

(1998) 11 BOM CK 0046

In the Bombay High Court

Case No : Civil Revision Application No. 196 of 1998

M/s. Binani Zinc Fibre and another

APPELLANT

Vs

Shri Pandurang Harischandra Toraskar and others

RESPONDENT

Date of Decision : 27-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 20, 9
Electricity (Supply) Act, 1948 — Section 82
Electricity Act, 1910 — Section 12, 17, 19, 52, 56

Citation : (2000) 1 BomCR 443 : (1999) 3 MhLj 973

Hon'ble Judges : R.M.S. Khandeparkar, J

Bench : Single Bench

Advocate : R.G. Ramani, for the Appellant; S.G. Dessai, Sr. A., Arun Bras D'Sa and M.S. Joshi, Addl. Govt., for the Respondent

Judgement

R.M.S. KHANDEPARKAR, J.—This Revision Application arises from order dated 26th June, 1998 passed in Regular Civil Suit No. 2/96/A by the Civil Judge, Senior Division, Bicholim. By the impugned Order, the trial Court has answered the following issue in negative:-

"Whether the defendant No. 1, 2 and 3 prove that this Court has no jurisdiction to entertain and try the present suit as the working of 110 KV S.C. Tower line is being done under Electricity Act, 1910 and Indian Telegraphic Act, 1885 under which only the District Magistrate i.e. the Collector, North Goa has jurisdiction."

2. The facts in brief relevant for the decision are that the respondent No. 1 herein has filed a suit seeking to restrain the petitioners and the respondents No. 2 to 4 from "taking proposed supply of electricity and/or from carrying any work in that regard to the suit property belonging to respondent No. 1". The contention of the respondent No. 1 is that the petitioners and the other respondents proposed to provide electricity supply of 110 KV through and/or even the suit property without the consent of the respondent No. 1 and without following the due process of law. On the other hand, it is the case of the

petitioners and the other respondents that the Civil Court has no jurisdiction to entertain and try the suit since according to them they are doing the work of 110 KV/SC Tower Line under Indian Electricity Act, 1910 and Indian Telegraph Act, 1885 under which only District Magistrate i.e. Collector, North Goa has jurisdiction to entertain the grievances of the public and that the grievances of the respondent No. 1 had been dealt with by the District Magistrate and the petitioners and the other respondents are ready to pay compensation as may be decided by the District Magistrate or the Court.

3. The trial Court on the basis of the pleadings had framed the above quoted issue and after hearing the parties has answered the same in the negative by the impugned order.

4. Shri R.G. Armani, learned Advocate appearing for the petitioners while assailing the impugned order submitted that the trial Court failed to appreciate that sections 19 and 52 of the Indian Electricity Act, 1910 impliedly ousts jurisdiction of the Civil Court to entertain such suit since the appropriate remedy is available under the Indian Electricity Act, 1910. He further submitted that the trial Court ought to have appreciated that the said statute clearly provides necessary remedy complete in itself and, therefore, the Civil Court could not have proceeded with the suit. Drawing my attention to section 12 of Indian Electricity Act, 1910, the learned Advocate submitted that sub-section (2) thereof clearly provides that in case of any objection being raised by the owner of the land for the work contemplated under sub-section (1) of the said section, it is for the District Magistrate to decide about the grievances and fix the compensation. According to the learned Advocate, the owners right is confined to compensation alone and, therefore, the Civil Court cannot entertain the suit of the nature filed by the respondent No. 1. He sought to rely upon the judgment of the Apex Court in the matter of M.P. Electricity Board, Jabalpur Vs. M/s. Vijaya Timber Co., and in the matter of Punjab State Electricity Board and Another Vs. Ashwani Kumar, in support of his submission.

