

(1977) 08 OHC CK 0036

In the Orissa High Court

Case No : Civil Revision No. 363 of 1976

The Municipal Council

APPELLANT

Vs

Rajani Kanta Padhi

RESPONDENT

Date of Decision : 04-08-1977

Acts Referred:

Orissa Municipal Act, 1950 — Section 402, 9

Citation : (1977) 44 CLT 488

Hon'ble Judges : P.K. Mohanti, J

Bench : Single Bench

Advocate : R.C. Misra and P.N. Misra, for the Appellant; S.K. Patnaik, for A.B. Misra, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanti, J.—The Municipal Council of Berhampur represented by the Executive Officer. Berhampur Municipality brought Title Suit No. 142 of 1975 in the Court of the Munsif. Berhampur against the opposite party for recovery of arrears of house rent for the shop house occupied by the opposite party and for his eviction therefrom. After conclusion of trial the-suit was posted for judgment. The trial Court without pronouncing the judgment passed an order on 30th October, 1976 observing that since the Berhampur Municipality had been superseded u/s 402 of the Orissa Municipal Act and the District Magistrate, Ganjam had been appointed to exercise the powers and to discharge the duties of the Municipal Council and its Chairman, the Municipal council was no more in existence and the suit could not proceed in the name of the Municipal Council without proper amendment. Accordingly the Plaintiff was directed to amend the cause title of the plaint. Aggrieved by this order the Plaintiff has come up in revision.

2. Apparently the learned Munsif has overlooks the provisions of Section 9 of the Orissa Municipal Act which runs as follows:

S. 9. Incorporation of municipality: The councillors of a municipality shall be a body corporate by the name of the municipality by reference to which it is known, shall have perpetual succession and common seal and subject to any restriction and qualification imposed by or under this or any other enactment shall have power to acquire and hold property, both movable and immovable, and subject to any rules prescribed to transfer any such property held by it, to enter into contracts and to do all other things necessary, proper or expedient for the purposes of this Act and may sue and be sued in its corporate name:

It is clear from the aforesaid provision that the Municipal Council is a corporate body and as such it is vested with the capacity of suing and being sued in its corporate name. A body corporate having perpetual succession has a continuous legal identity. The supersession of a municipal council is only a suspension of such body for a limited period. A corporate body must be sued qua a corporate body and no officer of that body can in law be regarded to be representing a corporate body. The vacating of offices of the councillors for the period of supersession does not operate to dissolve the municipal council. The council remains dormant during the period of its supersession and the officer appointed by the State Government exercises all the powers and performs all the duties conferred and imposed by the Act on the council. I am therefore unable to accept the reasoning adopted by the learned Munsif. I hold that the suit in its present form is maintainable.

3. In the result, the civil revision is allowed, the order of the learned Munsif being set aside. Parties to bear their own costs.

Revision allowed.