

(2002) 02 MP CK 0115

In the Madhya Pradesh High Court

Case No : S.A. No. 93 of 1999 (G) S.A. No. 94 of 1999 (G) , S.A. No. 95 of 1999 (G) , S.A. No. 96 of 1999 (G) , S.A. No. 97 of 1999 (G)

Moolchand

APPELLANT

Vs

Krishi Upaj Mandi Samiti, Beenaganj

RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 66, 67

Citation : (2002) 1 MPJR 533

Hon'ble Judges : P.C. Agarwal, J

Bench : Single Bench

Advocate : D.D. Bansal, for the Appellant; A.K. Shrivastava, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Agarwal, J.

This is a batch of five second Appeals by plaintiffs u/s 100 of the Code of Civil Procedure.

All these appellants have claimed themselves to be tenants of Krishi Upaj Mandi Samiti, Beenaganj, the respondent. They have a grievance that the respondent-committee has attempted to evict them from the shops occupied by them since 1981 without due process of law. All of them had claimed permanent injunction against the respondent-Samiti. On the other hand, respondent-committee claimed that it has tried to better raise its financial condition. Appellants are licensees for a limited period. State of Madhya Pradesh has sanctioned the amount for construction of shops by the committee and thus the appellants are liable to be evicted. Bar to civil suit u/s 66 of the M.P. Krishi Upaj Mandi Adhiniyam, 1972, which hereinafter be called as "Adhiniyam", was also claimed with bar or civil suit in absence of statutory notice u/s 67 of the said Adhiniyam.

Both the courts below agreed with the respondent and held that civil suit is barred u/s 66 of the Adhiniyam as well as u/s 67 of the said Act as no statutory notice was given by the appellants.

I have heard the learned counsel for both the parties and have also perused the record and the judgments of both the courts below.

Section 66 and Section 67 of the Adhiniyam read as follows :

66. Bar to Civil Suit -No suit in respect of anything in good faith done or intended to be done under this Act or rules or byelaws made thereunder shall lie against the Director or any officer of the State Government or against the Board or any market committee, or against any officer or servant of the Board or any market committee or against any person acting under and in accordance with the directions of the Director, such officer, or such committee.

Bar of suit in absence of notice - No suit shall be instituted against the Board or any market committee, until the expiration of two months next after notice in writing stating the cause of action, name and place of abode of the intending plaintiff, and the relief which he claims has been delivered or left at its office. Every such suit shall be dismissed unless it is instituted within six months from the date of the accrual of the alleged cause of action.

It is well settled that nobody can be dispossessed except by recourse to law. A person in settled possession can claim injunction even against a true owner. See, *Puran Singh and Others Vs. The State of Punjab*,), *Krishna Ram Mahale (Dead), by his Lrs. Vs. Mrs. Shobha Venkat Rao*,), *M. Kallappa Setty Vs. M.V. Lakshminarayana Rao*,). *Geeta Bal v. Radhakrishna* (1997 RN 105) and *Gajendra Singh v. Maan Singh* 2000 (1) MPJR 465. In the last case Division Bench of this High Court also has very deeply considered all the leading judgments on the subject and have held that a person in settled possession cannot be summarily evicted even by a true owner.

Of course, possession of a tenant or a licensee for a long period is settled possession within the meaning of *Munshiram v. Delhi Administration* (AIR 1968 SC 702). Of course, in such facts it cannot be said that the respondent had acted in good faith or intended to act under the Adhiniyam or Rules or Bye-laws framed thereunder. As such, obviously bar to civil suit u/s 66 of the Adhiniyam was not applicable against any action by the tenants for permanent injunction against their summary eviction by the landlord-committee.

However, Section 67 of the Adhiniyam is mandatory. See *Bhagwandas v. Krishi Upaj Mandl, Datla* (1992 MPLJ 995) which has been relied upon by both the Courts below. Provisions of this section are *pari materia* with that of Section 80 of the Code of Civil Procedure.

The learned Advocate for appellants has tried to compare Section 67 of the

Adhiniyam with the provisions of Section 319 of the M.P. Municipalities Act 1961. That provision reads as follows -

319. Bar of suit in absence of notice -(1) No suit shall be instituted against any Council or any Councillor, officer or servant thereof or any person acting under the direction of any such Council, Councillor, officer, or servant for anything done or purporting to be done under this Act, until the expiration of two months next after a notice, in writing, starting the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of a Council delivered or left at his office, and, in the case of any such member, officer, servant or person as aforesaid, delivered to him or usual place of abode, and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Every such suit shall be dismissed unless it is instituted within eight months from the date of the accrual of the alleged cause of action.

