

(1995) 04 GUJ CK 0036
In the Gujarat High Court

Case No : Civil Revision Application No's. 1065 and 1066 of 1992

Gujarat State Road Transport Corporation	APPELLANT
Vs	
Vimlaben L. Shah	RESPONDENT

Date of Decision : 01-04-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 16, 4(1), 7(1), 7(2), 9

Citation : AIR 1995 Guj 220 : (1995) 2 GLR 1714

Hon'ble Judges : S.D. Shah, J

Bench : Single Bench

Advocate : G.N. Desai, for the Appellant; Mehul Chinoy, for the Respondent

Judgement

S.D. Shah, J.—CRA No. 1065/92 is preferred by Guj. State Road Transport against Vimlaben L. Shah to challenge the order passed by the Civil Judge (JD), Bhavnagar below Exh. 29, dated 14th July, 1992 in RCS No. 469/84. It appears that Vimlaben initially instituted the aforesaid suit against GSRTC for declaration and injunction restraining the Corporation from in any way taking possession of Book Stall at the ST Depot and from in any way evicting her from the said Book Stall till final disposal of Eviction Case No. 59/84 filed by G.S.R.T.C. In such proceedings the petitioner-corporation tendered an application at Exh. 29, dated 8-4-1991 inter alia contending that to the premises in question provisions of Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 were applicable and accordingly the General Manager of the GSRTC was the "competent authority" for deciding the dispute between the parties. It was further contended that in view of the provisions contained in Section 16 of the said Act the Civil Court has no 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. It would be relevant to refer to the provisions of Section 16 of the said Act at this stage which is reproduced herein :

"16. Bar of jurisdiction : No Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person on the ground that he is in an 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 cost awarded to the State Government or the corporate authority under Sub-section (5) of Section 9 or any portion of such rent, damages or costs."

2. It appears that despite clear provision contained in the aforesaid Act and despite such provision having been specifically brought to the notice of the trial Court the Civil Judge (JD) rejected the application by judgment and order dated 14-7-1992 inter alia on the ground that initially the trial Court has granted interim injunction which was con-firmed in Misc. Civil Appeal No. 137/84 by the Dist. Court and therefore he cannot pass any order on the application preferred by the petitioner-corporation at Exh. 29. In the view of the trial Court the corporation ought to have moved the Hon"ble High Court against the order of the Dist. Court. It is this order passed below Exh. 29 which is the subject matter of challenge at the instance of GSRTC in CRA No. 1065/92.

3. CRA No. 1066/92 an application at Exh. 36 was given by Vimlaben L. Shah -- original plaintiff in the very suit u/s 10 of C.P.C. to stay the further eviction proceedings initiated by the competent authority of the GSRTC being Eviction Case No. 59/84. On such an application the trial Court passed impugned order on 14-7-1992 inter alia holding that the plaintiff-Vimlaben L. Shan has instituted RCS No. 469/84 prior in point of time in Civil Court and thereafter Eviction Case No. 59/84 was initiated by the competent authority under the aforesaid Act on 24th June, 1984, i.e. 9 days subsequent to the institution of civil suit by the plaintiff. It also took the view that both the proceedings related to same subject matter and therefore the ingredients of Section 10 of C.P.C. were satisfied and subsequently initiated Eviction Case No. 59/84 was required to be stayed. He, therefore, stayed the eviction proceedings of Eviction Case No. 59/ 84 till the civil suit preferred by the plaintiff is decided. The said order of the Civil Judge (JD) Bhavnagar is the subject matter of challenge at the instance of GSRTC in 2nd CRA No. 1066/92.

