

(1997) 06 AP CK 0004

In the Andhra Pradesh High Court

Case No : Appeal No's. 2431 and 2433 of 1987

Palakole Municipality

APPELLANT

Vs

Byla Sachidananda Rao and Another

RESPONDENT

Date of Decision : 23-06-1997

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 369(1), 369(2)

Citation : (1997) 5 ALT 824

Hon'ble Judges : D. Reddappa Reddi, J

Bench : Single Bench

Advocate : P. Rajagopala Rao, for the Appellant; K.F. Baba, for the Respondent

Final Decision : Allowed

Judgement

D. Reddappa Reddi, J.—Palakole Municipality represented by its Commissioner and Special Officer, the defendant in OS. Nos. 63 and 68 of 1979 on the file of the Subordinate Judge, Narsapur, is the appellant in both the appeals. They are being disposed of by this common judgment as the facts are similar and the questions of law that arise for consideration are common.

2. The facts, in brief are: The respondents/plaintiffs filed the suits claiming damages from the appellant on the ground that the premises let out to them were illegally demolished without terminating the lease granted in their favour and without issuing notice of demolition. The appellant/defendant resisted the suits on three grounds: First, the respondents refused to receive the notices of eviction and the notices of demolition were affixed on the subject premises in the presence of the concerned Village Administrative Officer. Second, the suits are bad as they have been filed without notice to the appellant as contemplated under Sub-section (1) of Section 369 of the A.P. Municipalities Act (for short "the Act"). Third, the suits are barred by limitation in view of the provisions of Sub-section (2) of the Section 369 of the Act.

3. Evidence, oral and documentary was adduced on either side. On consideration

of the said evidence, the trial Court found that the appellant failed to establish that the respondents/plaintiffs refused to receive the notices of demolition and the notices of demolition were affixed on the subject premises. On that basis, it held that the demolition of the subject premises was illegal and hence the provisions of Section 369 of the Act have no application. Consequently, the suits were decreed as prayed for. Hence, these appeals by the defendant-Municipality.

4. Sri P. Raja Gopal Rao, learned Standing Counsel for Municipalities, has confined his submissions only to the maintainability of the suits. According to him, the suits should have been dismissed for non-compliance of the provisions of Sub-sections (1) and (2) of Section 369 of the Act, which read as under:

"369. Institution of suits against municipal authorities, officers and servants: (1) No suit for damages or compensation shall be instituted against the Council, any municipal authority, officer or servant, or any person acting under the direction of such Council, municipal authority, officer or servant, in respect of any act done in pursuance of execution or intended execution of this Act or any rule, bye-law, regulation or order made under it or in respect of any alleged neglect or default in the execution of this Act, or any rule, bye-law, regulation, or order made under it, until the expiration of three months after a notice has been delivered or left at the municipal office or at the place of abode of such officer, servant or person, stating the cause of action, the relief sought and the name and the place of abode of the intending plaintiff and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Every such suit shall be instituted within six months after the date on which the cause of action arose or in a case of a continuing injury or damage, during such continuance or within six months after the ceasing thereof".

It is not in dispute that no notice was given to the appellant before instituting the suits. It is also not in dispute that Sub-section (1) of Section 369 of the Act is almost identical to the provisions of Section 685 (1) (a) of the Hyderabad Municipal Corporations Act, which read as under:

"685. Protection of persons acting under this Act against suits:- (1) No suit shall be instituted against the Corporation or against the Commissioner or a Deputy Commissioner or against any officer or servant, appointed under this Act, in respect of any act done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act-

(a) until the expiration of one month next after notice in writing has been, in the case of the Corporation, left at the Chief Municipal Office and in the case of the Commissioner or of a Deputy Commissioner or of a Municipal Officer or servant delivered to him or left at his office or place of abode, stating with reasonable particularity the cause of action and the name and place of abode of the intending plaintiff and of his attorney or agent, if any, for the purpose of such suit".

