
(2000) 09 GUJ CK 0095
In the Gujarat High Court
Case No : First Appeal No. 1248 of 1980

V.P. Suratwala

APPELLANT

Vs

Gujarat State Road Transport Corporation

RESPONDENT

Date of Decision : 28-09-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9, 96
Constitution of India, 1950 — Article 14
Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 — Section 16, 2, 2(h), 4, 4(1)

Citation : (2001) 1 GLR 94

Hon'ble Judges : Y.B. Bhatt, J

Bench : Single Bench

Advocate : Shirish Sanjanwala and S.H. Sanjanwala, for the Appellant; Pranav G. Desai, for the Respondent

Final Decision : Allowed

Judgement

Y.B. Bhatt, J.—This is an appeal u/s 96 of C.P.C. at the instance of the original defendants against whom the trial Court has passed a

decree of eviction, a decree in monetary terms payable to the plaintiff by the defendant by way of damages and a further decree as to mesne

profits.

2. The plaintiff, Gujarat State Road Transport Corporation, had filed a suit before a regular Civil Court viz. the Court of Civil Judge (Senior

Division), Valsad in respect of the premises in which the defendant was inducted by the plaintiff, and where the defendant was running a canteen.

The plaintiff had contended that the defendant was a licensee, and that on the date of the expiry of the tenure of the licence they were required to

hand over vacant possession.

3. The defendant resisted the suit by the written statement at Exh.9 and contended that it was not a licensee as alleged by the plaintiff, but was in fact a tenant within the meaning of the Bombay Rent Act. It also resisted the claim for mesne profits, etc.. It also appears that the defendant raised a contention as to the jurisdiction of the Civil Court.

4. On the basis of the pleadings of the parties, the trial Court framed various issues which arose on that account. In this context issue No. 8A is the only issue relevant at this stage. This issue reads as under :

8A. Whether this Court has got no jurisdiction to try this suit in view of Section 16 of Gujarat Public Premises (Eviction of Unauthorised Occupants) Act. 1972?

4.1 This Act is hereinafter referred to as "the Act" or "the said Act".

5. The trial Court decided this issue, in my opinion, in a highly simplistic and casual manner. The trial Court merely observed that the suit was filed

in 1970 (actually it was filed on 9th October 1970), whereas, according to the trial Court, the said Act came into force from 1972. In fact the said

Act is Act No. 12 of 1973 and came into force from 26th June 1973. The trial Court had taken note of the decision of this Court in the case of

Shivublia v. G.S.R.T. Corporation, reported in 1977 GLR 656, which on interpretation of Section 16 of the said Act clearly lays down the

interpretation of the word "entertain" to mean that it would clearly oust the jurisdiction of the civil Courts. The trial Court then noted a decision of

the Division Bench of this Court in the case of Mulsing Dhulaji v. Municipal Corporation of Ahmedabad, reported in 1978 GLR 266, and found

that the latter decision holds that the Act is not retrospective, and would not adversely affect the rights of a plaintiff in respect of a suit which had

already been filed and was pending on the date when the Act came into force. The trial Court, therefore, held that it had jurisdiction to decide the

suit and to pass a decree as prayed for.

5.1 Accordingly, after appreciating the evidence on record, the trial Court found in favour of the plaintiff and passed a decree for eviction against

the defendants.

6. This question of jurisdiction is the crux of the controversy before me in the present appeal.

7. I may clarify that it is not as though other factual aspects are not challenged or that the factual findings recorded by the trial Court on other issues

have been accepted. This observation on my part is merely to indicate that the question of jurisdiction of the trial Court, in the context of Section

16 of the said Act, is the only issue urged and argued before me.

8. Learned Counsel for the respective parties have addressed me at considerable length and have cited extensively from various decisions. In my

opinion, in view of my final conclusion indicated hereinafter, I need not discuss each and every decision cited before me in extensive detail. I shall,

therefore, only refer to the decisions cited before me in the context of the principle or ratio laid down therein, and the interplay of the various

decisions inter se.

