

(1961) 07 CAL CK 0013

In the Calcutta High Court

Case No : A.F.O.D. No. 488 of 1961 with C.R. 1929 (F) of 1961

P.B. Shah and Co. and Others

APPELLANT

Vs

Chief Executive Officer and Others

RESPONDENT

Date of Decision : 11-07-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 29 Rule 1, Order 7 Rule 1

Citation : AIR 1962 Cal 283 : 65 CWN 1128 : (1962) 2 ILR (Cal) 273

Hon'ble Judges : R.S. Bachawat, J;P. Chatterjee, J

Bench : Division Bench

Advocate : P.N. Mitter, Nanak Singh, Susil Kumar Biswas and Sunil Kumar Bose, for the Appellant; Ajoy Kumar Bose, for Respondent Nos. 1 to 3, Sankardas Banerjee and Mukul Prokash Banerjee, for the Respondent

Final Decision : Allowed

Judgement

Bachawat, J.—This is an appeal from an order rejecting the plaint in a suit. The plaintiffs claim to be the occupiers of premises No. 34, Netaji Subhas Road, Calcutta. The plaintiffs challenge the validity of an order of demolition of the premises in question passed on the 28th April, 1958, by the then Commissioner, Corporation of Calcutta. There are seven defendants to the suit. The first defendant is described as the "Chief Executive Officer, Corporation of Calcutta working for gain at No. 5, Surendra Nath Banerjee Road, Calcutta"; the third defendant is described as the "City Architect, Corporation of Calcutta working for gain at No. 5, Surendra Nath Banerjee Road, Calcutta"; the second defendant is the Corporation of Calcutta. The plaint asks for a perpetual injunction restraining the defendants Nos. 1 to 3, their servants or agents from giving effect to the aforesaid order of demolition dated the 28th April, 1958. The plaintiffs obtained from the Trial Court a temporary injunction in terms of the prayer of the plaint during the pendency of the suit. The suit was set down for hearing on the preliminary question of the maintainability of the suit in the absence of the service of a notice u/s 80 of the CPC upon, the defendant No. 1, the Chief

Executive Officer, Corporation of Calcutta. The Trial Judge came to the conclusion that the Chief Executive Officer then functioning as the Commissioner, Corporation of Calcutta was a public officer within the meaning of Section 2(17)(h) of the CPC and that in the absence of the service of a notice upon him u/s 80 of the Code the suit could not be entertained by the Court, and as such the plaint should be rejected.

2. The order rejecting the plaint is in any event erroneous. On the finding that the suit was not maintainable against the defendant No. 1, the suit should have been dismissed against him, but the plaint as a whole could not be rejected. It may be that in the absence of the defendant No. 1 the suit would become defective for nonjoinder of necessary parties, and if so, the suit will have to be dismissed against the other defendants also.

3. On the question whether the Chief Executive Officer functioning as the Commissioner, is a public officer within the meaning of Section 2(17)(h) of the Code a very lengthy argument was addressed before us. Ultimately, however, we find that the appeal has to be disposed of on a very narrow ground.

4. We find that neither the person who occupies the office of the Chief Executive Officer and or the Commissioner, Corporation of Calcutta nor the person who occupies the office of the City Architect is really on the record of the case. These officers are not corporate bodies. There is no provision in the Calcutta Municipal Act, 1951 to the effect that the persons occupying those offices may sue or be sued by their official title and designation. In the absence of such a provision, the ordinary law applicable to suits must apply. Order 7, Rule 1 (c) of the Code of Civil Procedure provides that the plaint shall contain inter alia the name, description and place of residence of the defendants so far as they can be ascertained. If the plaintiff intends to sue the persons who for the time being occupy those offices he must implead those persons by their individual names. Attempts to sue an officer by his official title have been unsuccessful in the absence of a statute authorizing such a suit. By way of illustration reference may be made to the case of *The Sheriff of Bombay Vs. Hakmaji Motaji and Co.*, where it was held that the Sheriff of Bombay is not a Corporation sole and cannot be sued as such.

5. Where a statute provides that a public officer shall be a corporation sole and can be sued in his corporate name, the officer may be sued in that name. Thus by Section 6 of the Official Trustees Act (II of 1913), the official trustee is made a corporation sole by the name of the official trustee of the State for which he is appointed and he may be sued in his corporate name. Again a statute may without making the public officer a corporation sole provide that he may be sued by his official title and he may then be sued by such title. Thus by Sub-section (3) of Section 10 of the Calcutta Official Receivers Act (Bengal Act VII) 1938 the official receiver of the High Court at Calcutta may be sued in the name of "the Official Receiver in the matter". Let us now turn to the Calcutta Municipal Act, 1951. By Section 6 of the Calcutta Municipal Act, 1951, the municipal

