

(1998) 10 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : C.I. A. No. 25 Of 1988

Notified Area Committee Nowshera, through its Chairman	APPELLANT
Vs	
Bharat Bhushan	RESPONDENT

Date of Decision : 06-10-1998

Acts Referred:

Citation : (2000) KashLJ 80 : (1999) SriLJ 200 : (1999) 1 SriLJ 200

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : K.K.Jindal, Advocates appearing for the Parties

Judgement

Arun Kumar Goel. Judge

1. This appeal is directed against the judgment and decree passed by learned district Judge, Rajouri in File No: 11/c, dated 12th May, 1988. By

means of impugned judgment and decree a declaration has been granted that the demand notices dated 26th December, 1986 and 21st April,

1987 issued by the Chairman. Notified Area Committee, Nowshera against the respondent are null and void because Chairman was not

competent to issue such notices. In order to properly appreciate the submissions urged in support of this appeal few facts need to be noticed.

2. Respondent, Bharat Bhushan (hereinafter to be referred as plaintiff) filed a suit for declaration simplicitor to the effect that the notices dated 26th

December, 1986 and 21st April, 1987 may be declared to be ultravires and amount contained therein as barred by limitation. Further case of the

plaintiff in the suit filed against the appellant (hereinafter to be referred as defendant) was that he was dharat contractor for the year 197778 in the

limits of Notified Area Committee, Nowshera. In terms of agreement entered into

between the parties, plaintiff was to realise dharat on medicines, diesel, petrol, and liquor, besides other items. When plaintiff started action for realising the dharat a writ was filed by the persons concerned in the High Court and a Stay order was passed in favour of such persons. It was also the case of the plaintiff that he was assured by the defendant that in case of nonpayment of dharat by the persons who were selling the aforesaid items, while adjusting him, his losses would also be taken care of in respect of these three items.

3. It appears that Chairman, Notified Area Committee issued notice on 26th December, 1986 which was followed by a declaration on 21st April, 1987 in accordance with the provisions of Section 101 of Jammu and Kashmir Municipal Act, 2008 (hereinafter to be referred as the Act).

Legality of these notices had been questioned by the plaintiff in the suit wherein decree in question came to be passed. This suit was contested and resisted by the defendant pleading bar of sections, 57, 57B, 100 and 106 of the Act, besides denying the claim of the plaintiff on facts.

4. Another salient feature of this case is that after framing of issues as well as additional issues, counsel appearing for the parties before the trial court stated that they did not intend leading evidence in support of the issues and this led to the case being posted for arguments. References in this behalf can be made to the order dated 18th December, 1987 passed by the trial court.

5. Before dealing with other Submissions, certain provisions which are relevant for determination of this appeal need to be noticed. Under Section 284(5) of the Act, State Government has the power to extend to any Notified Area the provisions of any Section of the Act, subject to any modification and restrictions as the Government may think fit.

Under the section 57B of the Act a temporary injunction can only be granted after notice had been issued to a Council or against any of its officer or servant and after opportunity to show cause has been given. Under Section 57 of the Act a notice is required to be delivered or left at the office of the Council and action can only be initiated after the expiry of this period of the one month of the service of such a notice.

6. Similarly under Section 100(1) of the Act a notice is required to be served by the Executive Officer when money claimable by a Council under

this Act is in arrears. Notice calling upon such defaulter to pay the sum claimed as due is to be asked within such time as may fixed in this notice.

Such an order is appealable under Section 102 (3) (c) of the Act. appeal lies to the authority under Section 103 of the Act. Section 57, 57B, 101

(1), 101 (3) (c), 103,106 and 283 read with Section 284 (5) of the Act are reproduced for ready reference.

57. Suits against Council and the officer : No suit shall be instituted against a Council or against any officer or servant of a council, in respect of

any Act purporting to be done in its or his official capacity until the expiration of one month next after notice in writing has been, in the case of a

Council, delivered or left at its office, and in the case of an officer or servant, delivered to him, or left at his office or palace of abode stating the

cause of action and the name and place of abode of the intending plaintiff, and the plaint must contain a statement that such notice has been so

delivered or left"" Provided that nothing in this section shall apply to any suit instituted under Section 54 of the Jammu and Kashmir Specific Relief

Act, 1977. 57A. 57B. Temporary injunction to be granted after notice : No Court shall grant any order of temporary injunction in any suit

instituted against a Council or against an officer or servant of a council in respect of any (sic.) purporting to be done in its or his official capacity

unless the Council, officer or the servant of the Council as the case may be has been given opportunity to show cause, why such order should not

be made.