9. The first of such decision is a decision of a Single Judge of this Court reported in the case of Shivubha v. G.S.R.T. Corporation, reported in

1977 GLR 656, which on a specific consideration of Section 16 of the said Act, holds that the jurisdiction of the civil Court would be definitely

barred (even in a pending suit), and that this is the intention expressly effected by the statute.

10. As against this, there is a decision of Division Bench of this Court in the case of Mulsing Dhulaji v. Municipal Corporation of Ahmedabad,

reported in 1978 GLR 266, wherein the Division Bench has found that the suits filed prior to the coming into effect of Section 16 of the said Act

(and/or suits pending on that date) are not affected. The jurisdiction of the Civil Courts in respect of such suits would not be barred.

11. What requires to be noted is that the Division Bench in 1978 GLR 266 (supra) refers to a decision of the Supreme Court cited before it viz. in

the case of Hindusthan Commercial Bank Ltd. Vs. Punnu Sahu (Dead) through Legal representatives, . However, with all respect to the Hon"ble

Judges of the Division Bench. I find that their decision stops after merely referring to the said decision. The decision of the Division Bench does not

in any manner cull out or discuss the ratio laid down in Hindusthan Commercial Bank Ltd. Vs. Punnu Sahu (Dead) through Legal representatives, ,

does not discuss or assign any reasons for not applying that ratio, and in fact gives no reason whatsoever for ignoring the said decision completely

after noting the citation.

12. It also requires to be noted that the decision of the Supreme Court in Hindusthan Commercial Bank Ltd. Vs. Punnu Sahu (Dead) through

Legal representatives, is a decision of a two Judges Bench, which follows with approval an earlier decision of a three Judges Bench of the

Supreme Court in the case of Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another, . The Division Bench

decision at (Mulsing Dhulaji v. Muni. Corpn. of Ahmedabad) 1978 GLR 266 fails to take note of the three Judges Bench decision of the Supreme

Court at Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another, .

13. There is yet another decision of the Supreme Court in the case of Shyam Kishore and others Vs. Municipal Corporation of Delhi and another,

, wherein the earliest Supreme Court decision on the issue at Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and

Another, has been carefully considered (at paragraphs 39 and 41).

14. A subsequent decision of a single Judge of this Court in the case of Gujarat State Road Transport Corporation Vs. Vimlaben L. Shah, follows

the decision laid down in 1977 GLR 656, taking the view that Section 16 of the said Act would oust the jurisdiction of a Civil Court even in case

of pending suits. However, this decision does not refer to the earlier Division Bench decision at 7978 GLR 266.

15. There is also a recent decision of the Supreme Court in the case of Martin and Harris Ltd. Vs. With Additional District Judge and Others, ,

which also interprets the word "entertain", in the specific context of a jurisdictional bar created by a statute in respect of a pending proceedings,

and lays down the ratio that such a jurisdictional bar would also apply to the proceedings pending before the concerned forum.

16. The crux of the matter is based upon the fact situation where the suit was filed prior to the coming into effect of the said Act, and the

jurisdictional barrier created by Section 16 of the said Act is sought to be applied to a pending suit. It is in this context that the word "entertain" is

required to be considered.

17. It is in the context of the interpretation of the word "entertain" that the decisions of the Supreme Court at Lakshmi Rattan Engineering Works

Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur and Another, , Hindusthan Commercial

Bank Ltd. Vs. Punnu Sahu (Dead) through Legal

representatives, , Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, are required to be considered, interpreted and applied to the facts of the case.

18. I may also note that the learned Counsel for me respondent has sought to rely upon a decision in the case of Manibai and Another Vs. Raj

Kumar Harpal Deo and Another, , and in the case of Kamruddin v. Husenshah, reported in 1972 GLR 599.