authorities charged with carrying out the provisions of that Act are (a) the Corporation, (b) the Standing Committee and (c) the Commissioner. The Corporation consists of 76 Councillors. By Section 7 of the Act the Corporation "shall by the name of the Corporation of Calcutta be a body corporate and have perpetual succession and a common seal and may by such name sue and be sued". The Corporation may therefore be sued in its corporate name. The Commissioner is an official appointed by the State Government u/s 19 of the Act. The Chief Executive Officer now functions as the Commissioner in view of West Bengal Act XXI of 1958. The City Architect is a municipal officer subordinate to the Commissioner. There is however no provision either in the Calcutta Municipal Act 1951 or in any other statute that the person occupying the offices of the Commissioner, of the Chief Executive Officer and of the City Architect are corporation soles or that they or any of them may sue or be sued by their official titles. From time to time different persons have occupied those offices. Thus on the 28th April 1958 Shri B.K. Sen was the Commissioner and as such passed the impugned order of demolition. But on the date of the institution of the suit some other person was occupying the office of the Commissioner. By impleading "the Chief Executive Officer" and "the City Architect" as defendants to the suit, the plaintiff here intends to sue each and every person who from time to time occupies the office of the Chief Executive Officer and of the City Architect. It is, however, plain, enough that these offices are not corporate bodies and that all persons occupying those offices from time to time do not become defendants to the suit as and when they occupy those offices.

6. In proceedings for the issue of high prerogative writs and in proceedings under Article 226 of the Constitution against a public officer or a public body, the individual occupying the office or the individuals forming the public body need not be named and they may be proceeded against under their official titles, see *B.C. Das Gupta and Another Vs. Bijoyranjan Rakshit and Others*, and *In re, Natesan* ILR 40 Mad 125 : (AIR 1918 Mad 763). These decisions are distinguishable. In the instant case we are concerned with a suit and not with a proceeding under Article 226 of the Constitution. The CPC 1908 requires the plaintiff to name the defendant. There is no provision of law which enables a plaintiff to sue a public officer by and under his official title as if, he is a corporation sole. It appears to us that the suit cannot proceed against the Chief Executive Officer or the City Architect as such. In the eye of the law the so-called defendant No. 1 Chief Executive Officer and No. 3 City Architect are not really on the record of the case. Since those defendants are not on the record, the question whether the suit is or is not maintainable against the defendant No. 1 in the absence of a notice u/s 80 of the CPC does not arise. The plaint cannot therefore be rejected on the ground of absence of such notice. If and when the person occupying the office of the Commissioner, Corporation of Calcutta be made a party defendant the question will arise whether he is a public officer within the meaning of Section 2(17) of the CPC and whether the suit is in respect of an act purporting to be done by him considering that the suit challenges an

order passed by his predecessor-in-office. It will be for the Trial Court to decide whether or not the proper persons should now be allowed to be added as defendants and whether or not in their absence the suit can proceed further. 7. In the result, we are bound to hold that the order of rejection of the plaint is erroneous, must be set aside and the suit must be remanded to the Trial Court for disposal according to law. We have at the same time to hold that the names of the defendants Nos. 1 and 3 must be struck off from the cause title of the suit. Mr. Mitter on behalf of the appellants stated that he would, if he is so advised, apply to the Court below for addition of proper parties and for amendment of the plaint, on the other hand, Mr. Banerjee for the respondent contended that the suit is defective for non-joinder of necessary parties and must be dismissed in its entirety. He also contended that the order of temporary injunction passed by the Trial Court has already lapsed or that in the alternative his client should be at liberty, if he is so advised, to apply to the Trial Court for an order vacating the injunction. We can only note these arguments. All the parties will be at liberty to move such applications, and urge such contentions as they may be advised before the Trial Court. In this appeal we cannot express any opinion on the merits of the respective cases of the parties nor on the merits of any application which any party may move in the Trial Court in future.

8. We, therefore, pass the following order:-The appeal be and the same is hereby allowed. The Order No. 59 dated 18th May, 1961, of the Trial Judge rejecting the plaint is set aside, and the suit be and is hereby remanded to the Court of first instance for disposal in accordance with law. We direct further that the names, defendant No. 1 Chief Executive Officer and defendant No. 3 City Architect, Corporation of Calcutta be struck off and deleted from the cause title of the plaint in the suit.

9. In the circumstances of the case, we direct that the appellants do pay to the appearing respondents the costs of the appeal. The costs will be equally divided amongst the two sets of appearing respondents.

10. Considering the urgency of the matter, we direct that the suit be heard as expeditiously as possible.

11. In view of the order passed in the appeal, the connected Rule is discharged. There will be no order as to costs in the Rule.

Chatterjee, J.

12. I agree.