3A. Mr. Pranav Desai for Mr. G. N. Desai for GSRTC firstly submitted that in view of specific statutory bar enacted by Section 16 of the aforesaid Gujarat Statute the Civil Court has no jurisdiction whatsoever to entertain any proceedings with respect to eviction of a person from public premises. He further submitted that the Book Stall is of the ownership of the Corporation and was allotted on licence basis subject to terms and conditions stipulated in the agreement to Vimlaben L. Shah, On completion of period of licence she was liable to vacate the said book stall but since she did not vacate the book stall and instituted civil suit the Corporation through its competent authority has no other option but to resort to statutory power given by Section 16 of the said Act. Said provision not only

confers power of eviction on the specified authority but also prescribes elaborate procedure to be followed by the competent authority and further prescribed the remedy of appeal. In every respect the procedure prescribed by the said statute is a complete Code in itself and therefore the legislature advisedly ousted the jurisdiction of the Civil Court so as not to create two parallel jurisdictions in two authorities. The ouster of jurisdiction of the Civil Court is so clear that it is not open to the unauthorised occupant to move the Civil Court even for injunction and the civil suit instituted by Vimlaben L. Shah in the Civil Court was absolutely without jurisdiction. Secondly, he submitted that even if under misconception of law and without knowing the inherent absence of jurisdiction the trial Court has proceeded to pass an order of injunction and was inherently lacking any jurisdiction and the order was non est. null and void in the eye of law and confirmation of such non est order even by the District Court would not infuse life in an order which was stillborn.

4. In the second CRA he very vehemently submitted that when the Civil Court has no jurisdiction, whatsoever, u/s 16 of the said Act, Section 10 of C.P.C. would have no application whatsoever because Section 10 empowers a Civil Court to stay the proceeding of the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties. He submitted that a proceeding before the competent authority under the provisions of Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1971 cannot be described by any stretch of imagination to be a "suit" within the meaning of the said term as understood in the common parlance or as defined in its dictionary meaning. He submitted that when the proceedings before the Civil Court are ousted by the provision of a subsequent statute, the provisions of general law cannot be attracted as under the well known maxim- *Generalibus Specialia Derogant* when a special provision is made on a certain matter, that matter is excluded from the general provision. This principle is also applied in resolving conflict between two different provisions of different Acts. The said provision would exclude the general provision and accordingly to Section 10 of C.P.C. can have no application to eviction proceedings initiated by the competent authority under the aforesaid Act. In the case of *Jadeja Shivubha Dolubha v. GSRTC*, reported in (1977) 18 Guj LR 656 the Ld. Single Judge of this Court has while dealing with Section 16 of the said Act has taken the view that the word "entertain" in Section 16 of the said Act would not only mean "receive and determine" but also mean "to adjudicate upon" or "proceed to consider on merits". If this is the real meaning of the word "entertain" it cannot be gainsaid that the legislature u/s 16 clearly intended that Civil Courts shall have no jurisdiction to adjudicate upon or proceed to consider on merits only claim in any suit or proceedings in respect of eviction of any person on specified grounds from public premises. In other words, the legislature by adopting the word "entertain" clearly intended to oust the jurisdiction of Civil Courts.

5. In view of the aforesaid decision of the Ld. Single Judge of this Court and even otherwise from specific language employed by Section 16 of the said Act there is

