
(2015) 04 CHH CK 0017
In the Chhattisgarh High Court
Case No : Second Appeal No. 192 of 2005

Shyam Kishore Agrawal

APPELLANT

Vs

Commissioner, Nagar Palika Nigam, Raipur

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 100(4)

Citation : (2015) 3 CGLJ 198

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : R.N. Pusty, for the Appellant

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J—This second appeal has been filed by the appellant/plaintiff invoking jurisdiction of this court under Section 100 of C.P.C. by which the plaintiff suit filed for declaration, possession as well as injunction of subject suit land was dismissed by the trial court and duly affirmed by the first appellate court by the impugned judgment and decree dated 28.01.2005. That the plaintiff/appellant instituted a suit for recovery of possession, permanent injunction, declaration and for damages, stating inter-alia that he is owner in possession of subject suit land and defendant/respondent has encroached upon part of suit land owned by him and didn't vacate the same despite receipt of notice served to defendant/respondent under Section 401(1) of Chhattisgarh Municipal Corporation Act, 1956 (hereinafter called as, "Act of 1956") and claimed afore-stated reliefs.

2. The respondent/defendant filed his written statement before the trial court controverting the allegations made in the suit and took specific stand that no notice has been served to the Municipal Corporation, Raipur (for short, Corporation) under Section 401(1) of the Act, 1956 and the notice sent to Commissioner, Municipal Corporation, Raipur is not a valid notice under Section 401(1) of the Act, 1956, and as such, notice served to the Commissioner and

institution of suit against the Commissioner, Municipal Corporation is not maintainable in law and deserves to be dismissed.

3. The trial court, by judgment and decree dated 24.04.2004 held that plaintiffs are the title holder of suit land, but since notice under Section 401(1) of the Act, 1956 has not been served to the Municipal Corporation, Raipur therefore, suit is not maintainable and dismissed the suit.

4. On first appeal being preferred by the plaintiffs, the first appellate court dismissed the first appeal and affirmed the findings of trial court holding that no notice has been served to the Municipal Corporation under Section 401 of the Act, 1956.

5. Against the said judgement and decree of first appellate court, the appellant/plaintiff has filed this Second Appeal under Section 100 of CPC stating inter-alia that this second appeal involves substantial question of law for determination.

6. Shri R.N. Pusty, learned counsel appearing for the appellant/plaintiff would submit that suit was filed against the Commissioner, Municipal Corporation after serving notice under Section 401 of the Act, 1956 to the Commissioner of said Corporation is legal and valid service of notice and as such notice to the Commissioner of said Corporation would be a notice to the Corporation for all practical purpose and as such there is full and sufficient compliance of provisions contained in Section 401 of the Act, 1956. Arguing further, he would submit that suit could be filed against the Commissioner of said Corporation and Section 7(3) of the Act, 1956 would not come in way of the appellant/plaintiff in institution of suit and both the courts below are absolutely unjustified in dismissing the suit holding that no proper and valid notice has been served to the Corporation under Section 401 of the Act, 1956, and the suit as filed against the Commissioner of said Corporation in absence of Corporation as party defendant is in accordance with law and the present appeal involves substantial question of law for determination as provided in Section 100(4) CPC.

7. I have heard the learned counsel appearing for the appellant/plaintiff and perused the original records with utmost circumspection.

8. Section 55 of the Act, 1956 deal with power of Commissioner. Section 400 of Act deals with power of Commissioner to institute legal proceedings and obtain legal advice. Section 401 of the Act, 1956 provides for notice, limitation in suit against Corporation and provides as under:

"401. Notice, limitation and tender of amends in suit against Corporation etc.--
(1) No suit shall be instituted against the Corporation. the Mayor-in-Council or any Corporation Officer or servant, or any person acting under the direction of the Corporation the Mayor- in- Council or any municipal officer or servant, in respect of any act done or purporting to have been done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act or any rule or byelaw made there under

until the expiration of one month next after notice in writing has been delivered or left at the Chief Corporation Officer or at the residence of such officer, standing with adequate particulars:--

(a) the cause of action;

(b) the name and residence of the intending plaintiff and of his advocate, pleader or agent, if any, for the purpose of the suit; and

(c) the relief which he claims."

