
(1930) 01 BOM CK 0026
In the Bombay High Court
Case No : First Appeal No. 323 of 1926

Ramacharya Govindacharya Kundgol	Vs	APPELLANT
Ramrao Appaji Huddar		RESPONDENT

Date of Decision : 15-01-1930

Acts Referred:

Citation : (1930) 32 BOMLR 900

Hon'ble Judges : Patkar, J; Amberson Marten, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amberson Marten, Kt., C.J.—Now, in the first place, I am far from satisfied that the present suit comes within Section 50 A at all. That section applies to a case where any property is claimed by the Municipality, or by any person as against the Municipality, and then there may be an order by the Collector. But as regards the Municipal notice in question, I do not think that there was any such claim by the Municipality, nor was there any claim by the defendants against the Municipality. It was an ordinary case of a city survey and an enquiry in respect of that.

2. But even if it could be said that the rights of the Municipality would necessarily have to be considered in such an enquiry, for instance, whether any part of a Court-yard had public right over it and so on, yet Sub-section (2), in my opinion, does not relate to a suit as between the rival owners, but to a suit to be brought either by the Municipality" against the owner, or by the owner against the Municipality. The present suit has nothing whatever to do with the Municipality. It is merely between two rival claimants to this particular plot of land. This view of the Act is borne out by the decision of Sir Lallubhai Shah and Mr. Justice Crump in Nathalal v. Nadiad Municipality (1922) 25 Bom. L.R. 58, ILR 47 Bom. 306. There at p. 62, Sir Lallubhai says:-

...the wording of Sub-section (2) of Section 50 A, 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.

3. That being so, on both those two grounds I am of opinion that this section does not apply in the present case.

4. Under these circumstances it follows that in my judgment the appeal ought to be dismissed with costs. Rule discharged with costs in stay application.

Patkar, J.

5. I concur.