101. Presentation of the Bill. (1) When any arrears of tax, water rate, rent, fee or any other money claimable by a Council under this Act, shall

have become due, the Executive Officer shall with the least practicable delay cause to be served on the person liable for the payment thereof, a

notice calling upon him pay the sum claimed as due within such time as may be fixed therein.

(2).....

(3) If the person liable for the payment of the said sum does not within the specified time either

(a).....

(b).....

(c) prefer an appeal in accordance with the provisions hereinafter mentioned.

103 Appeal against notice of demand: Appeals against any notice of demand issued under subsection (3) of section 101 may be made to the

Government or (to such authority) as may be empowered by the government in this behalf according to section 104 of this Act.

But no such appeal shall be beard and determined unless

(a) the appeal is brought within one month next after service of the notice of demand complained of; and

(b) an application in writing, stating the grounds on which the claim of the Council is disputed, has been made to the Council, as follows, that is to

say

(i) in the case of rate of building or lands, within the time fixed in the notice of the assessment or alteration thereof according to which the bill is

prepared;

(ii) in the case of any other claim for which a bill has been presented under subsection (1) of Section 101 within 15 days next after the presentation

of such bill; and

(c) the amount claimed from the appellant has been deposited by him or sufficient security has been furnished by the appellant to the satisfaction of

the Executive Officer.

106. Taxation not to be questioned except under this Act (1) No objection shall be taken to any valuation or assessment, nor shall the liability of

any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act.

(2) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules thereunder.

283. Constitution of notified area; The Government may, by notification, declare that, with respect to some or all of the matters upon which a

Municipal Fund may be expended, improved arrangements are required within specified area, hereinafter called a notified area, which nevertheless,

it is not expedient to constitute a Municipality.

283A.....

284. Power of government to impose taxation and regulate expenditure of proceeds thereof. The Government may

(1).....

(2).....

(3).....

(4).....

(5) extent to any notified area the provisions of any section of this Act subject to such modifications and restrictions, if any, as the Government may

think fit.

7. In exercise of powers vested in the State Government under Section 284(5) (supra), SRO 528 dated 21st October, 1974 came to be issued by

the Government of Jammu and Kashmir Housing and Urban Development Department, Srinagar. Subclause (a) thereof is as under:

(a) the expression ""Council"", ""Councilor"", ""Executive Officer"" and ""Municipality"", wherever they occur shall respectively be substituted by the expressions ""Committee"", ""member"", ""Chairman"" and ""Notified Area"".

A perusal of SubClause (a) clearly indicated that in place of Executive Officer, Chairman is to be substituted.

8. When a reference is made to the impugned judgment, learned trial court while dealing with issues 1 and 8 has allowed the claim of plaintiff on

the sole ground that both the impugned notices had been issued by the Chairman of Notified area Committee instead of its Executive Officer. It is

very unfortunate that neither the learned judge cared to examine the matter in depth nor the learned counsel appearing for the defendant cared to

properly assist the trial court in the matter which led to the passing of impugned judgment. In the face of powers vested in the State Government

under Section 284(5) (supra), read with SRO dated 21st October, 1974 issued by the State Government, both the notices issued, which were

impugned in the suit, are legal and valid and the findings to the contrary recorded in the impugned judgment is hereby reversed.

9. When once it is held that notices in question were legally valid and were issued by a person competent to issue those, suit filed by the plaintiff

was incompetent and remedy, if any was by way of appeal under Section 101 (3) (c) before the authority prescribed under Section 103 of the Act

(supra). Thus it is obvious that the suit before the trial court was not at all maintainable and the findings to the contrary recorded by the trial court in

that behalf are also reversed.

10. In view of the aforesaid discussion this appeal filed by the plaintiff is allowed with costs throughout, consequently judgment and decree passed

by the Distract Judge, Rajouri in File No: 11/c, dated 12th May, 1988 incase titled as "" Bharat Bhushan vs. Notified Area Committee, Nowshera

is hereby set aside resulting in. dismissal of the suit filed by the plaintiff. Cost of this appeal is assessed at Rs. 1000/.