
(1986) 11 BOM CK 0028
In the Bombay High Court
Case No : Second Appeal No. 673 of 1979

Ratnagiri Municipal Council	Vs	APPELLANT
J.S. Khanna and Company		RESPONDENT

Date of Decision : 05-11-1986

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 130, 304, 304(1), 6
Specific Relief Act, 1963 — Section 38

Citation : (1987) 2 BomCR 217 : (1987) MhLj 166

Hon'ble Judges : A.D. Tated, J

Bench : Single Bench

Advocate : C.A. Phadkar and S.M. Kazi, for the Appellant;

Final Decision : Allowed

Judgement

A.D. Tated, J.

1 This second appeal is directed against the judgment and decree dated 12th April, 1979 passed by the learned District Judge, Ratnagiri in Civil Appeal No. 77 of 1977 whereby he allowed the appeal against the judgment and decree dated 30th October, 1976 passed by the learned Civil Judge (Senior Division), Ratnagiri, in Regular Civil Suit No. 58 of 1973 whereby he dismissed the respondent-plaintiff's suit for injunction restraining the appellant-defendant from recovering the octroi dues amounting to Rs. 26,457/- as per demand Notice No. 807 dated 21st July, 1974.

2. The Government of Maharashtra wanted to construct the breakwater wall 1,500 feet long at Mirya Bandar at Ratnagiri. In order to execute that work some area from sea was reclaimed. The respondent-plaintiff company took the contract of various items for reclamation of the sea. One of the items was to put boulders in the sea water and another was to construct tetrapods and blocks and put them into sea water for reclamation. The plaintiff-company, in order to carry out the work, brought boulders from outside the limits of the appellant-defendant

Council and put them on the reclaimed portion, and there those boulders were crushed into metal required for constructing tetrapods and blocks. The metal was measured by the officer of the Public Works Department of the defendant-Council and thereafter tetrapods and blocks were constructed by the plaintiff-company and put them into the water. On 5th February, 1973 the defendant-Council issued import Bill No. 15, and subsequently issued demand Notice No. 801 on 21st July, 1973. In the import bill and the demand notice the plaintiff-company was called upon to pay a sum of Rs. 26,436.50 P. and notice fee of 50 Paise on account of octroi for the metal imported for constructing tetrapods and blocks.

3. The case of the respondent-plaintiff company was that the boulders which it had brought into the limit of the appellant-defendant Council were not intended to consume, to use or sell in the limits of the defendant-Council and, therefore, the Council was not entitled to levy octroi on metal or on the boulders. It was also contended by the plaintiff-company that the reclaimed area was outside the limits of the defendant Council, as it was not included in the municipal limits when municipal limits were defined. The plaintiff-company averred that it never imported metal as mentioned in the import bill or the demand notice. It averred that it did not pay octroi and one day before the institution of the suit two trucks bearing Nos. MHT 1087 and MHT 4091 belonging to it were attached by the defendant-Council and were brought to its office unlawfully for recovery of octroi. The plaintiff-company further averred that the aforesaid act of the defendant-Council was not according to law and the bill and the notice issued to it were time-barred and as such the defendant-Council could not claim the time-barred dues from the plaintiff-company. Thus the plaintiff-company submitted that the demand notice was not as required by law and as such the defendant-Council was not entitled to attach the plaintiff-company's property for recovery of the amount demanded by the plaintiff-company from it. On those averments the plaintiff-company claimed an injunction restraining the defendant-Council from recovering the amount of Rs. 26,457/- claimed under the demand notice dated 21st July, 1973.

4. The appellant-defendant Council by its written statement Ex. 27 opposed the respondent-plaintiff company's claim. The defendant-Council submitted that the reclaimed area formed part and parcel of the municipal limits of Ratnagiri town. According to it, the conversion of the boulders into metal was use or consumption, and preparation of tetrapods and blocks was again consumption of metal, and as such import of the boulders for conversion into metal for preparation of tetrapods and blocks was liable to the payment of octroi. The defendant-Council also submitted that it was not necessary to submit a bill u/s 150 of the Maharashtra Municipalities Act, 1965 (hereinafter referred to as "the Act"). According to it, it was sufficient that the bill should be given u/s 138 of the Act. The defendant-Council submitted that as the plaintiff-company failed to pay the amount demanded under the bill, it was entitled to attach the trucks of the plaintiff-company for recovery of the octroi dues. It submitted that the plaintiff-company had undertaken to dispose of the boulders within 12 hours after they

were brought into the municipal limits, but the plaintiff-company did not dispose of those boulders within 12 hours. It also submitted that its claim was within limitation and it was entitled to levy octroi on the boulders imported by the plaintiff-company into the municipal limits and as such the claim of the plaintiff-company for injunction was not tenable.

