

(1974) 10 MP CK 0013
In the Madhya Pradesh High Court
Case No : L.P.A. No. 1 of 1970

Kishanlal Baldevji and others

APPELLANT

Vs

Collector, Indore

RESPONDENT

Date of Decision : 09-10-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(17), 4, 4(1), 80
Government of India Act, 1935 — Section 204, 214
Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 11, 11(4), 11(5)
Registration Act, 1908 — Section 77

Citation : (1975) JLI 903

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J

Bench : Division Bench

Advocate : R.G. Waghmare, for the Appellant; P.L. Mehta, Addl. Govt. Advocate, for the Respondent

Judgement

G.L. Oza, J.—This Letters Patent Appeal has been preferred against the judgment of the Single Judge of this Court, who while hearing an appeal had maintained the order of dismissal of the suit filed by the Plaintiffs-appellants against respondents u/s 11(5) of the M. P. Ceiling on Agricultural Holdings Act, 1960 after obtaining leave from the learned Judge of this Court.

2. The present appellants-plaintiffs who are related to each other filed a suit u/s 11(5) of M. P. Ceiling on Agricultural Holdings Act, 1960 (hereinafter referred to as the Act). This suit was filed without notice to the Collector u/s 80 of the CPC as the Collector had passed an order under the Act directing that the appellants' lands in excess of 75 acres vested in the State. On behalf of the Defendants-respondents an objection was taken that such a suit against the Collector cannot be filed without notice u/s 80, Code of Civil Procedure. The trial Court upholding this objection dismissed the suit, whereas the first appellate Court set aside the dismissal and ordered remand of the case holding that notice u/s 80 was not necessary. On appeal, the learned Single Judge of this Court passed judgment dated 28-10-1968 setting aside the order passed by the lower appellate Court

and maintaining the dismissal of the suit on the ground that for a suit u/s 11(5) of the Act a notice u/s 80, CPC is necessary.

3. Section 11(4) of the Act provides as under:

If while considering the objections received under Sub-section (3) or otherwise, the competent authority finds that any question has arisen regarding the title of a particular holder and such question has not already been determined by a Court of competent jurisdiction, the competent authority shall proceed to enquire summarily into the merits of such question and pass such orders as it thinks fit.

Provided that if such question is already pending for decision before a competent Court, the competent authority shall await the decision of the Court.

In this provision, the competent authority under the Act, who for the purposes of the present case is Collector has the authority to enquire summarily into the merits of questions raised and pass orders In the present case, Collector, Indore passed orders under the above sub clause. Aggrieved by this order the present appellants filed a suit under Sub-clause (5) of section 11. The sub-clause provides as under: --

The order of the competent authority under Sub-section (4) shall not be subject to appeal or revision, but any party may within three months from the date of such order, institute a suit in the civil Court to have the order set aside, and the decision of such Court shall be binding on the competent authority, but subject to the result of such suit, if any, the order of the competent authority shall be final and conclusive.

Apparently, therefore, a suit can be filed against the order of the competent authority and the competent authority under Sub-clause (4) functions within the four-corners of the authority vested in it by Sub-clause (4) of section 11 of the Act. Consequently, it cannot be doubted that when Collector functions as a competent authority under the Act, he functions under the powers conferred on him by Sub-clause (4) of section 11 of the Act and not because he happens to be a Collector. It is also clear that an order passed by competent authority is final only subject to the decision of a suit u/s 11(5) of the Act. Consequently, the powers conferred on the competent authority make the order of the competent authority final except for a suit u/s 11(5) of the Act. This therefore, is clearly a remedy provided for under the Act and it cannot be said that the remedy of the suit is a common law remedy or a remedy available under the Code of Civil Procedure. Consequently, a suit u/s 11(5) of the Act is a special remedy provided under the Act.

4. Section 2(17) of the CPC provides the meaning of a "Public Officer". No doubt, Collector falls within the ambit of this definition. But section 4(1) of the CPC provides as under:--

4. Savings.--(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law

now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

This provision clearly lays down that any provision of this Code (Civil Procedure Code) which limits or otherwise affects any special or local law in force or any special jurisdiction or power conferred by and under any other law for the time being in force shall not be affected by the provisions of Code of Civil Procedure.

5. A suit u/s 11(5) of the Act is a special remedy under the special law. Consequently, the right to file such a suit cannot be limited by any provision of the Code of Civil Procedure, so long as there is no special provision under the special Act itself. Similarly, when Collector acts under the Act as a competent Authority, he exercises jurisdiction and powers conferred on him under this Act. Consequently, no restriction or protection can be afforded to the exercise of such powers under the provisions of this Code (Code of Civil Procedure) unless there is special provision to that effect in the Act.

6. Apparently, therefore, the effect of section 4 of the CPC is that where a person has a right to file a suit against the decision of the competent Authority u/s 11(5) of the Act, that right cannot be fettered by section 80 of the Code of Civil Procedure. Similarly, when the competent Authority exercising powers under this Act passes an order under Sub-clause (4) of section 11 of the Act, such an order has been specifically made, subject to a decision of the Civil Court under Sub-clause (5). Therefore, no additional protection can be afforded to this order of the competent Authority u/s 80 of the Code of Civil Procedure, without any special provision to that effect in the Act itself.

7. Admittedly, in the Act, there is no provision which brings into operation section 80, CPC also to suits u/s 11(5). Consequently, a suit u/s 11(5) cannot be dismissed merely because no notice u/s 80, CPC has been given to the Collector, who was functioning as a competent Authority under Sub-clause (4) of section 11 of the Act.

