

(1922) 09 BOM CK 0023

In the Bombay High Court

Case No : Appeal from Order No. 10 of 1921

Nathalal Ramdas Vaghji

APPELLANT

Vs

The Nadiad Municipality

RESPONDENT

Date of Decision : 21-09-1922

Acts Referred:

Bombay District Municipal Act, 1901 — Section 50A

Citation : AIR 1923 Bom 456 : (1923) 25 BOMLR 58 : 79 Ind. Cas. 192

Hon'ble Judges : Lallubhai Shah, J;Crump, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Lallubhai Shah, Kt., Acting C.J.

1. This is one of the several companion appeals which we have to decide; but it will be convenient to deal with this appeal first before considering what orders should be passed in the other appeals. It arises out of a suit filed by the plaintiffs for a declaration that a certain land situated at Nadiad was of their ownership and for a permanent injunction restraining the defendant Municipality from obstructing them in their enjoyment thereof. The occasion for the suit was that in pursuance of a resolution passed by the Nadiad City Municipality, the Government had, in accordance with the provisions in the Bombay Land Revenue Code, directed a survey within the Municipal limits of the town of Bombay, and the City Survey Officer had held that the land in question was a "street land," as defined in Section 3, Clause 12 under the Bombay District Municipal Act (Bom. Act III of 1901). That would involve the result that the Municipality would have certain rights in respect of the site in question under the Bombay District Municipal Act, and the whole purpose of the suit was to prevent the Municipality from interfering with the plaintiffs' enjoyment of this site. With that view a declaration and an injunction as stated above were sought by the plaintiffs.

2. The defendant Municipality raised several objections to the suit, but no

objection was raised that the suit was defective for want of a necessary or proper party. Four preliminary issues were raised :

1. Whether the plaintiffs' claim is time-barred?
2. Whether the plaintiffs' suit is barred u/s 167 of the District Municipal Act?
3. When the disputed site is decided to be a street land, whether it vests in and belongs to the Municipality? Whether Government and street people have any and what interest therein? Whether this suit can be heard in their absence? When Government is held to be a necessary party, whether this Court has jurisdiction to hear this suit?
4. Whether the defendant Municipality can dispute plaintiffs' right when the disputed site is a street land?

3. The trial Court held that the street people were not necessary parties, but that the Government was a necessary party, that the suit could not be heard in the absence of Government, and that if Government were joined as a party, the Court could have no jurisdiction to entertain the suit. The Court also held that the suit was time barred. In the result the suit was dismissed with costs.

4. The plaintiffs appealed to the District Court. The learned District Judge who heard the appeal held that Government was, a necessary party, and that the other issues could not be, and should not be, considered. He set aside the order dismissing the suit, and made an order returning the plaint for presentation to the proper Court.

5. It is from that order returning the plaint that the present appeal is preferred to this Court, and the only question that we are really concerned with on this appeal is whether the lower Courts are right in their view that the Government is a necessary party.

6. It is important to remember at the outset that the question of the joinder of Government as a party in this case is one of great practical importance, for if the Secretary of State for India in Council is a necessary or a proper party, it is clear that the suit must be tried in a different Court altogether. It is only the District Court that would have jurisdiction to try such a suit u/s 32 of the Bombay Civil Courts Act (XIV of 1869). It is not, therefore, a simple question of adding a party as a matter of additional caution or convenience, but it is a question of importance as affecting the constitution of the suit.

7. The lower Courts have proceeded upon the view that the decision of the City Survey Officer that this land is " street land " is one which requires to be set aside; and, secondly, that as the plaintiffs claim a declaration as to the ownership of the land in suit, the interests of the Government are necessarily involved. They hold that in the case of "street land", the property would not be vested in the Municipality, and though the Municipality would have certain control over the land, and certain statutory rights with reference to the land, the real dispute

must be taken to be between the plaintiffs and the Government.