9. All that this section requires, is that in case, a suit is to be instituted against Corporation or Mayor-in-Council, or any Corporation Officer/or servant. a notice in writing must be delivered or left at the Chief Corporation Office This has to be construed strictly.

10. The question whether service of notice to the Municipal Corporation under Section 401(1) of the Act, 1956 is mandatory before institution of suit stands concluded by decision of Madhya Pradesh High Court. In case of Municipal Corporation Murwara-Katni, Katni Vs. Lalchand Jaiswal, (2000) 2 MPLJ 288 in which it has been held that it is mandatory to serve notice under Section 401 of the Act, 1956 prior to filing of suit, where injunction is sought, suit could not be filed without serving notice under Section 401(1) of the Act, 1956. And principle enunciated therein has been followed by this Court also in M/s. Mangilal Pagariya Builders and Contractors Vs. Nagar Palika Nigam, (2013) 3 CGBCLJ 133 : (2013) 3 CGLJ 65 : (2014) 1 MPJR 65 .

11. The short question that falls for consideration is whether the notice addressed and served to the Commissioner, Municipal Corporation, Raipur, is due and valid notice to the Municipal Corporation, Raipur as required under Section 401(1) of the Act, 1956.

12. At this stage, it would be proper to notice Section 7(1) and 7(3) of the Act, 1956, which read as under:--

"7(1). Constitution of Municipal Corporation-There shall be constituted a Municipal Corporation for a larger urban area in accordance with the provisions of this Act.

xxxx xxxx xxx

7(3). The Corporation shall be a body corporate having perpetual succession and a common seal and shall be the said name sue and be sued."

13. Section 9(1) of the Municipal Corporation Act, 1956 provides for composition of Municipal Corporation which states as under:--

"9. Composition of Municipal Corporation - (1) A Municipal Corporation shall consist of:--

(a) a Mayor, that is Chairperson, elected by direct election from the Municipal

area;

(b) Councillors elected by direct election from the wards;

(c) not more than six persons having special knowledge or experience in the Municipal administration, nominated by the State Government:

Provided that only a person residing within the Municipal area and being otherwise not ineligible for election as a Councillor, may be nominated;

(d) Members of the House of the People and the Members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;

(e) Members of the Council of States registered as electors within the Municipal area;

[Provided that a member of the House of the People and a member of the State Legislative Assembly as mentioned in clause (d) or a member of Council of States, as mentioned in clause (e) may nominate his representative, who possesses such qualifications as may be prescribed in this behalf to attend the meeting of the Corporation.]

14. A close and careful reading of the aforesaid provision makes it transparently clear that the Municipal Corporation incorporated under the Act of 1956 is body corporate having perpetual succession and is separate and distinct entity. The Madhya Pradesh High * Court in Smt. Prabharani Vishwakarma Vs. State of Madhya Pradesh and Others, AIR 1999 MP 223 : (2000) ILR (MP) 716 , while considering Section 18 of the M.P. Municipalities Act, 1961 held that Municipality distinctive juristic personality having separate existence in law by holding as" under:--

"7. Testing on the aforesaid touchstone, it is graphically clear that the Municipality having been incorporated as a body corporate has to have its distinct name and separate legally entity. It is a body corporate for which the name is a sine quo non. The councilors who are elected as members of Municipality are members of a body corporate and their individual identity is merged in the body corporate. Being a body corporate it has to be given the status of distinctive juristic personality having separate existence in law."

15. The question as to whether notice addressed and served to the Municipal Commissioner under Section 401(1) of the Act of 1956 is a valid notice to the Municipal Corporation came up for consideration before the Madhya Pradesh High Court in Putli Bai Vs. Municipal Corp. Gwalior, (1964) JLJ 464 in which it has been held a notice addressed to the "Commissioner" cannot be deemed to be the notice to the Corporation. Relying upon the decision of the Supreme Court in S.N. Dutt Vs. Union of India (UOI), AIR 1961 SC 1449 : (1962) 1 SCR 560 . The Court observed as under:--

"These observations are emphatic and I am bound by them. Following them with

the utmost respect, it must be said that a notice addressed to the "Commissioner" cannot be deemed to be notice to the "Corporation".