5. Upon hearing the learned Advocates for the parties and on perusal of the records, it is seen that the point for consideration before the trial Court was the issue of lack of jurisdiction of the Civil Court to entertain the suit in question on the ground that the acts of the petitioners and the other respondents were under the provisions of Indian Electricity Act, 1910 and Indian Telegraph Act, 1885. The sole contention of the petitioners is that the jurisdiction in such matters exclusively vests with the District Magistrate of the concerned District and Civil Courts cannot interfere. In that regard, the petitioners seek to rely upon the provisions contained in sections 12, 19 and 52 of Indian Electricity Act, 1910.

6. Section 52 of the said Act is relating to Arbitration proceedings. It provides that where any matter is, by or under the said Act, directed to be determined by Arbitration, the matter shall, unless it is otherwise expressly provided in the licence of a licensee, be determined by such person or persons as the State Government may nominate in that behalf on the application of either party; but

in all other respects the Arbitration shall be subject to the provision of the Arbitration Act, 1940, provided that where Government or a State Electricity Board is a party to a dispute, the dispute shall be referred to two Arbitrators, one to be appointed by each party to the dispute.

7. Section 19 of the Indian Electricity Act, 1910 relates to the subject of compensation for damage. It provides that a licensee shall, in exercise of any of the powers conferred by or under the said Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation of any damage, detriment or inconvenience caused by him or by anyone employed by him, Except as provided in section 12, sub-section (3), where any difference or dispute arises as to the amount or the application of such compensation, the matter shall be determined by Arbitration.

8. The provisions contained in section 12 of Indian Electricity Act, 1910, on which the petitioners heavily rely upon to claim ouster of Civil Court jurisdiction in relation to the suit filed by the respondent No. 1, deals with the matters pertaining to the opening and breaking up of streets, railways and tramways. The said section reads thus:-

"12. Provisions as to the opening and breaking up of streets, railways and tramways.---(1) Any licensee may, from time to time but subject always to the terms and conditions of his licence, within the area of supply, or when permitted by the terms of his licence, to lay down or place electric supply-lines without the area of supply, without that area-

- (a) open and breakup the soil and pavement of any street, railway or tramway;
- (b) open and breakup any sewer, drain or tunnel in or under any street, railway or tramway;
- (c) lay down and place electric supply-lines and other works;
- (d) repair, alter or remove the same; and
- (e) do all other acts necessary for the due supply of energy.

(2) Nothing contained in sub-section (1) shall be deemed to authorise or empower a licensee, without the consent of the local authority or of the (owner or occupier) concerned, as the case may be, lay down or place any electric supply-line, or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, wherever or whereunder any electric supply-line or work has not already been lawfully laid down or placed by such licensee;

Provided that any support of an overhead line or any stay or strut required for the sole purpose of securing in position any support an overhead line may be fixed on any building or land or, having been so fixed may be altered, notwithstanding the objection of the owner or occupier of such building or land, if the District Magistrate or in a Presidency town the Commissioner of Police by

order in writing so directs;

Provided also, that, if at any time the owner or occupier of any building or land on which any support, stay or such strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town, the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.

(3) When making an order under sub-section (2), the District Magistrate or the Commissioner of Police, as the case may be, shall fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(4) Every order made by a District Magistrate or a Commissioner of Police under sub-section (2) shall be subject to revision by the State Government.

(5) Nothing contained in sub-section (1) shall be deemed to authorise or empower any licensee to open or breakup any street not repairable by Central Government or the State Government or a Local Authority, or any railway or tramway, except such streets, railways tramways (if any), or such parts thereof, as he is specially authorised to breakup by his licence, without the written consent of the person by whom the street is repairable or of the person for time being entitled to work the railway or tramway, unless with the written consent of the State Government:

Provided that the State Government shall not give any such consent as aforesaid; until the licensee has given notice by advertisement or otherwise as the State Government may direct and within such period as the State Government may fix in this behalf, to the person above referred to, and until all representations or objections received in accordance with the notice have been considered by the State Government.

(6) In this section, "occupier" of any building or land means a person in lawful occupation of that building or land."