19. The simplest and perhaps over-simplified approach to the interpretation of the word ""entertain"" would be to state that it means to accept or to

receive a plaint, an application or a proceeding. The question is whether such a simplistic approach is in consonance with the legislative intent

expressed in Section 16 of the said Act. There cannot be any doubt that the legislative intent behind Section 16 is to create a jurisdictional bar

against civil Courts in respect of the subject-matter specified in the said section. The question which then arises is as to whether the word

entertain"" would or could or should mean ""proceed to consider on merits"" or to mean ""adjudicate upon"" and/or to mean ""apply the judicial mind

for the purpose of deciding the rights of parties"".

20. I have considered the various decisions cited before me by Counsel for the respective parties as narrated hereinabove. As aforesaid, I do not

propose to discuss each decision in greater detail in view of the opinion expressed by me hereinafter. Suffice it to say that in my opinion the

cumulative effect of the various Supreme Court decisions referred to hereinabove, on the aspect of interpretation of the word ""entertain"", in the

context of a jurisdictional bar created by a statute would mean as under :

(a) ""Entertain"" means not merely filing of a proceeding, or acceptance thereof at the filing stage, but means acceptance of the proceeding for the

purpose of judicial determination upto the stage of final determination.

(b) ""Entertain"" does not mean only the final application of the judicial mind for the purpose of final decision in that proceeding.

(c) ""Entertain"" also means application of the judicial mind at every stage of the proceeding from presentation to final decision.

(d) Thus, it would follow that the moment a statute creates a jurisdictional barrier against a civil Court from ""entertaining"" a suit/proceeding, the

Court loses its jurisdiction to apply its judicial mind any further to that proceeding, with effect from that stage of the proceedings when the bar

against ""entertaining"" comes into force. Thus, such a bar cuts short the pending proceeding at whatever stage it may be pending.

21. In view of the above, I am of the opinion that the decision of the Division Bench reported in 1978 GLR 266 is, in the light of the subsequent

decisions of the Supreme Court, no longer good law.

22. It is, therefore, directed that this appeal be placed before a three Judges Bench of this Court as may be directed by the Hon''ble the Chief

Justice.

23. Order accordingly.

FURTHER ORDER (15-9-2000)

24. At this stage, after the above judgment and order was dictated, but before it could be signed, Mr. Pranav Desai, learned Counsel for the

respondent, submitted that the judgment and order may not be signed as he wishes to make further submissions in the matter. This request is

granted. S. O. to 19th September, 2000.

FURTHER ORDER (21-9-2000)

25. Mr. Pranav Desai, learned Counsel for the respondent-plaintiff, has continued his further submissions, upon which learned Counsel for the

appellant is also heard.

26. It was submitted that so far, the learned Counsel for the parties have addressed the Court on a limited aspect, and that therefore, the attention

of the Court was focussed only upon that limited aspect, viz. the interpretation of the word ""entertain"" in the context of Section 16 of the said Act.

It was submitted that the jurisdictional bar created by Section 16 has been appreciated by this Court on the basis of the submissions made by

learned Counsel, only in the limited context of the interpretation of the word ""entertain"". It was only within this limited ambit and focus, that the

Court may have been persuaded to conclude that the jurisdictional bar may also apply to pending suits, and that such jurisdictional bar would cut

short the pending proceeding at whatever stage it may be pending, when Section 16 of the said Act came into force.

27. However, this is not the end of the matter. Learned Counsel for the

respondent-plaintiff submitted that for the purpose of his submissions which follow, it may be assumed that the jurisdictional bar created by Section 16 would effectively cut across or cut short the pending proceeding at whatever stage it may be pending when Section 16 came into force. However, this aspect, in the submissions made and contentions raised so far only emphasise the time element, and focusses on the point of time or the stage of the proceeding when the jurisdictional bar can be applied or imposed. However, merely on this account, it does not mean that such a bar can be imposed or applied as a universal bar in respect of all suits, and irrespective of other considerations. In this context, it was submitted that the jurisdictional bar, in order to become effective and in order to cut short the pending proceedings, must also comply with the factual conditions stipulated in the said Section. In other words, such a bar can only come into effect, if all the conditions (which pertain to fact situations contemplated by Section 16) are satisfied.

