
(2011) 03 MAD CK 0351

In the Madras High Court

Case No : C.R.P. (PD) No"s. 2548 and 1380 of 2010 and M.P. No. 1 and 1 of 2010

Tamil Nadu Housing Board

APPELLANT

Vs

Master Crafts

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1)

Citation : (2011) 3 CTC 650

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : P. Wilson, A.A.G. assisted by Adi Narayana Rao, for the Appellant; A. Narajan for A. Madhumathi, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—Civil Revision Petition No. 2548 of 2010 was filed to struck off the suit in O.S. No. 1645 of 2010 on the file of the I Additional Judge, City Civil Court, Chennai.

2. Civil Revision Petition No. 1380 of 2010 was filed challenging the temporary injunction granted in I.A. No. 3014 of 2010 in O.S. No. 1645 of 2010.

3. The suit in O.S. No. 1645 of 2010 was filed by the Respondent/Plaintiff for injunction. The Respondent/Plaintiff has stated that they purchased the suit property from one A. Khader Mohideen under two registered sale deeds dated 17.2.1983 and their vendor purchased the suit property under a registered sale deed dated 30.8.1972 and their vendor and thereafter they are in possession of the suit property and in July 2007, the revision Petitioners disturbed their possession and enjoyment contending that they proposed to acquire the suit property and therefore, the Respondent filed a writ petition in W.P. No. 31534 of 2007 and that petition was dismissed with liberty to approach the civil court and thereafter, the revision Petitioners kept quiet and suddenly on 26.10.2007, the

second revision Petitioner issued an advertisement inviting applications from the public for allotment of HIG houses in the suit property and on the same date, the revision Petitioners and their officials attempted to dispossess the Respondent in an illegal manner and therefore, the Respondent/Plaintiff filed W.P. No. 26067 of 2009 and that petition was dismissed with an observation permitting the Respondent to file a suit within four weeks from the date of receipt of copy of that order and it is for the competent civil court to take that suit on file and decide the same including passing of any interim orders and therefore, the present suit was filed for injunction.

4. Mr. Wilson, learned Additional Advocate General submitted that the suit property was the subject matter of acquisition and award was passed on 1.9.1986 after complying with the formalities prescribed under the Land Acquisition Act and the owners, as per the revenue records, were served with notice and award was passed and once the notification was issued under the Land Acquisition Act, the land vests with the Government and civil Court has no jurisdiction to entertain any suit in respect of those matters and Section 4(1) notification was published on 11.6.1975 and notice was served on the then owner A. Khader Mohideen, the vendor of the Respondent and thereafter, award was passed and hence, the civil court has no jurisdiction. He relied upon the judgments reported in State of Bihar Vs. Dhirendra Kumar and others, , S.P. Subramanya Shetty and others Vs. Karnataka State of Road Transport Corporation and others, , Commissioner, Bangalore Development Authority Vs. K.S. Narayan, and Ganpatibai and Another Vs. State of M.P. and Others, in support of his contention. He, therefore, submitted that as the civil court has no jurisdiction to entertain any suit in respect of lands which are acquired by the Government under the Land Acquisition Act, the present suit is not maintainable.

5. On the other hand, learned Counsel for the Respondent submitted that the plaint has to be considered on the basis of the allegations made in the plaint and the court should not take into consideration the stand of the Defendants or the written statement filed by the Defendants in the suit to decide the merits of the case at the initial stage and it is the specific case of the Respondent/Plaintiff that they are in possession of the property and that possession was sought to be disturbed and as a matter of fact, in the writ petition in W.P. No. 31534 of 2007, this Court has granted liberty to the Respondent to work out their remedies in the manner known to law and in W.P. No. 26067 of 2009 also this Court observed that it is always open to the Respondent herein to work out his remedy in the manner known to law including filing of the suit and therefore, the suit was filed and at the threshold, it cannot be struck off when admittedly, the Respondents are in possession of the suit property. He relied upon the decision reported in C.E. Sulochana v. C.E. Sathyanarayana Reddy (2008) 3 MLJ 371 for the proposition that only the plaint allegations have to be taken into consideration for rejection of the plaint.

