
(1996) 01 DEL CK 0047

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 4171 of 1995 and Civil Writ Appeal No. 2224 of 1995

Sector Twenty-one owners Welfare Association (STOWFA)

APPELLANT

Vs

Air Force Naval Housing Board

RESPONDENT

Date of Decision : 08-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226(2)

Citation : (1996) 1 AD 471 : (1997) 65 DLT 81 : (1996) 36 DRJ 304

Hon'ble Judges : R.C. Lahoti, J; Lokeshwar Prasad, J

Bench : Division Bench

Advocate : V.K. Sawhney, A.K. Tiwari, N.N. Agarwal and Kuldeep Pabley, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) The petitioner is a Society registered under the Societies Registration Act, 1860 with Sub-Registrar of Firms Chits & Societies Meerut, since 16th April 1986. Its membership consist of certain flat owners situated within the territorial periphery of Noida (New Okhla Industrial Development Authority), in the State of U. P.

1.1The respondent No.1 - Air Force Naval Housing Board (hereinafter the Board, for short) - is also a Society registered under the Societies Registration Act, 1860 in Delhi.

1.2The respondent No.2 - Noida is a statutory authority constituted u/s 3 of the U.P. Industrial Area Development Act, 1976.

1.3Respondent No.3 - Jalvayu Vihar Sehkari Awas Samiti Ltd. (hereafter the Samiti, for short) - is a Society incorporated, under the provisions of the U.P. Cooperative Societies Act, 1965 and the Rules made thereunder.

(2) The flat owners represented by the petitioner-society have certain grievances

in respect of execution and registration of sale deed-cum-sub lease deed in respect of super structure of residential units and for land underneath the flats. They have filed this petition seeking quashing of annexures P-11, 14 and 15. It appears that the respondents are insisting on execution of the deeds in the prescribed proforma Annexure P-13 and the petitioners are not agreeing unless and until certain clauses are deleted there from.

(3) Annexure P-11 is a circular entitled - "Steps to be taken AFNHB"s allottees of Noida Schemes for execution of sub-lease deed". Annexure P-13 is the proforma of sale deed-cum-sub lease deed. Annexure P- 14 is a letter dated 10.4.95 issued by the respondent No.1 to one of the members of the Society.

(4) According to the petitioner, the Board- respondent No.3, has sponsored the Society-respondent No.4, with a view to create an intermediary and conduit through which funds would be extracted from the flat owners on one pretext or the other. Seeking restraint against some of the activities of the respondents a suit against Registrar Co-operative Societies U.P. and the Society-respondent No.3 has been filed before a Court of Sub-Judge at Ghaziabad, U.P. which is still pending. At one point of time, the petitioner- association had in consultation with the Society- respondent No.3 formulated a Committee which had agreed to go in for registrations under the U.P. ownership of Flats Act, 1975. However, the Society-respondent No.3 did not persuer the matter and Therefore the petitioner had to file a civil writ NO.3968/90 before the High Court of Delhi which was withdrawn because of want of jurisdiction in Delhi High Court.

(5) It is further submitted by the petitioner- Association that the allottees of the flats are being compelled to become members of an illegally formed Society-respondent No.3. Common areas, common facilities and common lands have been handed over to the Society-respondent No.3 albeit without a legal conveyance deed and/or a legal consideration which is all illegal..

(6) A perusal of the several averments made in the petition clearly goes to show that the petitioner- Association is aggrieved by the existence of the Society-respondent No.3 and its acting as someone in between the petitioner and the respondents No.1 and 2. The fact remains that all the grievances raised by the petitioner are an outcome of the flats situated in Noida (U.P.) and the existence of certain laws in the State of Uttar Pradesh which are sought to be implemented and enforced through the respondents. A relief has also been sought for that the sale deed-cum-lease deeds be directed to be registered at Delhi by virtue of the permissible provision incorporated in Section 30(2) of the Indian Registration Act though ordinarily the such deeds are to be registered with the Sub-Registrar or the Registrar having jurisdiction over Noida where the flats are situated. In short, so far as the cause of action is concerned, it wholly arises within the State of U.P. The grievances raised by the petitioner are to be solved by the respondents No.2 and 3, both in the State of U.P. The respondent No.1 having its location at Delhi has been joined merely to confer territorial jurisdiction on the High Court of Delhi though it does not have any direct or substantial role to play excepting that it

makes appearance here and there on the averments made in the petition.

(7) The respondents have raised a preliminary objection to the maintainability of petition in Delhi High Court pleading want of territorial jurisdiction here at .The learned counsel for the parties have been heard on the objection so raised.

(8) Article 226(1) and (2) of the Constitution of India provide as under :-

226.Power of High Courts to issue certain writs.

(1)Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part Iii and for any other purpose.

(2)The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

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IT is pertinent to note that prior to 15th Amendment which had introduced clause 1A in Article 226 of the Constitution, later on renumbered as Clause (2), the situs of the cause of action was immaterial. It was held that the High Court had power to issue writs to any person, authority or government residing or located within the territories in relation to which it exercised jurisdiction. By virtue of Clause Ia, presently clause (2), the power conferred by Clause (1) has become available to high courts exercising jurisdiction in relation to the territories within which the cause of action wholly or any part arises notwithstanding that the seat of the Government or authority or the residence of person against whom writ was sought to be issued was not within those territories.

