
(2019) 12 BOM CK 0030
In the Bombay High Court
Case No : Second Appeal No. 111 Of 2004

Sau. Smita

APPELLANT

Vs

Sau. Rajani And Anr

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Maharashtra Housing And Area Development Act, 1976 — Section 66, 66(i)(a)(iv), 71, 173, 177

Citation : (2019) 12 BOM CK 0030

Hon'ble Judges : Pushpa V. Ganediwala, J

Bench : Single Bench

Advocate : Radhika Raskar, V.R. Choudhari, H.N. Verma

Final Decision : Allowed

Judgement

1. Heard.

2. In this second appeal, the appellant / defendant No.1 challenged the legality and correctness of the concurrent Judgments and decrees passed by both the courts below. The parties hereinafter are referred to as per their original status before the Trial Court.

3. While admitting this appeal on 01/07/2004, the following substantial question of law was framed.

"Can any construction which is otherwise permissible but is carried out without obtaining prior permission, ipso facto, constitute nuisance or violation of right of privacy of a person who could have otherwise not obstructed such construction ?"

4. This Court vide order dated 1st March 2019 framed the following additional substantial question of law.

"Whether the Civil Court in the present case had jurisdiction to entertain the suit filed by the respondent, in view of the expressed bar of jurisdiction of Civil Courts under Section 71 of the Maharashtra Housing and Area Development Act,

1976 ?"

The facts in brief, which are necessary to decide the present appeal, are as under :-

5. The respondent-plaintiff filed a suit for Mandatory and Prohibitory Injunction vide Regular Civil Suit No.775/1993 before the Court of Civil Judge, Junior Division, Amravati. It is the case of the plaintiff that respondent No.2 - defendant No.2 - The Amravati Housing and Area Development Board (In short "Housing Board") allotted Block No.4/6 on first floor to the plaintiff and Block No.4/2 on ground floor to the defendant no.1 in the building situated at Tope Nagar, Amravati.

6. It is further the case of respondent / plaintiff that appellant/defendant No.1 without any permission of the Housing Board has illegally and unauthorizedly constructed a structure on an open site, which was kept open towards eastern and northern side of her block for the use of occupiers of the building. Due to this illegal construction, it is stated that the right to light and air of the plaintiff's block got affected which constrained the plaintiff to file a suit for mandatory and prohibitory injunction.

7. The defendant No.1 in her written statement resisted the suit and denied all the adverse contention and essentially raised the question of jurisdiction to the Civil Court, in view of bar of jurisdiction under Section 71 read with Section 177 of the Maharashtra Housing and Area Development Act, 1976. (In short, the "said Act").

8. The learned Trial Court on the basis of pleadings of the parties framed necessary issues, recorded evidence and decreed the suit in favour of plaintiff. On issue of jurisdiction, the learned Trial Court held that as dispute is with regard to civil rights between the parties, the Civil Court has jurisdiction to adjudicate the dispute. The learned Trial Court also answered issue with regard to unauthorized construction in favour of the plaintiff.

9. The defendant no. 1 carried the Judgment and decree dated 21/01/1999 of the Trial Court in first appeal bearing R.C.A.No.37/1999 before the Court of District Judge, Amravati. The Joint District Judge, Amravati vide its Judgment and decree dated 21/11/2003, while dismissing the appeal maintained all the findings recorded by the Trial Court. The impugned Judgment and decree of the First Appellate Court is assailed in this second appeal by the defendant no.1.

10. Ms. Radhika Raskar, learned counsel appearing on behalf of appellant-defendant no.1 brought to the notice of this Court various provisions in the said Act and vehemently argued with regard to bar of jurisdiction to the Civil Courts in as much as there are express provisions and remedies available to the members of the Board with regard to any grievance relating to the tenements.

11. Before adverting to discuss the issue of jurisdiction, it would be necessary to reproduce the relevant provisions of the said Act. In the said Act, Chapter VI

deals with the powers of the competent authority to evict persons from authority premises and to recover dues. Relevant Section 66 of the said Act with regard to powers to evict certain persons from Authority premises, is reproduced hereunder.