6. Heard both the counsel. In this case, the Respondent/Plaintiff filed the suit for

injunction on the basis of possession. Even though they claimed title to the suit property under two sale deeds referred to in the plaint, having regard to the admitted facts as disclosed in the orders passed in the above two writ petitions, it has been made clear that the subject matter of the suit was the subject matter of the land acquisition and the revision Petitioners acquired the land under the Land Acquisition Act by issuing notice and it is seen from the typed set of papers filed by the revision Petitioners.

7. No doubt, while considering the plea of the revision Petitioners, to decide the question as to whether the plaint is liable to be struck down or not, the court has to take into consideration only the plaint allegations. In this case, it is stated in the plaint by the Respondent/Plaintiff that they had already filed two writ petitions and orders were passed. The Respondent/Plaintiff also filed a copy of the order passed in W.P. No. 26067 of 2009 and in that order, the order passed in the earlier writ petition was also incorporated. Therefore, having regard to the facts alleged in the plaint, it is permissible to look into the contention of the revision Petitioner to find out whether the suit is maintainable or not.

8. In W.P. No. 31534 of 2007, the revision Petitioners filed detailed counter stating about the notification issued u/s 4(1) of the Land Acquisition Act and the passing of the award on 1.9.1986 and the taking over of possession by the TNHB and after considering the counter filed by the revision Petitioners in the writ petition, this Court has held that whether the land was acquired in accordance with law or whether the Respondent herein is the absolute owner of the property or not and whether they are in possession of the property are all questions to be decided on evidence and even assuming that the Respondent herein is the absolute owner of the property and is in possession of the same, injunction cannot be granted and permitted the Respondent herein to work out their remedies in the manner known to law. In the second writ petition, the Respondent herein challenged the notification dated 16.10.2009 issued by the second Respondent inviting applications from the public for allotment of HIG houses and this Court has observed in para 6 and 7 as follows:

6. Taking note of the fact that earlier this Court dismissed the claim of the Petitioner on the ground that the Petitioner has not proved his title, this Court cannot interfere with the notification issued by the second Respondent. Therefore, the Petitioner is not entitled for any relief as prayed for.

7. Under such circumstances, the writ petition stands dismissed. However, it is always open to the Petitioner to work out his remedy in the manner known to law including filing of a suit as stated by the learned Counsel for the Petitioner in the affidavit filed in support of the writ petition and if such suit is filed within a period four weeks from the date of receipt of copy of this order, it is for the competent court to take the said suit and decide including any interim order to be passed therein....

9. Therefore, as per the observation of this Court, the earlier writ petition was

dismissed on the ground that the Petitioner has not proved his title and therefore, this Court cannot interfere with the notification, but, however, a liberty was given to work out his remedy in the manner known to law including filing of the suit. In this suit also, the Respondent herein based his cause of action on the basis of the notification issued by the second Petitioner calling for applications for allotment of HIG houses in the suit property. Therefore, even assuming that the suit was filed as per the direction of this Court in W.P. No. 26067 of 2009, the Respondent, without filing a suit for declaration of his title, as held in the above writ petition, cannot file a suit for injunction to protect his possession. When the land was acquired under the Land Acquisition Act by following the procedure, a suit for declaration or for injunction will not lie in a civil court and it has been held in the judgments relied upon by the learned Senior Counsel for the revision Petitioners, as stated above.

10. In a similar circumstance, the Honourable Supreme Court held in the judgment in Commissioner, Bangalore Development Authority Vs. K.S. Narayan, as follows:

The main ground on which the suits were filed was that the notice as required by Section 17(5) of the BDA Act was not served upon the Plaintiffs. The Plaintiffs are claiming title to the property and are seeking the relief of possession on the ground that the notification has been rendered invalid on account of non-service of notice upon them u/s 17(5). The Plaintiffs are clearly assailing the validity of the acquisition proceedings. It is not their case that the land scheduled property is outside the purview of the land regarding which the notification u/s 17 had been issued. The ground for assailing the notification, namely, that notice u/s 17(5) was not served upon the Plaintiffs and its effect could only be examined in a writ petition filed under Article 226 of the Constitution before the High Court and not by the civil court.