5. Dealing with the question whether the provisions of Section 685 of the Hyderabad Municipal Corporations Act are mandatory or discretionary, it has been held by this Court in *Bansilal v. Special Officer, Municipal Corporation of Hyderabad*, 1981 (2) APLJ 470 that they are mandatory and the suit filed without complying the same is not maintainable.

The same view has been reiterated by this Court in *Lalitharaj v. Municipal Corporation of Hyderabad*, 1987 (1) APLJ45 .

6. Incidentally, it may be mentioned that the provisions of Section 369 (1) of the Act as well as Section 685 (1) (a) of the Hyderabad Municipal Corporations Act are similar to the provisions of Section 80(1) of the Code of Civil Procedure. It has been held in *The State of Madras Vs. C.P. Agencies and Another*, that:

. "Section 80 is express, explicit and mandatory and admits of no implications or exceptions. Section 80 peremptorily requires that no suit shall be filed against the Government or a public officer in respect of anything done in his official capacity until after the expiry of two months from the service of a notice in the manner therein prescribed stating the cause of action, the name, description and place of residence of the plaintiff and the reliefs which he claims".

I am of the considered view that the above proposition of law will apply in all fours to the provisions of Section 369 (1) of the Act. In this view of the matter, there shall be no hesitation to hold that the suits filed by the respondents/ plaintiffs without giving notice to the appellant should have been dismissed as not maintainable.

7. The question of limitation as contemplated under Sub-section (2) of Section 369 of the Act is no longer res-integra, for an identical question has been answered in favour of the appellant and against the respondents in the *Commissioner and Special Officer v. Shaik China Bakshi*, 1986 (1) An. W.R. 302 which has been affirmed by a Division Bench of this Court in LPA No. 282/85 disposed of on 24-3-1995. Therein, Justice P. Rama Rao, observed:

"Section 369 is a comprehensive provision prescribing limitation for the suits for damages or compensation against the Council, municipal authority, officer or servant. The suit for damages or compensation for any reason whatsoever has to be necessarily filed within the time prescribed u/s 369 (2). The action for recovery of compensation contemplated u/s 192 is not taken out of the purview of Section 369 as Section 369 is wide enough to cover all situations of recovery of damages or compensation as against the municipality or any officer. Further, Section 369 is concerned with the prescription of the limitation in respect of the suits for any acts done by the municipality or the officer of the municipality pursuant to execution or intended execution of the Act or any rule under the Act and any alleged neglect or default in the execution of the Act or regulation or order. Therefore, the claim for compensation arising out of Section 192 comes within the time prescribed u/s 369. But, however, Sri G. Bhaskara Rao, the learned Counsel for the respondent tries to rescue the case from the applicability

of Section 369 by contending that this should not be construed as merely a case arising u/s 192. It is amplified by him that there was no encroachment at all and as such, the action of the authorities without any notice and without considering whether there is any encroachment on the land and the purported demolition is manifestly illegal and as such, the question of attracting Section 369 does not arise. I am unable to appreciate this contention as Section 369 is comprehensive enough to include all kinds of suits either by way of compensation or damages. Aggrieved by any action whether it is illegal or otherwise and also acts intended to be under the provisions of the Act, Section 369 covers the situation of any illegalities committed by the officers also intending to discharge their duties under the provisions of the Act. Even assuming that there was no encroachment and the action is illegal, however, the coverage of Section 369 cannot be escaped because the action of the municipality though tainted with illegality is under the provisions of the Act".

8. Admittedly, the demolition took place on 11-1-1976 and the suits were filed on 15-1-1979, i.e., beyond the period of six months from the date of demolition. They are, thus, barred by limitation prescribed u/s 369(2) of the Act.

9. For the aforesaid reasons, the judgments and decrees under appeals are liable to be set aside. They are, accordingly, set aside. In the result, the appeals are allowed with costs throughout.