no manner of doubt that the Gujarat Legislature by enacting Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1971 intended to create an independent and separate authority to decide the dispute of eviction from public premises by the competent authority and it also wanted to completely oust the jurisdiction of the Civil Court so as to avoid initiation of any parallel proceedings or invocation of parallel jurisdiction before the Civil Court. Despite the aforesaid legal position the Civil Judge (JD) at Bhavnagar not only entertained the suit but granted injunction in favour of the allottee whose terms of licence has expired and against whom the proceedings of eviction were initiated by the competent authority. The very act of entertaining the suit was without jurisdiction as the Civil Court lacked the jurisdiction, or to put it mildly its jurisdiction was specifically ousted by the special statute. In my opinion, therefore, the application given by the petitioner-corporation at Exh. 29, i.e. to dismiss the suit as the Civil Court has no jurisdiction to decide the question of eviction of unauthorised occupation in the view of the provisions of the said Act was required to be allowed and by raising specific issue ought to have decided the question of jurisdiction. In fact, since the matter was covered by binding precedent of this Court which is the Court superior to the District Court at Bhavnagar, the Civil Judge (JD) at Bhavnagar ought to have rejected the application on the ground that since the order of injunction was confirmed by the District Court it cannot decide the issue of jurisdiction. The order, dated 14-7-1992 passed by the Civil Judge (JD) at Bhavnagar below Exh. 29 is totally without jurisdiction and in fact that application Exh. 29 preferred by the corporation was required to be granted. No useful purpose would be served by remanding the matter to the trial Court when the position of law is no longer *res integra* and is squarely covered by the judgment of the single Judge of this Court in the case of *Jadaja Shivubha* (*supra*). I, therefore, hold that the suit instituted by the respondent-plaintiff being RCS No. 469/84 in the Court of Civil Judge (JD) Bhavnagar was totally without jurisdiction and the Civil Court totally lacked jurisdiction in entertaining the same. It is directed that the Civil Court shall take up such suit on file and after following the directions contained in this judgment and the binding precedent of this Court in the case of *Jadeja Shivubha* (*supra*) shall immediately dispose of RCR No.469/84 on or before 30th June, 1995. Writ of this judgment and order shall be sent along with the copy of this judgment and order to the Court of Civil Judge (JD) at Bhavnagar forthwith with further direction to the Dist. Judge, Bhavnagar to see that the judgment and order of this Court is complied with. CRA No. 1065/92 is therefore allowed. Rule is made absolute accordingly. No costs.

6. In another CRA preferred by the petitioner-corporation the Civil Judge (JD) Bhavnagar has not only misread and mis-understood Section 10 of C.P.C. but has failed to apply its mind to Section 10 of C.P.C. in light of the provisions contained in Section 16 of Gujarat Public Premises (Eviction of Unauthorised Occupants) Act. Section 10 of C.P.C. reads as under:

"10. No Court shall proceed with the trial of any suit in which the matter in issue

is also directly and substantially in issue in a previously instituted suit between the same parties, or between the parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Govt. and having like jurisdiction, or before the Supreme Court".

7. From the said provision it becomes clear that where it is clear from the pleadings of the previously instituted suit by the plaintiff before the Civil Court that the subject matter of controversy in issue is directly or substantially in issue in subsequently instituted suit, the subsequently instituted suit is required to be stayed. The object underlying Section 10 is to avoid two parallel trials on the same issues by two Courts and to avoid recording of conflicting findings on issue which are directly and substantially in issue in previously instituted suit. Language of Section 10 itself suggests that it is referable to a suit instituted in Civil Court and it cannot apply to proceedings of other nature instituted under the statute, more particularly, when by, ouster clause enacted in special statute, the jurisdiction of the Civil Court is specifically ousted. Section 10 of C.P.C. can never have any application so as to stay the proceedings under the special statute before the special forum on the ground that one of the parties has already approached the Civil Court despite ouster clause ousting the jurisdiction of the civil Court. To accept the contention of the respondent-plaintiff in substance would amount to conferring jurisdiction upon the Civil Court despite its specific ouster by the special statute and it could also render meaningless and nugatory the ouster clause contained in the special statute, the object of which was to specifically oust the jurisdiction of the Civil Court and to confer the same on the competent authority. The Civil Judge (JD) Bhavnagar has miserably failed in reading Section 10 of the C.P.C. and his order is not only one which is without jurisdiction but exhibits total non-application of mind on his part, and the same is therefore required to be quashed and set aside and is hereby quashed and set aside. The order staying the proceedings before the competent authority passed by the Civil Judge (JD) Bhavnagar is hereby quashed and set aside and the competent authority is hereby directed to proceed further with the Eviction Case No. 59/84 expeditiously. Rule is made absolute accordingly. No costs.