11. In the judgment in Tamil Nadu Handloom Weavers' Co-Operative Society v. S.R. Ejaz 2009 (5) CTC 710, the learned Judge of this Court, after quoting various Supreme Court decisions, held that the availability of alternative remedy by filing an application under Order VII Rule 11 is no bar to invoke Article 227 of the Constitution of India, when the abuse of the process of the court is patent and held as follows:

There is no dispute with respect to the legal position that before approaching the High Court in exercise of jurisdiction under Article 227 of the Constitution of India, the parties should avail the alternative remedy. However, in a given case, if the attempt of a party to the litigation was to take undue advantage and the suit was a clear abuse of process of law and that too, in a case in which the very suit itself was filed only to circumvent the order passed by the Supreme Court, this Court was not expected to be a mute spectator without taking steps to correct the jurisdictional error.

The remedy as provided under Order 7, Rule 11 CPC is an effective remedy to

axe the Civil Suit at the threshold in case it satisfied the ingredients of the said provision. The Trial Court was given exclusive jurisdiction to decide the fate of a litigation in its initial stage itself. Therefore, the Trial Court should be apprised of the inherent defects in the plaint and on such appraisal, the Trial Court was obliged to consider the maintainability of the suit. It is true that the jurisdiction of the Trial Court cannot be bypassed in a routine manner. Normally, the parties should be directed to pursue the statutory remedy available to them before availing the constitutional remedy. However, in extraordinary circumstances, when it was demonstrated that there was flagrant violation of the principles of law, or abuse of process of court or the lower court was accused of dereliction of duty of grave nature, the parties would be entitled to invoke the jurisdiction under Article 227 of the Constitution of India.

Because of clever drafting, at times, it would be difficult for the Trial Court to find out the inherent defects in the suit. The provisions as contained in Order 7, Rule 11 CPC was enacted to find out such defects though at a later stage. The Trial Court is within its powers to exercise the jurisdiction under Order 7, Rule 11 CPC at any point of time. Though by-passing the alternative remedy should be in exceptional circumstances only, it cannot be said that the High Court has to maintain silence at all point of time even when it was demonstrated that the Trial Court has committed serious illegality and its order had the effect of flouting the order passed by the Supreme Court.

12. Further, in the judgment reported in Dindigul Pettai Sathangudi Shatriya Nagar Uravinmurai v. Selvaraj 2009 (2) CTC 57, the learned Judge of this Court relied upon the judgment of the Honourable Supreme Court rendered in Maria Soosai and Anr. v. Esakkiammal 1999 (1) LW 727 and also the judgment reported in Seeni @ Sundarammal v. Ramasamy Poosari and Ors. 2001 (1) LW 202 and held that if a party has initiated vexatious and frivolous litigation in order to harass the other party, the court can nip the attempt at the bud itself, irrespective of the stage of such proceedings. Further, in the case of Maria Soosai and Anr. v. Esakkiammal 1999 (1) LW 727, the Honourable Supreme Court has held as follows:

The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material.

...Frivolous or vexatious proceedings may also amount to an abuse of the process of court, especially where the proceedings are absolutely groundless. The Court, then has the power to stop such proceedings summarily and prevent the time of the public and the Court from being wasted. Undoubtedly, it is a matter of the Courts' discretion whether such proceedings should be stopped or not....

13. From the above judgments, it has been made clear that the court should not be used to entertain vexatious suit and it amounts to abuse of process of law and such proceedings must be stopped at the initial stage.

14. Further, in the decisions reported in State of Bihar Vs. Dhirendra Kumar and others, and S.P. Subramanya Shetty and others Vs. Karnataka State of Road Transport Corporation and others, , the Honourable Supreme Court has held that a civil suit in a matter relating to land acquisition is not maintainable and filing of such suits are barred u/s 9 of the Code of Civil Procedure. Therefore, when a suit is barred by virtue of the provisions of the Land Acquisition Act, the Respondent/Plaintiff is not entitled to maintain the suit and it is liable to be struck off and plaint in O.S. No. 1645 of 2010 is struck off.

In the result, Civil Revision Petition No. 2548 of 2010 is allowed. As the suit in O.S. No. 1645 of 2010 is struck off, the temporary injunction granted is vacated. Therefore, Civil Revision Petition No. 1380 of 2010 is also allowed. No costs. The connected miscellaneous petitions are closed.