28. For the better appreciation of this contention, a reference to Section 16 would be advantageous. Section 16 of the said Act reads as under :

16. Bar of Jurisdiction :- No Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person on the ground that he is in unauthorised occupation of any public premises or for any other reason specified in sub-section (1) of Section 4, or the recovery of the arrears of rent payable under sub-section (1) of Section 7 or the damages payable under sub-section (2) of that Section or the costs awarded to the State Government or the Corporate authority under sub-Section (5) of Section 9 or any portion of such rent, damages or costs.

On a perusal of the provisions of the said Section it would become apparent that the jurisdictional bar can be invoked and applied, firstly if the suit or proceeding is ""in respect of the eviction of ..."". Thus, it must first be established that the suit or proceeding pertains either to the eviction of a person, or any order directing eviction, or any action threatened for eviction. This condition pertains to the nature and character of the suit to which such a bar can be applied. If the suit or proceeding is not ""in respect of the eviction of ..."", the jurisdictional bar cannot be invoked or applied. Whether the suit in question is on the facts of the case, ""in respect of the eviction of ..."", is a fact situation, which will be discussed hereinafter.

28.1 The second condition imposed by the said Section also pertains to a fact situation. Such a suit or proceeding must pertain to or be in respect of any person "on the ground that he is in unauthorised occupation". This condition implies and presupposes that the jurisdictional bar would come into effect if the suit or proceeding is based "on the ground that he is in unauthorised occupation". Whether the instant suit, on the facts of the case, is a suit for eviction or is in respect of eviction on the ground that the defendant is in unauthorised occupation is a question of fact which will be discussed hereinafter.

28.2 The third condition which is also based upon a fact situation, is that the suit or proceeding must be in respect "of any public premises". Thus, the suit must also be in respect of public premises.

28.3 Further fact situations have been contemplated by Section 16. It also contemplates that a suit should pertain to :

- (i) "any other reason specified in sub-section (1) of Section 4, or
- (ii) the recovery of arrears of rent payable under sub-section (1) of Section 7, or
- (iii) damages payable under sub-section (2) of Section 7, or
- (iv) the costs awarded to the State Government or the corporate authority under sub-section (5) of Section 9, or portion of such rent, damages or costs.

Thus, it is also required to be seen whether the suit pertains to any cause of action or challenge to, or relief sought against, any orders passed u/s 4(1) or Section 7(1) or Section 7(2) or Section 9(5).

29. The nature and character of the suit will therefore, be required to be examined. Only if the nature and character of the suit is within the scope and ambit of the fact situations contemplated by Section 16, can the jurisdictional bar be invoked and applied.

30. With this aim in view the plaint has been carefully examined.

30.1 Firstly, the suit does not in any manner pertain to the eviction of the defendant. The relevant averment in the plaint is that the plaintiff was a licensor, that the defendant was a licensee, the licence agreement (which is part of the plaint) was for a specific tenure and that on the expiry of the tenure the licensor is entitled to enter into possession of the premises, It is for this reason that the plaintiff has not sought for a decree of eviction

against the defendant. The plaintiff has merely sought a declaration that the defendant is a licensee of the plaintiff, and a consequential relief by way

of a permanent prohibitory injunction restraining the defendant from interfering with the possession and user by the plaintiff. It is only by way of an

alternative relief that the plaintiff has sought a decree for possession from the defendant. Only by way of incidental reliefs has the plaintiff sought a

money decree (apparently for damages) and for mesne profits for use and occupation by the defendant after the expiry of the tenure of the licence.

30.2 The plaintiff neither claims nor asserts that the defendant is in "unauthorised occupation". This phrase "unauthorised occupation" is defined in

Section 2(h) of the said Act. Apart from the fact that the plaintiff does not assert the defendant to be in unauthorised occupation, even a reference

to Section 2(h) would show that the plaintiff has not made any averments which would even indicate that this definition of "unauthorised

occupation" would be or should be made applicable to the defendant.