9. On plain reading of section 12, it is apparent that sub-section (1) thereof relates to the work to be carried out by the licensee subject to the terms and conditions of his licence. Accordingly, licensee can place electric supply lines and carry out other work necessary for due supply of energy through the properties. Sub-section (2) provides that the powers given to a licensee under sub-section (1) would not authorise or empower the licensee to lay or place any electric supply line or to do any other work in any private property, without the consent of owner or occupier thereof. It is pertinent to note that the said provision begins with non obstante clause. As already seen above, it clearly provides that "nothing contained in sub-section (1) shall be deemed to authorise or empower". In other words, the sub-section (2) of section 12 clearly excludes the activities of the licensee which are authorised under sub-section (1) in cases of private properties without the consent of the owners of such

properties. Moreover, the first proviso to sub-section (2) empowers District Magistrate to authorise the licensee to provide any support to a overhead line or any stay or strut required for the sole purpose of securing in position in support of a overhead line. Moreover, even when such an order is passed by District Magistrate, the same can be reviewed at the instance of the owner in terms of the second proviso to sub-section (2). The provisions contained in sub-section (3) thereof provides that the District Magistrate may fix the amount of compensation or the annual rent payable by the licensee to the owner is in relation to the matters referred under subsection (2). As already seen above, the first proviso of sub-section (2) is restricted to the matters pertaining to support to overhead line or any stay or strut required for the sole purpose for securing in position in support to overhead line. In other words, the provisions contained in first proviso of sub-section (2) are relating to the acts necessary to provide some sort of support or additional work in case of existing overhead lines to be erected or laid in a private property. Therefore, the compensation spoken of in sub-section (3) is related to such work.

10. The provisions contained in section 12 or 17 or 52 of the Indian Electricity Act, 1910 nowhere oust the jurisdiction of the Civil Court to entertain the suits of the nature of the one in hand.

11. The Apex Court in the matter of M.P. Electricity Board, Jabalpur v. M/ s. Vijaya Timber and Company, rather than supporting the submission on behalf of the petitioners justifies the impugned order. It was the case wherein the M.P. Electricity Board had suffered a decree at the hands of the trial Judge, directing the removal of the electric line with posts situated in the land at Nandai and further direction to pay a sum of Rs. 1,770/- towards past damages and to pay future damages at the rate of Rs. 5/- per day to M/ s. Vijaya Timber and Company from the date of institution of the suit till the removal of electric line. While disposing the objection on the part of the Electricity Board regarding the maintainability of the suit, the Apex Court observed that the High Court had held that the Board had laid transmission line without taking the consent of M/s. Vijaya Timber and Company and, therefore, the same could not be treated as having done in accordance with the provisions of the Indian Electricity Act, 1910 to take shelter under the provisions of the Electricity Act, 1910, and those of Electricity (Supply) Act, 1948. It was further held that it is well settled that the exclusion of the jurisdiction of the Civil Court cannot be readily inferred and the normal rule is that the Civil Courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly excluded.

12. The Apex Court in the matter of Punjab State Electricity Board and another v. Ashwani Kumar was dealing with a matter arising from a suit filed by Ashwani Kumar seeking to restrain the Board from collecting and recovering the amount of consumption charges on the ground that the meter installed for measuring the consumption was suspected to have been tampered and was not giving accurate

consumption report. It was found therein that instructions 115(1)(b) of the sales manual indicate the procedure to be followed when the meter was found to be accurate but the reading was inaccurate and the instructions relating the procedure to be followed for resolving the dispute was also provided therein. In that set of facts, the Apex Court was considering the question whether the Civil Court would be justified in entertaining the suit for injunction. The Apex Court held that the Civil Court has jurisdiction to go into and try the disputed facts of civil nature where fundamental fairness of procedure has been violated. Referring to the various statutory circulars, it was held that the same indicate that the fundamental fairness of the procedure has been prescribed in the rule and was being followed in the matter in issue and, therefore, by necessary implication the cognizance of the Civil Court was excluded. That was squarely in the facts of the case before the Apex Court that it was held that the Civil Court had no jurisdiction. It cannot be forgotten that a precedent is an authority only for what it actually decides and not what may remotely or even logically follows from it. Even a slight distinction in facts or an additional fact may make a lot of difference in that regard.

