
(2014) 07 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Regular First Appeal No. 174/2014

Murli Ram

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(d), Order 7 Rule 7, 80, 80(2)

Rajasthan Municipalities Act, 2009 — Section 271, 304, 304(1)

Citation : (2014) 4 WLN 340

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Vijay Jain, Advocate for the Appellant; B.S. Sandhu and Pankaj Sharma, Advocate for the Respondent

Judgement

Arun Bhansali, J.—This appeal is directed against the judgment and decree dt. 26.05.2014 passed by the Additional District Judge No. 2, Hanumangarh, whereby, the plaint filed by the appellants-plaintiffs seeking declaration and injunction against the respondent-defendants, came to be rejected by the trial Court under Order VII, Rule 11(d) C.P.C. on its coming to the conclusion that the same was barred under provisions of Section 304 of the Rajasthan Municipalities Act, 2009 ("the Act"). The facts in brief may be noticed thus: the appellants-plaintiffs claiming themselves to be in possession of the suit property filed a suit, inter alia, claiming the following reliefs:-

2. In the plaint, it was averred in para No. 7 as under:-

3. The effect of the averments made in para-7 and the relief claimed is that the suit was filed against the Municipal Council, Hanumangarh seeking declaration that the auction dt. 25.02.1988 as illegal & void and further injunction was sought that the private respondents be restrained from demolishing the property of the plaintiffs.

4. On notice being served, an application under Order VII, Rule 11(d) C.P.C. was

filed on behalf of the Municipal Council, Hanumangarh raising objection about the maintainability of the suit in absence of notice as envisaged under Sec. 304 of the Act.

5. A reply to the application was filed by the appellants-plaintiffs, inter alia, relying on the provisions of Sub-Section (3) of Section 304 of the Act claiming that the suit was of urgent/emergent nature and, therefore, the application filed by the Municipal Council, Hanumangarh be dismissed.

6. The trial Court as noticed hereinbefore allowed the application filed by the Municipal Council, Hanumangarh and rejected the plaint.

7. It is submitted by learned counsel for the appellants-plaintiffs that the trial Court was not justified in dismissing the suit inasmuch as the suit was for injunction as well and looking to the emergent situation, the Court should have entertained the suit. It was further submitted that application under Sec. 80(2) C.P.C. was filed by the appellants-plaintiffs and, therefore, the suit could not have been rejected on the ground of noncompliance of provisions of Section 304 of the Act.

8. It was further submitted that the trial Court was not justified in deciding the objection at the stage of Order VII application and instead should have directed the defendants to file written statement.

9. Reliance was placed on Suresh Chandra and Dhan Raj Vs. Shri Hanuman Prasad, , Nagar Nigam, Kota and Another Vs. Chhagan Lal , Chairman, Town Area Committee Vs. Ghulam Mustafa Shah and Others , Ramautar Gope and Others Vs. Sheonandan Mistri and Others, , Govt. of Kerala and Others Vs. Sudhir Kumar Sharma and Others, . Hari Ram vs. Har Bhagwan Sahni, 1994 DNJ (Raj.) 524, Swami Sunderdas vs. Baba Madho Das, 1994 DNJ (Raj.) 162 and Nishit M. Prabhu Verlekar Vs. Chandranath Vinayak Dhume and Others, .

10. On the other hand learned counsel for the respondents supported the judgment impugned passed by the trial Court. It was, inter alia, submitted that the plaintiffs sought relief of declaration as well as injunction and the same was directed against the Municipal Council, Hanumangarh and as such without compliance of Section 304 of the Act, the suit was not maintainable. It was also submitted that the judgments cited by the counsel for the appellants have no application to the facts and circumstances of the present case and, therefore, the appeal deserves to be dismissed.

11. Looking to the emergent nature of the case, the certified copies of the trial Court record, which includes the plaint; the applications filed by the plaintiffs and defendants and the reply filed by the plaintiffs to the application have been produced by the appellants and are taken on record.

12. I have considered the rival submissions.

13. From the averments made in the plaint, it is apparent that the appellants

have sought a declaration regarding the auction, said to have been conducted on 25.02.1988 by the then Mandi Vikas Samiti, Hanumangarh. During the intervening period, the said Mandi Vikas Samiti, Hanumangarh was abolished and the land in question was transferred to the jurisdiction of the Municipal Council, Hanumangarh and, therefore, the Municipal Council, Hanumangarh was impleaded as party defendant No. 2 in the plaint.

14. Provisions of Section 304 of the Act reads as under:-

"304. Suits against Municipality or its officers.-(1) No suit shall be instituted against a Municipality or against the Chairperson, Vice-Chairperson, member, officer or servant of Municipality or against any person acting under the direction of any of them in respect of an act done or purporting to have been done in its or his official capacity, until the expiration of two months next after notice thereof in writing has been, in the case of a Municipality, left at its office and, in the case of the Chairperson, Vice-Chairperson, member, officer, servant or person delivered to him or left at his office or place or abode explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the intending plaintiff, and the plaint shall contain a statement that such notice has been so delivered or left.

