

(1918) 08 AHC CK 0002
In the Allahabad High Court

The Municipal Board of Benares

APPELLANT

Vs

Gajadhar

RESPONDENT

Date of Decision : 03-08-1918

Acts Referred:

Citation : AIR 1918 All 16 : 47 Ind. Cas. 848

Hon'ble Judges : Henry Richards, C.J;Tudball, J

Bench : Division Bench

Judgement

Henry Richards, C.J.—This appeal arises out of a suit brought by the plaintiff against the Municipal Board. Later on we shall refer to the relief the plaintiff claimed before and after the amendment of the plaint. The dispute between the parties commenced by an application for leave to build or re build a chabutra and saiban. The Municipality refused leave and there were various negotiations between the parties to which it is unnecessary for us to refer, except to say that no final agreement was arrived at between the parties. If a map which is on the record correctly describes the premises, it would appear that the chabutra projects on to a public road. All orders made by the Municipality on these applications for leave to build and re-build are subject to appeal as mentioned in the Municipalities Act of 1916 and they cannot be challenged in any other Court. Accordingly if the plaintiff's cause of action has anything to do with the orders which the Municipality made upon the application of the plaintiff he has no cause of action. It has been suggested on behalf of the plaintiff that the structure is very old Even if this be true, the Municipal Board u/s 211 of the Act have power to require the owner to remove the structure if it overhangs, projects or encroaches on a street or into or upon any drain, sewer or aqueduct therein. The present suit seems to have been founded on a notice which the Municipal Board caused to be served requiring the plaintiff to remove the chabutra. This notice was served on the 17th of June. 1916. Section 326 of the Act provides that no suit shall be instituted against a Board in respect of any act done until after the expiration of two months after the notice prescribed in that section has been served. Now the act of the Municipality which gave rise to the present

cause of action was the notice which they caused to be served in June 1916. Admittedly the notice of action served by the plaintiff was on the 14th of July 1916, and the suit was commenced on the 4th of August of the same year, that is admittedly less than two months after the notice of action had been given. It would seem, therefore, that prima facie the plaintiff's suit was premature. As it originally stood it was clearly a suit for a declaration to establish the plaintiff's title to the land, and ancillary thereto an injunction. In order to avoid the consequence of the want of the prescribed notice under the Act, the plaintiff amended his plaint but only in respect of the relief asked for. His amendment is in reality an amendment in language only not in substance; he still asks for a declaration that the platform and the saiban is ancestral property of the plaintiff and that the plaintiff and his ancestors have been for a long time in possession and occupation thereof, that the Municipal Board has no right to get the same demolished and that according to law the notice issued by the Municipal Board regarding the demolition thereof is in, valid and void, and then he prays that an injunction may be issued. The only exception to the provision requiring notice of action is to be found in Clause 4 of Section 326, which is as follows:-- "Provided that nothing in Sub-section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the commencement of the suit or proceeding. Even after the amendment the suit is not a suit in which the only relief claimed is an injunction. Furthermore, from the very nature of the suit and the allegations made by the plaintiff and defendant respectively, it is absolutely clear that the object of the suit would not be defeated either by the giving of the notice or the postponement of the commencement of the suit. The real substance of the Suit is the title to the land. Even if the Municipal Board had carried out their alleged threat to demolish the building as it stands, it could very easily be restored after the plaintiff had established his title. The total value placed upon the chobutra is the sum of Rs. 25. We think that the decree of the Court of first instance is correct and should be restored. We allow the appeal, set aside the order of the lower Appellate Court and restore the decree of the Court of first instance with costs in both Courts.