and Another	APPELLANT
Vs	
Mohanbhai Merubhai Parmar and Others	RESPONDENT

Date of Decision : 13-08-1993

Acts Referred:

Companies Act, 1956 — Section 3
Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 16, 2(f), 4, 7, 9

Citation : (1994) 2 GLR 1083

Hon'ble Judges : B.S. Kapadia, J

Bench : Single Bench

Judgement

B.S. Kapadia, J.—The present revision application is filed against the order dated 16-12-1991 passed by the learned 2nd Jt. Dist. Judge, Surat in Misc. Civil Appeal No. 71 of 1991 which was filed by the original plaintiffs against the order passed below application (Ex. 5) in Small Cause Suit No. 490 of 1990 of the Court of Small Causes at Surat. By the said order the learned Addl. Small Causes Judge at Surat held that the plaintiffs are being evicted under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and, therefore, it is legal action and legal action is not capable of causing any injury or loss to any party. On behalf of the defendants relevant documentary evidence is produced wherein it is found that the eviction proceedings have been taken and completed under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and hence under the provisions of Section 16 of the said Act there is a bar of jurisdiction and, therefore, the present application as well as the suit cannot be entertained. In result, the application with show cause notice stood vacated and dismissed.

2. In the appeal against the said order the learned 2nd Jt. Dist. Judge, Surat raised the following point for determination:

(1) Whether the learned Additional Judge, Small Causes Court, Surat, has erred in holding that there is a bar of jurisdiction u/s 16 of the Gujarat Public Premises

(Eviction of Unauthorised Occupants) Act, 1972?

(2) Whether the learned Additional Judge, Small Cause Court, Surat has erred in holding that this case will be governed under the provisions of the Public Premises Act, which is subsequently enacted and Special legislation.

(3) Whether interference of the Appellate Court is necessary in this discretionary order of the learned trial Judge?

(4) What order?

3. The learned Dist. Judge held that the learned trial Judge has erred in holding that there is a bar of jurisdiction u/s 16 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 and further held that the learned trial Judge has erred in holding that this case will be governed under the provisions of the said Act which is subsequently enacted and special legislation. The learned Dist. Judge ultimately allowed the appeal and set aside the order passed by the learned trial Judge below application (Ex. 5) and issued temporary injunction in favour of the original plaintiff till the disposal of the suit. Against the said order the present revision "application is filed.

4. This matter was argued at length before me on earlier occasion and at that time the record and proceeding of the case were perused. There is no dispute that the suit premises belong to the defendant. Whether the suit premises are "public premises" within the meaning of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 or not will be governed by the definition of "public premises" as given u/s 2(f) of the said Act which reads as under:

Public premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the State Government, and includes any premises belonging to, or taken on lease by, or on behalf of:

(i)

(ii)

(iii) any Corporation (not being a Company as defined in Section 3 of the Companies Act, 1956) established under a Central or State Act and owned or controlled by the State Government, and

(iv)

5. In view of the said definition it will be required to be seen whether G.E.B. is a Corporation under the Central or State Govt. and owned or controlled by the State Govt. Section 5 of the Indian Electricity (Supply) Act, 1948, confers powers on the State Govt. to constitute by Notification in the Official Gazette a State Electricity Board under such name as shall be specified in the Notification. Accordingly in pursuance of the said provision the Govt. of Gujarat has issued Notification dated 1-5-1960 in exercise of the powers conferred u/s 5 of the Indian Electricity (Supply) Act, 1948, constituting the State Electricity Board

under the name "Gujarat Electricity Board" from 1-5-1960 and appointed members of the said Board. Section 12 of the Electricity Supply Act also provides that the Board shall be a body corporate by the name notified under Sub-section (1) of Section 5, having perpetual succession and a common seal, with power to acquire and hold property both movable and immovable, and shall by the same name sue and be sued.

6. It is, therefore, clear from the aforesaid provisions that G.E.B. is a Board constituted under the Central Act by the State Govt. When that is so, any premises belonging to the said Board would be "public premises" within the meaning of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972. This aspect has been totally lost sight of by the learned Dist. Judge. In that view of the matter the entire discussion made by the learned Dist. Judge is totally misconceived.

7. The learned trial Judge has in his order referred to the documentary evidence like four eviction notices dated 8-1-1991 (Marks 16/27 to 16/30) and four eviction orders dated 25-1-1991 (Marks 33/1 to 33/4). On perusal of the said documents it is clear that they are passed by the Competent Officer as required under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act. Under these circumstances it would be necessary to consider the provisions of Section 16 of the said Act which relate to bar of jurisdiction which clearly provides that no Court shall have jurisdiction to entertain any suit or proceedings in respect of the eviction of any person on the ground that he is in unauthorised occupation of any public premises or for any other reason specified in Sub-section (1) of Section 4, or the recovery of the arrears of rent payable under Sub-section (1) of Section 7 or the damages payable under Sub-section (2) of that section or the costs awarded to the State Govt. or the Corporation Authority under Sub-section (5) of Section 9 or any portion of rent, damages or costs. Therefore, said section takes away the jurisdiction of the Civil Court for the purpose of initiating any action for eviction of the persons. Section 4 of the said Act Specifically confers power on the Competent Officer notwithstanding anything contained in any other law for the time being in force to issue notice as provided and calling upon the persons concerned to show cause as to why the order of eviction should not be passed and after such notice is issued u/s 5 of the said Act the Competent Officer can also make an order of eviction for the reasons recorded therein directing that the public premises shall be vacated on such date as may be specified in the order by persons who may be in occupation thereof or part thereof. If such order is passed appeal is provided u/s 9 of the said Act which shall lie to the Appellate Officer, who shall be the District Judge of the District in which the public premises are situated or such other judicial officer in that district who has for atleast ten years held a Judicial office in the State as the District Judge may designate in this behalf. Section 10 of the said Act provides that save as otherwise expressly provided in this Act, every order made by a competent officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings and

no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

8. Section 10 of the said Act is the clear answer to the suit filed by the respondents. Once when the competent officer has already passed an order u/s 5 of the said Act for eviction the only remedy open to the respondent would be to file an appeal u/s 9 of the said Act. Therefore, suit filed by them would be completely barred by the provisions of Section 10 of the said Act and no Civil Court can give injunction in the present case.

9. In view of this clear position of law Mr. P.K. Jani, learned Advocate for the respondent seeks permission to withdraw the Summary Suit No. 490 of 1990 pending in the Court of the Small Causes Judge, Surat, to enable the respondent to file an appeal against the order of eviction referred to hereinabove to the Dist. Judge as provided u/s 9 of the said Act. Accordingly, he is permitted to withdraw the suit and the learned trial Judge is directed to pass an order of dismissal of the suit as withdrawn. The respondents are directed to file appeal within a period of two weeks from today to the Dist. Judge. The learned Dist. Judge for the purpose of condoning the delay in filing the appeal would. take into consideration the fact of the suit filed in the trial Court and appeal from order and the present revision application filed in this Court and consider it as sufficient cause and will proceed with the appeal on merits.

10. Accordingly, C.R.A. is allowed. The order passed by the trial Court is restored and the order passed by the appellate Court is hereby set aside. Rule is accordingly made absolute with no order as to costs.