5. On the above pleadings the learned trial Judge framed necessary issues and after referring them to trial he held that the appellant-defendant Council failed to prove that it was entitled to recover octroi dues on stones and rubles brought by the respondent-plaintiff company into Ratnagiri and that the defendant-Council failed to prove that the reclaimed area where the plaintiff-company used the boulders and metal was within the limits of the defendant-Council. He also found that the bill and the notice issued by the defendant-Council to the plaintiff-Company were barred by limitation. He held that the defendant-Council failed to prove that the plaintiff-company made representations that the stones would be thrown into the sea within 12 hours and fraudulently made use of the stones. He held that the suit was bad for want of notice u/s 304 of the Act. On the above findings he found that the plaintiff-company was not entitled to the injunction sought by it and therefore, he dismissed the suit with costs.

6. Feeling aggrieved with the judgment and decree dismissing the suit passed by the learned trial Judge, the appellant-defendant Council preferred an appeal to the District Court, Ratnagiri which was numbered as Civil Appeal No. 77 of 1977. The learned District Judge who heard the appeal raised only one point for consideration, and it was whether the notice u/s 304 of the Act was necessary, and he answered the point in the negative. In view of his finding that no notice u/s 304 of the Act was necessary, he allowed the appeal and decreed the plaintiff-company's suit with costs.

7. Feeling aggrieved with the judgment and decree passed by the learned District Judge, the defendant-Council preferred Second Appeal No. 673 of 1979. This appeal was heard on 24th March, 1986 by my brother Kantharia J. He by his order dated 24th March, 1986 raised an issue as follows;

"Whether the reclaimed portion of the sea came within the limits of the Municipal Council?"

and remanded that issue to the trial Court for recording its finding on that issue, after hearing the Counsel for both the parties. The learned District Judge heard the Counsel for both the parties on the above issue, and for the reasons recorded by him on 30th June, 1986 he answered the issue in the affirmative.

8. The learned Counsel for the appellant-defendant Council contends that the learned District Judge was not right in finding that notice u/s 304 of the Act was necessary in the present case. According to the learned Counsel, the suits u/s 38 of the Specific Relief Act, 1963, are excluded from the operation of Clauses (a) and (b) of sub-section (1) of section 304 of the Act. According to him, exclusion of such suits from the operation of Clauses (a) and (b) of sub-section (1) of

section 304 of the Act means that in such suits it is not necessary that the suits must be instituted within six months next after the accrual of the cause of action and the suits cannot be instituted until the expiration of one month, after notice in writing has been delivered at the municipal office, as per Clauses (a) and (b) of sub-section (1) of section 304; but at the same time a notice u/s 304(1) of the Act is a must and not suit can be entertained unless notice as per section 304(1) is delivered at the municipal office before institution of the suit. The learned Counsel contends that had the Legislature intended to exclude the suits u/s 38 of the Specific Relief Act totally from the provisions of section 304(1) of the Act, it would have used the expression, "Nothing contained in section 304 (1) would apply to suits u/s 38 of the Specific Relief Act". He submits that as Clauses (a) and (b) alone of sub-section (1) of section 304 are mentioned in sub-clause (iv) it must be construed that the suits u/s 38 of the Specific Relief Act are excluded only from Clauses (a) and (b) of sub-section (1) and not the opening portion of sub-section (1) of section 304. I am unable to agree with the learned Counsel.

9. Section 304 of the Act reads as follows:-

"304(1). No suit shall lie against a Council or against any committee constituted under this Act, or against any officer or servant of a council in respect of any act done in pursuance or executing or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act-

(a) Unless it is commenced within six months next after the accrual of the cause of action; and

(b) until the expiration of one month after notice in writing has been, in the case of a Council or its committee, delivered or left at the municipal office and, in the case of an officer or servant of a Council, delivered to him or left at his office or place of abode; and all such notices shall State with reasonable particularity the causes of action and the name and place of abode of the intending plaintiff and of his Advocate pleader or agent, if any, for the purpose of the suit."

(2) At the trial of any such suit,-

(a) the plaintiff shall not be permitted to adduce evidence relating to any cause of action save such as is set forth in the notice delivered or left by him as aforesaid;

(b) if the suit be for damages and if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered and shall pay all costs incurred by the defendant after such tender."

(3) If the defendant in any such suits in an officer or servant of a Council, payment of any sum or part thereof payable by him or in consequence of the suit may, with the sanction of the Council, be made from the municipal fund."