8. Though Government was not a party in the lower Courts, notice was issued in this case to the Government Pleader here on this appeal. We have heard the Government Pleader on behalf of Government, though not a party to the suit. We think, however, after a consideration of the arguments urged before us on both sides, and of the relevant provisions of the Bombay District Municipal Act and of the Bombay Land Revenue Code, that Government is not a necessary party to the present suit. The survey was undertaken in this case as contemplated and provided by Section 50A of the Bombay District Municipal Act. This section was inserted by Bombay Act X of 1912 and by another Act in the same year a similar provision was inserted in the Bombay Land Revenue Code by way of addition to Section 37 of the Bombay Land Revenue Code. For our present purpose it is enough to point out that in this Municipal area the Survey was undertaken as contemplated by Section 50A. Sub-section (2) of that section clearly provides that any suit instituted in any Civil Court after the expiration of one year from the date of any order passed by the Collector under Sub-section (1), or, if one or more appeals have been made against such order within the period of limitation, then from the date of any order passed by the final appellate authority, as determined, according to Section 204 of the Bombay Land Revenue Code, 1879, shall be dismissed, if the suit is brought to set aside such order, or if the relief claimed is inconsistent with such order, provided that the plaintiff has had notice of such order.

9. The order in the present case was passed first by the City Survey Officer, and then by the superior officer in appeal, and the decision was that it was "street land". The definition of the word "street" as given in Section 3, Clause (12), does not in any sense negative the idea of private ownership. "Street" shall mean "any road, foot way, square, court, alley or passage accessible whether permanently or temporarily to the public, whether a thoroughfare or not and shall include every vacant space, notwithstanding that it may be private property, partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut thereon, and if it is used by any persons as a means of access to or from any public place or thoroughfare, but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid." The decision of the Survey Authorities that the site in question formed part of a street, as defined in the Bombay District Municipal Act, does not mean that the decision was that the Government had any interest in the land. It was really a decision relating to a dispute between private owners and the Municipality, that it was part of street land, which would mean that the Municipality would have certain powers with reference to such land which had been given under the Statute. For instance, u/s 90 of the Bombay District Municipal Act, the Municipality will have power to call upon the owners of the houses in the street to do certain things, and to declare it to be a public street if so advised under certain conditions. That affects the rights of private owners, and to that extent

the Municipality is interested in upholding the decision of the City Survey Officer, and the plaintiffs are interested in questioning that decision. That is a dispute between the private owners and the Municipality in which, so far as I can see, the Government have no manner of interest. At least the cause of action as stated in the plaint does not disclose any such interest, and whatever view may be taken of the effect of the vesting clause in the Bombay District Municipal Act with reference to public streets, I do not think that so far as the cases which relate to the decision of the City Survey Authorities that the land in question was a street land, would be affected by those considerations. The decision, so far as it goes, is entirely a matter in which the Municipality and the plaintiffs are interested, and in the suit the adjudication is sought with reference to the rights of these two parties. It is not necessary formally, in my opinion, to sue to set aside the decision of the Survey Authorities. Even if there was a prayer to set aside that decision, it would not render it necessary to join Government as a party. That is a mere matter of form, and the wording of Sub-section (2) of Section 50A, in my opinion, clearly indicates that whether the relief claimed is inconsistent with that order or whether the relief is to have the order set aside, the suit has to be filed within a particular time, and that the suit as there contemplated is clearly a suit between a private party and the Municipality.

10. I do not desire to say anything more in this appeal as to whether, where the decision of the Survey Authorities was that a particular piece of land formed part of a public street, Government would be a necessary party or not. For the purpose of this appeal it is enough to say that Government is not a necessary party, because the decision of the Survey Authorities is not in favour of Government in any way, and the parties interested in that decision are the plaintiffs and the Municipality, who are before the Court.

11. We have to consider what course we should adopt now in view of the fact that the trial Court has decided the question of limitation. We think that on the whole the best course, and practically the only legal course, under the circumstances, is to set aside the order made by the lower appellate Court, and to remand the appeal to that Court for disposal according to law. If after remand the learned District Judge upholds the view of the trial Court on the question of limitation, so far as that Court is concerned, the suit will end there. If the learned District Judge, however, comes to the conclusion that the suit is not time-barred, it will be for him to consider what order to make in order that the suit may be disposed of according to law. We, therefore, allow this appeal, set aside the order of the lower appellate Court, and remand the appeal to that Court for disposal according to law. We think the respondent should pay the costs of this appeal. The other costs will be dealt with by the District Court when the appeal in that Court is disposed of. The Government Pleader to bear his own costs of this appeal.

12. The remaining portion of the judgment is not material to this report.