(3) Nothing in this section shall be deemed to apply to any suit instituted u/s 54 of the Specific Relief Act, 1877 (I or 1877).

However, close study of the provisions would make it clear that language used in both these provisions is not identical. Under these provisions a suit is barred for anything done or purporting to be done under this Act and such bar does not apply to any suit instituted u/s 54 of the Specific Relief Act, 1877 (1 of 1877). There has been no comparable provision in the Adhiniyam.

As per the bar against suits under the Act of 1961 applies only against anything done or purported to be done under the Act. The theory that the act complained was totally unauthorised and was not within the scope of authority enunciated in *Municipal Council Ratiam v. Kantilal* (1979 MPWN 41), *Balaghat Municipality v. Meghraj* (1966 JLJ 53), *Municipal Council, Gotegaon v. Balaprasad Tiwari* (1983 MPWN 411), *Nagar Palika, Blna v. Shri Nandlal* (1960 JU 747), *Municipal Council Murwara v. S.K. Kehansons and Co.* (1976 JLJ 63) do not apply to the cases under the Adhiniyam.

Under the Adhiniyam market committees are established u/s 7 (1) and declared as Body corporate having perpetual succession and a common seal and can sue and be issued in its corporate name u/s 7(2) of the Adhiniyam. Having incorporated these marketing committees are clothed with certain immunities inter alia u/s 66 and 67 of the Adhiniyam against suits for acts done in good faith and without service of statutory notice. Such immunities are termed in absolute language. Obviously, the courts cannot over-look or dispense with the provisions of the Adhiniyam on equitable principles as law always prevails over equity. See, *Council of Indian School Certificate Examination v. Isha Mittal* (2000 (2) MPWN 203).

The court has interprets the law as it is and cannot import its own ideas of justice, equity or good conscience, it is note worthy that under the Adhiniyam

there is no comparable provision exempting the suits for injunction against the requirement of statutory notice. Actually, the provisions of Adhiniyam are nearer to that of Section 401 of the Municipal Corporation Act 1956, which had been held mandatory and suit filed without of notice is held incompetent in *Municipal Council Murwara v. Lalchand Jalswal* (2000 (2) VB 184, decided recently on 6.7.1999 = 2000 (2) MPU 288. The same view has been reiterated in *Baldev Singh Bhatla v. The Commissioner, Nagar Palika Nigam, Raipur* (2000 (1) MPJR 227).

Obviously the provisions of Section 80 (2) of the CPC cannot also be invoked by the appellants as the legislature in its wisdom has not made any provision for exemption from such statutory notice in cases when an urgent and immediate relief is sought. In absence of any enabling provision under the Adhiniyam itself invocation of procedure prescribed u/s 80 (2) of the CPC is not possible. Further, no such attempt was made by the appellants to seek any such permission in the trial court at the time of filing plaint as they themselves knew that such exercise would have been futile. Thus, there is no substance in this argument also.

The learned Advocate for the Appellant has emphasized that in case the appellants are compelled to serve a statutory notice and wait for two months before institution of suit in such cases of high handedness and where they are apprehending their unauthorised eviction without recourse to the law of the land, their situation would be pitiable. However, such considerations cannot dispense with statutory requirement of notice u/s 67 of the Adhiniyam. It is well settled that if a particular mode is prescribed for something it can be done only in that manner and not in any other way. See *Shatrughanlal Shrivastava and Others Vs. State of Madhya Pradesh and Others*,) and *Chandrabhan Singh v. State of M.P.* (2001 (1) Vidhi Bhaswar 263).

Hence in my considered opinion the courts below have been correct in insisting on service of statutory notices u/s 67 the Adhiniyam before institution of such suits and thus there has been no substance in this second appeal. No substantial question of law arises herein. The appeal is summarily rejected.

However, as the respondent has already come to know the grievance of the appellant in whose favour the courts below had granted temporary injunctions against eviction, it would be just to grant a time of three months within which time if the appellants if so advised serve statutory notices to the respondents and file fresh suits. During such period, the appellant shall not be evicted from their shops. With this direction these appeals are summarily rejected.