8. Both the learned counsels have placed before us a number of decisions. Learned counsel for the appellants has relied on decisions reported in *The Collector of Bombay Vs. Kamalavahooji Maharaj*, Learned counsel for the respondents has relied on *The State of Madras Vs. C.P. Agencies and Another*,

9. In *A I Rule 1966 A P 123*, necessity of notice u/s 80 CPC in a suit u/s 62 of the Hindu Religious and Charitable Endowments Act was in question, which was considered and it was observed in this case as under:--

Orders passed by Deputy Commissioner u/s 68 of the Act and by the Commissioner u/s 61 of the Act are judicial orders and the right of suit is provided u/s 62 to set aside the judicial orders passed by the Commissioner. The Commissioner is not sued in his capacity as a public officer, but only as a statutory body. I cannot, therefore, understand how in such a case notice u/s 80, CPC is necessary.

A Division Bench of the Allahabad High Court in A I R 1940 All. 138 held that in a suit u/s 77 of the Registration Act, a notice u/s 80 to the Registrar is not necessary.

In *The Collector of Bombay Vs. Kamalavahooji Maharaj*, a Division Bench of that High Court held as under: --

It is well established principle resting on decided cases and recognised in section 4, CPC itself that where there is a conflict between a special Act and a general Act, the provision of the special Act prevails. When one goes back to look at section 60 of the Bombay City Land Revenue Act, it provides that a Revenue Judge shall decide all suits brought before him against a Collector or any person on his establishment on account of land revenue or all acts done in their official capacity by Collector or any of his assistants or other subordinates so that that section seems to draw a distinction between suits brought on account of land revenue and suits brought on account of acts done in their official capacity by the Collector or any of his assistants, or other subordinates and the words of section 80, CPC refer to latter class of suits and not to the former.

In 1968 Madras Law Journal 41, the question which came up for consideration was rather different. In this case, it was observed as under:--

When the applicability of the provisions of Madras Hindu Religious and Charitable Endowments Act, 1959 (hereinafter referred to as the Act) to a temple is challenged, a Deputy Commissioner has jurisdiction to decide that question u/s 6 (a) of the Act. Consequently, a suit filed in Civil Court claiming certain reliefs on the basis that the provisions of the Act did not apply to the suit temple and as such is outside the purview of the Act.

The case reported in *Sawai Singhai Nirmal Chand Vs. Union of India*, is a case arising out of a suit under Order 21, Rule 63, Code of Civil Procedure. Apparently, therefore, this being a suit under CPC itself, notice u/s 80 was held necessary. Apparently, therefore, this case is of no help to the respondents. The *State of Madras Vs. C.P. Agencies and Another*, is not at all applicable to this case. In that decision the principles of construing a notice u/s 80, CPC have been laid down.

10. In *Director of Industries Vs. Janardan Nanda*, the question of notice in a suit challenging an order under Bihar and Orissa Public Demands Recovery Act came up for consideration. Placing reliance on *State of Seraikella Vs. Union of India (UOI) and Another*, it was observed:--

Question for consideration, however, is whether a notice u/s 80, CPC is excluded by any provision under the Act.

In *State of Seraikella Vs. Union of India (UOI) and Another*, Rule 5 of the Federal Court Rules, framed u/s 214 of the Government of India Act, 1935, laid down that none of the provisions of the CPC shall apply to any proceeding in the Federal Court unless specifically incorporated in those Rules. The provisions of

section 80, CPC had not been incorporated in the Rules and that being so, their Lordships held that section 80, CPC could not affect suits instituted in the Federal Court u/s 204, Government of India Act, 1935. There is no provision in the Act which excludes operation of section 80, Code of Civil Procedure.

In fact in A I R 1951 S C 253 Justice Mahajan in his judgment observed:--

The Code in section 4 has enacted that it does not affect any special jurisdiction or special forms of procedure. Rule 5 of the Federal Court Rules framed u/s 214, of the Government of India Act lays down in clear and unambiguous language that none of the provisions of the CPC shall apply to any proceedings in the Federal Court unless specifically incorporated in these rules.

It clearly emerges from these observations that because of section 4 quoted above of the Code of Civil Procedure, section 80 can only come into operation if the special Act makes it applicable to the special remedy. Similarly. Rule 5 of the Federal Court Rules also provided that provisions of the CPC will only apply if there is a special provision in the rules for its application. What their Lordships of the Supreme Court, therefore, held was that in absence of a provision in the Special Act making section 80, CPC applicable, objection of notice u/s 80 could not be entertained. Unfortunately their Lordships of the Orissa High Court in the case cited above failed to consider the effect of section 4 of the CPC and about Rule 5 also what was felt was that section 80 would apply so long as it is not specifically excluded. With due respects we fail to agree with this view. From the decision quoted above, it is clear that to bring into operation the provisions of section 80 a specific provision in the Special Act is necessary. Unfortunately, their Lordships of the Orissa High Court felt that a specific provision to exclude section 80 is necessary and in our opinion that does not appear to be correct legal position.

11. Consequently, in our opinion, in a suit u/s 11(5) notice u/s 80, CPC is not necessary. Consequently, the judgment passed by the learned Single Judge of this Court dated 10-12-1969 is set aside and the judgment passed by the first appellate Court holding that the suit without notice u/s 80, CPC is maintainable is maintained and the direction passed by the lower appellate Court remanding the case to the trial Court for decision in accordance with law also is maintained. The appellant shall be entitled to costs of this appeal. Counsel's fee Rs. 100 if certified.