13. The learned Single Judge of Kerala High Court in the matter of Secretary, K.S.E.B., Trivandrum Vs. M. Sainaba and Others, has clearly observed that it is to be noted that mere conferment of special jurisdiction on a tribunal in regard to certain specified matters does not in itself exclude the jurisdiction of the Civil Courts. That was a suit instituted for mandatory and prohibitory injunction for directing the Board to remove two electric posts already put up in the plaintiffs property and for permanent injunction to restrain the Board from drawing up electric lines or through or across the plaintiff's property. The contention raised by the Board was that the suit was not maintainable in view of section 56 of the Indian Electricity Act, 1910. Section 56 provides that no suit, prosecution or other proceeding shall lie against any public officer, or any servant of a local authority, for anything done, or in good faith purporting to be done, under the said Act and no Court shall take cognizance of an offence by the public officer except with the sanction in case of a person employed in connection with the affairs of the Union, of Central Government and in any other case of the State Government. Section 82 of the Electricity (Supply) Act, 1948 provides that no suit, prosecution or legal proceedings shall lie against any member or officer or any employee of the Board for anything done in good faith under the said Act. Referring to both the sections, the learned Single Judge of Kerala High Court has held thus : ---

"Section 56 deals with protection for acts done in good faith. It pre-supposes that if the act has been done not with good faith, there is no bar of a suit. So this provision did not completely bar the jurisdiction of the Court. The application of the section depends upon the complaint of the suitor. If it is a complaint that the action has been done not with good faith, certainly section 56 has no application at any rate, at the threshold on the "rising of the curtain". The protection granted to the Public Officer or any servant of the local authority u/s 56 is pre-

conditioned on the fact that the action taken or purported to have been taken by the Public Officer or any servant of the local authority should be in good faith. Similarly section 82 also gives protection from not defending a suit or other legal proceedings by any member or officer or any employees of the Board for anything done with good faith and that the action has been done or intended to have been done under the provisions of the Act. What is important to note is that it is not a total exclusion of jurisdiction, but it is hedged with the conditions and so it is difficult for a Court at the threshold without going to the merits to say that the suit is not maintainable".

14. As already seen above, the objection to the maintainability of the suit in hand is not raised on the basis of section 56 of the Indian Electricity Act, 1910 or section 82 of the Electricity (Supply) Act but on the basis of section 12, 19 and 52. As seen above, sections 19 and 52 speak about the compensation and the Arbitration proceedings. They do not in any manner assist the petitioners in their contention about the lack of jurisdiction of the Civil Court to entertain the suit. As far as section 12 is concerned, there is no provision either expressly or impliedly debarring any suit when the grievance of the plaintiff is that the electricity line is sought to be drawn through or over his property without following the procedure of law and without the consent of the plaintiff.

15. The trial Court after detail analysis of the rival contentions has held that the remedy available under Indian Electricity Act, 1910 is only regarding compensation for the injury caused on account of the acts of the licensee. It does not provide any remedy against the other acts on the part of the petitioners and the other respondents under the guise of acting under the provisions of Indian Electricity Act, 1910 or Electricity (Supply) Act. Besides, there is no specific provision either in the Indian Electricity Act or Indian Telegraph Act, 1885 barring the jurisdiction of the Civil Court. In this view of the matter, the trial Court has answered the issue of lack of jurisdiction of the Civil Court in the negative. I do not find any impropriety or illegality having been committed by the trial Court while arriving at the said finding. There is no jurisdictional error on the part of trial Court justifying interference by this Court in its revisional jurisdiction.

16. In the result, therefore, no case is made out for interference in the impugned Order passed by the trial Court answering the issue in negative regarding the absence of jurisdiction of Civil Court to entertain the suit filed by the respondent No. 1. Revision Application is summarily rejected with costs of Rs. 500/- in favour of respondent No. 1.

17. Application dismissed.