Section 66: Power to evict certain persons from Authority premises -

1) If the Competent Authority is satisfied -

a) that the person authorised to occupy any Authority premises has -

i) not paid rent or compensation or amount lawfully due from him in respect of such premises for a period of more than two months, or

ii) sub-let, without the previous permission of the Authority, the whole or any part of such premises, or

iii) committed, or is committing any act which is destructive or permanently injurious to such premises, or

iv) made, or is making, material addition to, or alteration in, such premises without the previous permission of the Authority, or

v) other wise acted in contravention of any of the terms, express or implied, under which he is authorised to occupy such premises, or

vi) failed to vacate the premises required by the Authority for the purpose of implementing any plan or project for the sale of tenements and to accept the alternative accommodation offered by the Authority;

b) that any person is an unauthorised occupation of any Authority premises, the Competent Authority may, for reasons to be recorded in writing, by notice served (i) by post, or (ii) affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, other that person, as well as any other person, who may be in occupation of the whole or any part of the premises, to vacate the premises in unauthorised occupation, within 24 hours of the date of service of notice, and in any other case within a period of seven days of the date of such service.

2) Before an order under sub-section (1) is made against any person, the Competent Authority shall issue, in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause within ten days why an order of eviction should not be made.

The notice shall -

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are or may be in occupation of, or claim interest in, the Authority premises, to show cause against

the proposed order, on or before such date as is specified in the notice.

If such persons makes an application to the Competent Authority for the extension of the period specified in the notice, such Authority may grant the same on deposit of one hundred rupees and on such terms as to payment and recovery of the amount claimed in the notice, as such Authority thinks fit.

Any written statement put in by any person and documents produced in pursuance of the notice, shall be filed with the record of the case, and such person shall be entitled to appear before the Competent Authority by advocate, attorney or other legal practitioner.

The notice to be served under this sub-section shall be served in the manner provided for the service of a notice under sub-section (1); and thereupon, the notice shall be deemed to have been duly given to all persons concerned.

3) If any person refuses or fails to comply with an order made under sub-section (1), the Competent Authority may evict that person and any other persons who obstructs him and takes possession of the premises, and may for that purpose use such force as may be necessary.

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12. Section 71 and 177 of the said Act deal with bar of jurisdiction of Civil Courts which read thus :-

Section 71: No civil court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person from any Authority premises under this Chapter, or the recovery of the arrears of rent, compensation, amount or damages for use and occupation of such premises, or in respect of any order made or to be made or any action taken or to be taken by the Competent Authority or the appellate officer in the exercise of any power conferred by or under this Chapter, or to grant any injunction in respect of such order or action.

Section 177: Bar of Jurisdiction.

Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Authority or the Tribunal is empowered by or under this Act, to determine; and no injunction or stay shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred or duty imposed by or under this Act.

13. In the instant case, it is not disputed that both the parties are the members of the Housing Board. It is the grievance of the plaintiff that defendant No.1 without any authority and sanction, made unauthorized construction on the open place which was kept open for the use of occupiers of the building wherein both the parties have been allotted tenements by the Board. As per Section 66 (i)(a) (iv) of the said Act, the competent authority is empowered to evict a person, who is authorized to occupy any tenement and who has made or is making material addition to, or alteration in such premises without the previous permission of the authority. In the instant case, as remedy is already provided in the said Act which is a self-contained Code, and there is express bar as per Section 71 read with Section 173 of the said Act, the Civil Court has no jurisdiction to entertain any suit or proceeding in respect of any matter which the Competent Authority is empowered to take. The plaintiff, in the instant case, instead of approaching the Competent Authority, filed a suit for mandatory and prohibitory injunction before the Civil Court. Both the Courts below, decreed the suit mainly on the ground that civil rights of the plaintiff have been infringed and therefore, he has remedy to approach Civil Courts.

14. There can not be any doubt that the civil courts have jurisdiction to try all suits of civil nature except the suits of which their cognizance is either expressly or impliedly barred. In the instant case, it is not disputed that both the parties have been allotted tenements in the same building by the defendant no.2 - the Housing Board. The rights with regard to the said tenements of both the parties have been emanated from the order of allotment of tenements by the Board and the Competent Authority has been appointed in the said Act to control the illegal and unauthorized acts of the tenement holders and a complete procedure is provided in the said Act as to how to deal with the occupant, if he fails to comply with the order of the competent authority.

15. In such circumstances and in view of express bar provided under Section 71 read with section 173 of the said Act, both the Courts below could not have entertained the jurisdiction which have been conferred upon the Competent Authority and the jurisdiction of the civil courts have been expressly barred.

16. For the forgoing reasons, the substantial question of law at Sr.No.2 is answered accordingly and in view of answer to the question of law at Sr.No.2, there is no need to answer question No.1, being rendered redundant.

17. In these circumstances, appeal needs to be allowed and the Judgments and decrees of both the Courts below, needs to be quashed and set aside and the same is accordingly quashed and set aside and resultantly, the suit R.C.S.No.775/1993 is dismissed.

18. The parties to bear their own costs.

19. In view of Judgment passed above, Civil Application No.2707/2004 stands disposed of accordingly.