
(1994) 09 KAR CK 0029

In the Karnataka High Court

Case No : Regular Second Appeal No. 331 of 1984

Mysore City Corporation, Mysore

APPELLANT

Vs

Chote Sab

RESPONDENT

Date of Decision : 19-09-1994

Acts Referred:

Karnataka Municipal Corporation Act, 1976 — Section 322

Citation : (1995) 1 KarLJ 1

Hon'ble Judges : M. M. Mirdhe, J

Judgement

1. This appeal is preferred by the appellant who was the defendant in the trial court against the judgment and decree dated 9-12-1993 passed by the II Additional Civil Judge, Mysore, in R.A. No. 51 of 1981 setting aside the judgment and decree dated 26-12-1981 passed by the Principal I Munsiff, Mysore, in O.S. No. 34 of 1979.

2. I have heard the learned counsel for the appellant and the learned counsel for the respondent fully and perused the records of the case.

3. The respondent filed a suit for permanent injunction restraining the appellant-Corporation from giving effect to the communication dated 6-1-1979 from demolishing the suit schedule premises of the portion shown as A and B in the plaint sketch. The case of the plaintiff is that he is carrying on business in B portion of the suit sketch belonging to one Jeevandriah and the condition of the premises is good and it is not in a dilapidated or dangerous condition and the landlord is attempting to evict him and the appellant served him with a communication under Section 322(3) of the Karnataka Municipalities Act, 1976 (which will hereinafter be referred to as "the Act"). According to the plaintiff this communication is issued by the appellant at the instance of the landlord who has failed in his attempt to evict the plaintiff. The appellant resisted the suit of the plaintiff contending that the building was in a dilapidated condition requiring immediate demolition and, therefore, a notice was issued in accordance with law and the notice is genuine and bona fide and it cannot be questioned in a court of

law. The trial court dismissed the suit. The lower appellate court in appeal by the respondent-plaintiff allowed the appeal and set aside the judgment and decree of the trial court and decreed the suit of the plaintiff.

4. This Court has admitted this Appeal and passed an order as follows:-

"This appeal is admitted to consider the following substantial question of law, it being the one found at Serial No. (b) at para No. 11 of the appeal memo."

The question referred to in this order is as follows:-

"Whether the lower appellate court was justified in the facts and circumstances of the case in substituting its discretion to the discretion of the Corporation to hold whether or not the suit premises is in dilapidated condition."

5. The respondent-plaintiff's suit is for permanent injunction restraining the appellant-Corporation from giving effect to the communication Exhibit P. 1 and restraining the appellant from demolishing the suit structure. The said notice is issued under Section 322(3) of the Act. The trial court as well as the lower appellate court have held and rightly so that this notice will have to be construed as a notice under Section 322(1) of the Act. The Act also provides an appeal against such a communication under Section 444(1)(a)(i) of the Act. The appeal is to the Standing Committee and the decision of the Standing Committee is made final by Section 444(3) of the Act. The trial court dismissed the suit of the appellant on the ground that in view of the fact that there was a remedy provided to the plaintiff to prefer an appeal against Exhibit P. 1 and he has not preferred an appeal, the court will not be justified in exercising its discretion to grant permanent injunction in his favour. The lower appellate court found fault with the trial court holding that the trial court was not justified in deciding about the maintainability of the suit when no such contentions were taken by the appellant itself. I think the approach of the lower appellate court is not correct. The question was not whether the suit was maintainable or not. The question was whether a permanent injunction should be granted in favour of a party who had not availed of the remedy provided by the Act. The Act itself makes the communication like Exhibit P. 1 final when it is not challenged by way of any appeal provided under the Act. The trial court was right in not exercising the discretion in favour of the plaintiff when the plaintiff had failed to challenge Exhibit P. 1 by way of appeal and by his not filing an appeal against Exhibit P. 1, it had become final. Therefore, against such a communication, the court would not have been justified to issue a permanent injunction. But the question of law raised in this appeal is not on this point. The question of law framed in this case is to the effect whether the lower appellate court could have interfered with the finding of the appellant given in Exhibit P. 1 that the building was in a dilapidated condition. That is the sum and substance of the question framed in this appeal. The lower appellate court on the basis of reassessment of evidence on record has come to the conclusion that the suit premises cannot be said to be in a dilapidated condition.

6. In *Javeed Ahmed Khan v Syed Ali*, ILR 1994 Kar. 1619, this Court has held that the court is not justified in coming to a conclusion different from the one in the notices directing demolition. In dealing with the object of Section 322 of the Act His Lordship in that ruling has held as follows:-

"15. The object and intendment of enactment of Section 322 is self-explanatory, it is an enabling provision because the very object of it is to enable the authorities to take precautionary measures to prevent danger to the life and property of not only the persons living in such structures or buildings but also passers by or the occupiers of neighbouring structures. In the instant case the competent authority having inspected the suit premises was of the opinion that the structures are in dangerous condition and therefore issued the notices in question to demolish them. Now the question is whether the court can go behind that notice directing demolition of the structures in the interests of safety of life and property of the inmates and the neighbours thereof, and come to a different conclusion. This Court in *Narendra Badigar Mattu Kammarar Sahakari Sangha Niyamitha v Krishnaji Vaikuntha Rao Deshpande*, ILR 1985 Kar. 3589, had the occasion to consider the similar question. Regard being had to the intendment of the Legislature and the object of Section 21(1)(k) of the Act, Chandrakantraj Urs, J., as he then was, held in paragraph 3 as follows:-

"The relevant clause (k) of the proviso to sub-section (1) of Section 21 of the Act clearly provides that the landlord can seek eviction if a local authority has directed demolition of the building. Once that is established by production of the notice the court cannot go behind that notice and come to a different conclusion that the building does not require demolition. To uphold such reasoning by courts would be to create a needless fiction between the local authority concerned and the court and the purpose of the legislation will be totally defeated."

(emphasis supplied)

The view of the learned Judge is with a view to not only uphold the intendment of the Legislature but also avoid fiction that may arise in the event of the court taking a different view from the view expressed by the local authority exercising power under Section 322, inasmuch as the final authority is the Commissioner in the instant case, to come to a conclusion on whether action requires to be taken under that provision to prevent any danger being emanated either to the occupier of the building or the neighbours including public at large. I respectfully agree with the view taken by the learned Judge in *Deshpande's* case *supra*. Indeed, it appears to me that regard being had to the decisions of the other High Courts, that conclusion appears to be salutary and is justified as the learned Judge has rightly observed that in the event of the courts taking a different view the view expressed by the local authority, necessarily there will be a fiction between the two and consequently the very purpose of legislation will be defeated. By virtue of Section 322 which is, as already stated, an enabling provision, the Commissioner is empowered to take preventive measures in case of imminent danger to persons and property from the structures coming within

his jurisdiction. Besides, there is a statutory responsibility cast on him under the Act to do so." In view of the law laid down by this Court, the lower appellate court was not justified in taking a different view from the view expressed by the local authority in Exhibit P. 1. The question of law raised in this appeal is answered accordingly. Therefore, the lower appellate court had no grounds to interfere with the judgment and decree passed by the trial court.

7. For the reasons discussed above, I proceed to pass the following order:-

The appeal is allowed with costs. The judgment and decree of the lower appellate court are set aside and the judgment and decree of the trial court are confirmed.