16. The principle of law enunciated by Madhya Pradesh High Court in the matter of Putli Bai Vs. Municipal Corp. Gwalior, (1964) J LJ 464 was followed by same Court in Kashiram v. Municipal Council, Mandsour 1966 J LJ (SN) 7 and it was held that, notice served to the Chief Municipal Officer under Section 319 of the Municipalities Act, 1961 and thereafter suit instituted against the Municipal Council on the basis of such notice was not maintainable.

17. Similarly, in the matter of Smt. Prabharani Vishwakarma Vs. State of Madhya Pradesh and Others, AIR 1999 MP 223 : (2000) ILR (MP) 716 it has been held by Madhya Pradesh High Court that the Municipality is a body corporate having its own juristic personality and notice addressed to the Chief Municipal Officer is not a notice to the Municipality. Paragraph 11 of the report states as under:--

"11.In view of the preceding analysis it is amply clear that the Municipality being a body corporate has its own juristic personality, and therefore the requirement of law that President intending to resign has to give a notice in writing to the Municipality, means, it has to be addressed to the Municipality. It may be delivered to the Chief Municipal Officer or any other person who has been authorised to receive it on behalf of the Municipality but the notice has to be addressed to the Municipality not to the Chief Municipal Officer. The Chief Municipal Officer may be the Chief Executive Officer of the Municipality and might have given authority to perform various functions but he cannot be substituted for the Municipality. It has been observed in the case of Laxmi Narayan Dubey (supra) that he has the duty to receive papers for or on behalf of the Municipality. In this regard we may say that the Chief Municipal Officer of the Council might have the authority to receive papers for or on behalf of the Municipal Council but when a notice is to be given in writing to the Municipality, though there is no explicit expression, it has to be addressed to the Municipality. It is inhered in the language employed as it has to be addressed to the Municipality which is a body corporate. In view of the analysis we are of the considered view that the decision rendered in the case of Amrit Chandra Rajpal (supra) and Laxmi Narayan Dubey (supra) do not lay down the correct law to the effect that notice on the Municipal Officer is notice to the Municipality. As the learned single Judge in the instant case has relied on the aforesaid decisions and has arrived at the conclusion that notice on the Chief Municipal Officer has been properly served on the Municipality, we are not able to subscribe to the said view. Resultantly, our view is that the requirement of the statute is that the notice in writing has to be addressed to the Municipality and a notice to the Chief Municipal Officer does not meet the requirement of law."

18. Now reverting back to the facts of present case and by applying the principle of law laid down by the Madhya Pradesh High Court in aforesaid cases Smt. Prabharani Vishwakarma Vs. State of Madhya Pradesh and Others, AIR 1999 MP 223 : (2000) ILR (MP) 716 and Putli Bai Vs. Municipal Corp. Gwalior, (1964) J LJ

464 to the facts of present case, it would appear that notice Ex. P/5 dated 11.02.1998 was addressed and served to the Commissioner, Municipal Corporation, Raipur and thereafter suit was instituted against the Commissioner, Municipal Corporation, Raipur as such no notice was served to the Municipal Corporation before institution of suit as mandatorily required under Section 401(1) of the Act of 1956. Thus the suit filed without serving notice to the Municipal Corporation under the aforesaid provision was clearly not maintainable for want of valid notice in view of law laid down in the aforesaid cases and therefore the Trial Court was absolutely justified in dismissing the suit for want of notice as provided in Section 401(1) of the Act of 1956 and the First Appellate Court is also perfectly justified in affirming the finding of the Trial Court and dismissing the appeal filed by the appellant/plaintiff as such no substantial question of law is involved for determination as required under Section 100(4) of Code of Civil Procedure, 1908.

19. As a fallout and consequence of aforesaid discussion, appeal being devoid of merit is liable to be and are hereby dismissed at admission stage as this second appeal doesn't involve any substantial question of law for determination. Liberty granted by the first appellate court in favour of appellant/plaintiff for proceeding in accordance with law shall remain intact, and as such, no fresh liberty is required. No order as to costs.

*"Court" should be.