(9) In Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others, contract work was to be carried out in Gujrat. However, the advertisement inviting tenders was published in newspaper which was read at Calcutta. The contractor submitted the offer from Calcutta and made representations from Calcutta. Dispute having arisen a petition was filed at Calcutta. Their Lordships have held :-

(I)the power conferred by clause (1) of Article 226 can be exercised by the High Court provided the cause of action wholly or any part had arisen within its territorial limits;

(II)merely because the advertisement was read at Calcutta and the contractor

submitted the offer and made representations from Calcutta, they do not constitute "an integral part of the cause of action"; it cannot be said that a part of the cause of action arose within the jurisdiction of Calcutta High Court.

WHETHER a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of averments made in the petition.

(III) that some event, however trivial and unconnected with the cause of action, occurring within the jurisdiction of a Court does not confer jurisdiction on the said court; the litigant carrying the cause before such court makes an abuse of the process of the Court.

(10) In *Bhagat Ram Sharma VS. Union of India & Ors.*, 1988 (Supp.) Scc 30 the petitioner's claim for pension as a member of the State Legislative Assembly under the proviso to sub-section 1 of Section 6-B of the Himachal Pradesh Legislative Assembly (Allowances and Pension of Members) Act, 1971 was disallowed on the ground that no part of the cause of action against the State of Himachal Pradesh arose within the territorial jurisdiction of the High Court of Punjab. The decision was upheld by the Supreme Court.

(11) In *Simplex Castings Ltd (M/s.) Vs. Union of India*, 1995 Jlj 268, the dispute related to the rates of auxiliary duty payable in regard to import of goods into India which enter the country through Vishakhapatnam Port. The exigibility of the tax and the liability for payment were unrelated to the contract between the petitioners on the one hand and their suppliers abroad on the other. A writ petition filed in the State of Madhya Pradesh alleging that the consequences from the imposition of the duty flew at Raipur within the State of M.P. was rejected and the petition was dismissed on the ground of want of territorial jurisdiction in the High Court of Madhya Pradesh as no part of cause of action arose in Raipur.

(12) In *Everest Coal Co.Pvt.Ltd. VS. Coal Controller & Ors.*, 90 Own 438".the Division Bench has held -:

"IN order to maintain a writ application, the petitioner has to establish that within the territorial limit of the Courts jurisdiction prima facie a legal right claimed by him has been either infringed or is threatened to be infringed by the respondents. Such infringement may take place by causing him legal injury or threat thereof. Accordingly, when the impugned act of the respondent takes effect within the territorial jurisdiction of a particular High Court, the Court may entertain the Writ petition of the person aggrieved notwithstanding that the respondents have the offices or residences outside its territorial jurisdiction. An order which has been made by an authority or person at a place beyond the territorial jurisdiction of a particular High Court but is given effect to against the petitioner within the said High Court's jurisdiction gives rise to at least a part of cause of action at the place where it is implemented. When an order becomes effective only when it is communicated or served, the service of the order or receipt of a notice thereof would form part of cause of action for filing a writ petition by the person aggrieved thereby.

FOR the purpose of accrual of cause of action for filing a writ petition, it is also necessary to make a distinction between actual or apprehended injury to the writ petitioner and indirect effect or remote consequences upon him. Obviously, for giving rise to cause of action for filing writ petition what is material is whether or not within the territorial limits of the said High Court, there has been any proximate or direct effect upon the petitioner. Indirect or remote result of the impugned acts of the respondents cannot be pleaded for establishing that cause of action, either whole or in part, had arisen within the territorial limits of a particular High Court."

(13) The law as reflected by the above said decisions is that the emphasis has shifted from the residence or location of the person or authority sought to be proceeded against to the situs of the accrual of cause of action wholly or in part. It is also clear that a trivial or insignificant part of the cause of action arising at a particular place would not be enough to confer writ jurisdiction; it is the cause of action mainly and substantially arising at a place which would be determination factor of territorial jurisdiction. So also it shall have to be kept in view who are the real persons or authorities sought to be proceeded against or against whom the writ to be issued by the Court would run. Joining of proforma or ancillary parties, and certainly not the joining of unnecessary parties, would be relevant for (he purpose of Article 226(1).

(14) Reverting back to the case at hand, it is clear that the cause of action has wholly arisen in Noida within the State of U.P. The principal and substantial grievance of the petitioner association is against the respondents No.2 and 3. The writ to be is sued by the Court shall run against the respondents No.2 and 3 though incidentally, the respondent No.1 may also be required to be bound by the writ. The reverse is not correct. The writ, if any, to be issued by the Court would not serve any purpose if issued against respondent No.1 alone. In the mailer of registration of the sale deed- cum-sub-lease deed merely because a document can be registered at Delhi by virtue of Section 30(2) of the Registration Act, territorial jurisdiction in the Courts at Delhi cannot be inferred. Moreover, the petitioner-association is already having some litigation before the Courts of U.P. and at One point of time the Delhi High Court had declined to entertain the petitioner - association's writ for want of territorial jurisdiction in Delhi.

(15) For all the foregoing reasons, it is held that Delhi High Court does not have territorial jurisdiction to entertain the writ petition. Certainly it will not be a sound exercise of judicial discretion to entertain a writ petition at Delhi merely because the respondent No. 1 has been joined as a party to the petition. The petition is directed to be dismissed for want of territorial jurisdiction in Delhi High Court.