(4) Nothing in Clauses (a) and (b) of sub-section (1) shall apply to any suit u/s 38 of the Specific Relief Act, 1963, of under sub-section (1) or (2) of section 96 of this Act.

The reading of section 304 of the Act clearly above that Clauses (a) and (b) of sub-section (1) of that section cannot be read separately from the rest of the portion of sub-section (1) of that section. Clauses (a) and (b) have to be read as integral part of sub-section (1) of section 304. Thus on plain reading of the section it is obvious that no notice u/s 304(1) of the Act is necessary for commencing a suit u/s 38 of the Specific Relief Act or under sub-section (1) or (2) of section 96 of the Act. Consequently, I am unable to agree with the learned Counsel for the appellant-defendant Council that notice u/s 304 of the Act was necessary for institution of the present suit and as such since notice was not given, the suit is bad for want of notice u/s 304 of the Act.

10. The next point for consideration is whether the reclaimed area is within the limits of the appellant-defendant Council. The notification issued by the Government of Bombay, General Department No. 3997/33 dated 3rd January, 1941, wherein the municipal limits of the town of Ratnagiri are fixed, is not on record. That notification has been referred to in the letter written by the President of the defendant-Council to the Secretary to the Government of Maharashtra, Urban Development, Public Health and Housing Department, Sachivalaya, Bombay 32. That letter is dated 18th March, 1967 and it is marked Ex. 68. In this letter the municipal limits of Ratnagiri town from the notification referred to above are reproduced, and it has not been disputed before me that there is any mistake in reproducing the municipal limits of Ratnagiri. The western limit is described as "sea". According to the learned Counsel for the appellant-defendant Council, all land under the sea contiguous to the land reclaimed forms part and parcel of the area of Ratnagiri town, as the western boundary of Ratnagiri gets extended to the west and all reclaimed land upto the sea gets included into the limits of Ratnagiri town. According to him, every time the land is reclaimed by human agency or by natural forces, in order to extend the western limit of the defendant-Council. It is not necessary to issue a notification u/s 6 of the Act, and that area automatically forms part of Ratnagiri town, as the western boundary remains the same, that is, the sea. The learned Counsel for the respondent-plaintiff company, on the other hand, contends that the western limit of the Ratnagiri town should be considered the land-line on the west which was existing on the day the notification dated 3rd January, 1941 was issued, and in case the land-line gets further extended to the west by reclamation of the sea, it is necessary to issue further notification u/s 6 of the Act for extending the western limit of defendant-Council. I am unable to agree with the learned Counsel for the respondent-plaintiff company for the simple reason that the western boundary sea remains the same even though the western land-line gets extended towards the west by reclamation, as the western boundary remains the same, that is, the sea. Consequently, agreeing with the learned District Judge, I find that the reclaimed area forms part of the area of the defendant-Council and

it is not necessary to issue further notification u/s 6 of the Act for including the reclaimed land into the area of the defendant-Council.

11. The learned Counsel for the respondent-plaintiff company next contends that the learned trial Judge found that the demand of the appellant-defendant Council for octroi was barred by limitation and therefore, the notice served by the defendant-Council on the plaintiff-company for payment of time-barred dues was bad in law. The learned trial Judge referred to the provisions of section 150 of the Act, and stated that under that section the presentation of a bill for a sum due to Municipal Council should be made with the least practicable delay, and as in the present case the bill was issued on 5th February, 1973 for the amount due for the period from 1st July, 1970 to 31st October, 1972, the claim was barred by limitation. The learned Counsel for the appellant-defendant Council contends that the claim of defendant-Council was u/s 138 of the Act and there is no limitation provided in the Act for the claim under that section. According to him, section 150 falls under Chapter X of the Act which is for the recovery of municipal claims, and that section is not applicable to the recovery of octroi dues u/s 138 of the Act. He submits that the claim was made within the period of three years, which is the ordinary period under the Limitation Act, 1963, for institution of a suit for recovery of municipal dues. He submits that the question of limitation does not arise, as no suit was instituted by the defendant-Council for the recovery of the municipal dues. According to him, the defendant-Council under the Act, has sufficient powers to recover its octroi dues and those powers are found in section 141 of the Act. The learned Counsel for the respondent-plaintiff company has not been able to point out any provision which bars demand for octroi dues after a particular period. Consequently, the finding of the learned trial judge that the claim of the defendant-Council for the octroi dues was barred by limitation cannot be sustained.

12. In the result, the appeal is allowed with costs. The claim of the respondent-plaintiff company is dismissed with costs throughout.