(2) No action such as is described in sub-Section (1) shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be commenced otherwise than within six months next after the accrual of the causes of action.

(3) Nothing in sub-Section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by giving of the notice or the postponement of the commencement of the suit or proceeding."

15. A bare look at the said provisions reveal that no suit shall be instituted against the Municipality and its officers until the expiration of two months next after notice thereof in writing has been given explicitly stating the cause of action, the nature of relief sought and the plaint contain statement that such a notice was delivered or left.

16. Sub-Section (3) provides an exception to Sub-Section (1) to the effect that said provision would not apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by giving of the notice or the postponement of the commencement of the suit or proceeding.

17. In the present case, admittedly, the suit is for declaration and injunction both and the same is not a suit seeking simpliciter injunction. The use of word only in Sub-Section (3) of Section 304 of the Act is not without significance.

18. Further, under Sub-Section (1), the plaint was required to contain statement that a notice as required by Section 304(1) had been delivered or left or averment was required to be made under Sub-Section (3) to indicate that giving

of notice would result in defeating the object, however, both the averments are missing from the plaint.

19. When the application was filed by the respondent-defendant Municipal Council, the reply by plaintiffs did not indicate any such notice having been delivered or left, as such the requirements of Section 304 of the Act having not been fulfilled, the filing/institution of the suit was clearly barred.

20. So far as the judgments of this Court in the case of Suresh Chandra (supra) and Nagar Nigam (supra) are concerned, the judgments are based on the answer given by a Division Bench of this Court in the case of Suresh Chandra vs. Hanuman Prasad on 09.09.2005, which pertains to Section 271 of the Rajasthan Municipalities Act. 1959, which provisions are *pari materia* to the provisions of Section 304 of the Act, as under:-

"(1) Section 271 of the Act aforesaid is not a provision of public policy but one for the benefit of the municipality or the persons mentioned therein.

(2) Giving of notice is a condition precedent to exercise jurisdiction. But, this being a mere procedural requirement, the same does not go to the root of jurisdiction in true sense of the term. The indication is clear that the requirement of notice on expiry of a particular period has no jurisdictional effects.

(3) Looking to this nature of the provision of the notice the same is capable of being waived by the defendants and on such waiver the Court gets a jurisdiction to entertain and try the suit.

(4) The question whether in fact there is waiver or not would necessarily depend on facts of each case, and is liable to be tried by the same Court if raised."

21. The Division Bench clearly held that the provision was for the benefit of the Municipality, giving of notice was a condition precedent to exercise jurisdiction, however, the same does not go to the root of the jurisdiction and the notice was capable of being waived by the defendants and on such waiver, the Court gets a jurisdiction to entertain and try the suit.

22. However, admittedly, in the present case there has been no waiver as far as the Municipal Council, Hanumangarh is concerned, as it has filed application in the nature of Order VII, Rule 11(d) on the first date seeking dismissal of the suit for noncompliance of provisions of Section 304 of the Act. In that view of the matter, the judgments cited are not applicable.

23. The judgments in the case of Ramautar Gope (supra) and Chairman, Town Area Committee (supra) are clearly distinguishable on facts as in the case of Ramautar Gope, no relief was sought against the Patna Municipal Corporation, and in the case of Chairman, Town Area Committee, the suit was merely for injunction.

24. The judgment of Hon"ble Supreme Court in the case of Govt. of Kerala (supra) also apparently has no application inasmuch as in the said case, the trial

Court without deciding application under Sec. 80(2) C.P.C. dismissed the suit under Order VII, Rule 11 C.P.C. for lack of notice under Sec. 80 CPC. In the present case, neither provision similar to Section 80(2) C.P.C. is available on the statute book in relation to Section 304 of the Act nor any application in this regard was pending consideration before the trial Court and, therefore, the judgment has no application.

25. So far as the other three judgments cited by learned counsel for the appellants in the case of Hari Ram (supra), Swami Sunderdas (supra) and Nishit M. Prabhu Verlekar (supra) are concerned, it cannot be said as a rule that application of such a nature is to be decided only after a written statement is filed by the defendants.

26. Hon''ble Supreme Court in the case of Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, , has held that application under Order VII, Rule 11 C.P.C. can be filed at any stage.

27. In the present case looking to the nature of objection regarding non-issuance of notice as required by Section 304 of the Act, there was no reason for respondent Municipal Council, Hanumangarh to raise the said objection in the written statement, as there is no iota of dispute regarding non-delivery of such a notice. In a given case there may be a dispute as to the nature of the notice and the requirement thereof, wherein the Court can direct raising of the issue in the written statement, however, the present case being not of such a nature, the submissions made by the learned counsel for the appellants in this regard have no substance. In view of the above discussion, there is no substance in this appeal and the same is, therefore, dismissed. The stay application is also dismissed.