
(1999) 07 MP CK 0079
In the Madhya Pradesh High Court
Case No : C.R. No. 1195 of 1999

Municipal Corporation Murwara-Katni, Katni

APPELLANT

Vs

Lalchand Jaiswal

RESPONDENT

Date of Decision : 06-07-1999

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 393, 393(1), 401(1), 68(1)
Madhya Pradesh Municipalities Act, 1961 — Section 319, 319(1)
Specific Relief Act, 1963 — Section 38

Citation : (2000) 2 MPLJ 288

Hon'ble Judges : Sreesh Chandra Pandey, J

Bench : Single Bench

Advocate : V.S. Shroti, for the Appellant; V.S. Dabir with Yogesh Dhande, for the Respondent

Final Decision : Allowed

Judgement

S.C. Pandey, J.

This is a revision against the order dated 17-4-1999 passed in Civil Suit No. 15-A/99 decided by 1st Additional District Judge, Katni.

Learned Counsel for the applicant has made a statement before me that he has filed the certified copy of the order dated 17-4-1999 on 5-7-1999. It be attached with the revision at appropriate place. The filing of certified copy is within the period of limitation and, therefore, the question of limitation does not arise and this revision is being decided finally after accepting the certified copy filed by the counsel for the applicant. The impugned order shows that one of the objections raised by the applicant was that they have not been served with one month's notice in accordance with the provisions of section 401(1) of the Municipal Corporation Act, 1956 (henceforth "the Act") which is akin to section 80 of the old CPC as exists prior to amendment of the CPC by Act No. 104 of 1976. The objection is that the entire suit relates to exercise of power by the Municipal Corporation conferred upon it by the M.P. Foreign Liquor Rules, 1996 (henceforth

"the Rules of 1996"). It appears that the Municipal Corporation or the Municipal Commissioner has been authorised to act as a licensing authority in respect of FL-2 and FL-3 within the local limits of the jurisdiction of the Municipal Corporation. The Municipal Corporation is a corporate body and it has been conferred power by "the Rules of 1996" to act as a licensing authority in respect of FL-2 and FL-3 within its local area. The objection, therefore, is section 401(1) of "the Act" would be clearly applicable as the notice has to be served to the Municipal Corporation for refusal to renew the licence in favour of the non-applicant. That notice was never served by the non-applicant and, therefore, the plaint was liable to be rejected on the ground of non-service of the notice u/s 401(1) of "the Act", which is mandatory for filing the suit.

It is not in dispute that notice u/s 401(1) of "the Act" was not served upon the applicant and, therefore, the applicant was entitled to raise a ground u/s 401(1) of "the Act". However, it has been argued by Learned Counsel for the non-applicant that section 393 of "the Act" permitted that the amended section 80(3) of the CPC by the Act No. 104/76 would be applicable to a civil suit of this nature and, therefore, its benefit could be given to the non-applicant. The further argument is that the objection raised by the applicant regarding service of notice u/s 401(1) of "the Act" is liable to be rejected on the ground that the Court itself permitted the non-applicant to file the plaint without service of notice and that order was not challenged in revision.

The suit filed by the non-applicant is for declaration and mandatory injunction claiming that the non-applicant was a licence-holder for last ten years under the orders of the State Government and he was running the Dream Land Bar and Restaurant near the old Bus Stand, Laxmi Bai Ward, Katni. It was further alleged that he had not committed any breach of the licence FL-3 during the period, therefore, he applied for renewal of licence under FL-3 to the Municipal Corporation as per the rules framed under the Excise Act for the period between 1-4-1999 to 31-3-2000. He was to pay the necessary licence of Rs. 3,00,000/- , but no order was passed by the Municipal Corporation, Katni. It was alleged that the Collector, Katni was interfering with the question of grant of licence which he was not authorised to do as the Municipal Corporation has full power to renew the licence. The Municipal Corporation was not renewing the licence at the instance of the Collector, Katni who was acting mala fide on account of some personal grudge against the non-applicant. It was further alleged that the Collector had orally directed the applicant not to renew the licence and, therefore, the suit was filed for declaration and mandatory injunction requiring the Municipal Corporation to renew the licence. It was further alleged in the plaint that there was likelihood of a Police raid in his shop and, therefore, there was emergency. Looking to the urgent nature of the case, the plaint was filed after obtaining permission of the Court dispensing with the notice.

Having heard the counsel for both the parties, this Court is of the view that service of notice u/s 401(1) of "the Act" to the Municipal Corporation, Katni

would be mandatory for the reason that the Municipal Corporation derives its authority under "the Act". Its Constitution is under "the Act" and it can have no power whatsoever apart from "the Act". The delegation of powers to renew licence under "the Rules of 1996" cannot be apart from the powers of Municipal Corporation under "the Act". The conferral of power to grant or renewal of licence is covered by section 68(1) of "the Act" read with item No. 7 of the Schedule. Therefore, any act or omission on the part of the Municipal Corporation shall be covered by Section 401(1) of "the Act". It would be directly applicable and no suit could be filed against the Corporation without serving a notice u/s 401(1) of "the Act". It is mandatory to serve notice u/s 401(1) of "the Act" prior to filing of the suit. There is no provision in "the Act" that in case of emergency and where an injunction is sought a suit could be filed without serving a notice u/s 401(1) of "the Act". There is no provision for taking permission of the Court for relaxation of notice u/s 401(1) of "the Act". It appears to this Court that under "the Act", no relaxation has been given for a suit instituted u/s 38 of the Specific Relief Act. In this connection, it may be pointed out that u/s 319 of the Municipalities Act, 1961, there is a specific provision in the shape of Sub-section (3) of section 319 as follows:--

Sub-section (3): Nothing in this section shall be deemed to apply to any suit instituted u/s 54 of the Specific Relief Act, 1877 (1 of 1877).

The aforesaid sub-section implies that a notice u/s 319 of the Municipalities Act, 1961 can be dispensed with in a case of injunction u/s 54 of the repealed Specific Relief Act, 1877, which is analogous to section 38 of the Specific Relief Act, 1963. It appears that legislature has not taken a similar care in respect of section 401(1) of "the Act", as was done in the case of section 319(1) of the Municipalities Act, 1961. Therefore, the Court has no option but to hold even in the cases that the suit is filed for injunction, whether it be permanent or mandatory, a suit cannot be filed unless and until a notice is served u/s 401(1) of "the Act". It is obvious that such a suit without complying with section 401(1) of "the Act" shall be barred and that the plaint is liable to be rejected as such. The argument advanced by Learned Counsel for the applicant is not acceptable because section 393(1) of "the Act" does not apply to a suit. This sub-section applies to any appeal, enquiry or proceeding which the District Court or the High Court is required to decide or proceed with under "the Act". It has also been stated in sub-section (1) of section 393 of the Act that the provisions of the Code of Civil Procedure, which are not inconsistent, with the provisions of "the Act", shall be made applicable to such appeal, enquiry or proceeding. There is no merit in the argument of Learned Counsel for the applicant that merely because the trial Court had granted permission to file the civil suit, that order should have been challenged in revision or appeal. In the opinion of this Court, the order granting permission to file the suit without a legal notice was an ex-parte order and the applicants had right to object to it by filing an application under Order 7, Rule 11 of the Code of Civil Procedure. For all these reasons, in the opinion of this Court, the plaint filed by the applicant, was liable to be rejected.

Consequently, this revision succeeds and is allowed. The plaint, filed by the applicant, is hereby rejected. No costs.