30.3 Section 16, as discussed hereinabove, also contemplates that the suit or proceeding must relate to any "public premises". This phrase has

been defined by Section 2(f) of the said Act. A plain reading of the plaintiff indicates that the plaintiff has neither claimed nor asserted that the

premises which were the subject-matter of the license were in any manner whatsoever "public premises" within the meaning of Section 2(f) of the said

Act.

30.3.1 Further, the nature, character or constitution of the owner of such property is sharply defined by clause (iii) of Section 2(f) of the Act. Only

if the owner of the property satisfies any criterion laid down in Section 2(f)(iii), can its property be said to be "public premises". Admittedly, the

plaintiff Corporation satisfies the criterion pertaining to the nature and character of ownership, and yet, notably has neither asserted nor referred to

this criterion of ownership in the plaintiff for even hinting at the property being in the nature of "public premises".

30.4 A further reference to Section 4(1) of the said Act indicates that if and when the competent officer is satisfied (as regards the fact situation

contemplated by sub-section (1)), the competent authority may issue a show-cause notice as to why an order of eviction should not be made.

Sub-Sees. (2), (3), (4) and (5) of Section 4 are merely procedural which need

not be discussed at this stage. In short, Section 4 is an enabling provision, empowering the competent authority to reach a subjective satisfaction in respect of the fact situation contemplated by sub-section (1), and calling upon the occupant of such premises to show cause as to why an order of eviction should not be passed. When Section 4(1) is seen in the context in which it is referred to in Section 16, it is obvious that the suit must pertain to either the subjective satisfaction of the competent officer recorded u/s 4(1), or must pertain to show-cause notice issued to the occupant on the basis of such subjective satisfaction arrived at by the competent officer. On a plain reading of the plaint in the present suit it becomes obvious, that neither sub-section (1) of Section 4 or any part thereof is either the basis of the suit or in any way connected with the suit. The suit makes no reference whatsoever to the competent officer, or to any subjective satisfaction, or to any show-cause notice either issued or proposed. Thus, the suit falls outside the ambit of Section 4(1).

30.5 When the suit plaint is seen in the context of "recovery of the arrears of rent payable under sub-section (1) of Section 7", once again it is found that the suit does not pertain to any recovery in respect of any arrears of rent alleged or claimed u/s 1(2) of the said Act. A plain reading of Section 7 indicates that action may be taken under the said Section in respect of the public premises, that the action may be taken by the competent authority, by issuing a notice to the person in unauthorised occupation, requiring that person to pay up arrears of rent. This provision pre-supposes an earlier determination of the arrears. Sub-section (2) of Section 7 merely contemplates consequential action in prescribing and demanding damages in respect of such unauthorised occupation. A plain reading of the plaint discloses that there is neither any assertion nor any claim made in the suit in respect of any arrears of rent, nor in respect of any public premises, nor any notice issued by the competent officer requiring the occupant to meet the demand, etc. Thus, the averments and assertions in the plaint are clearly de hors and unconnected with Section 7, sub-sees. (1) and (2).

30.6 Similarly, there is neither any averment nor assertion nor claim made in the suit in respect of "costs awarded to the State Government or the Corporate Authority under, sub-section (5) of Section 9".

30.7 In short, no matter how minutely and carefully we examine the plaint, it is found that on the fact situation, on the averments and assertions

made in the plaint, and the reliefs claimed therein, are clearly de hors :

- (i) any right, power or status conferred by the Act on the plaintiff or the plaintiffs' property;
- (ii) any obligation or liability cast upon the occupant under the Act;
- (iii) any action taken under the Act or threatened to be taken under the Act;
- (iv) any order of any nature or character passed under the Act.

30.8 Furthermore, the suit in question is not based upon any nature or character contemplated by the Act which is claimed or asserted by the

plaintiff. The suit is not based upon any character or status attributed to the defendant under the Act. It is simply a suit by the licensor against the

licensee, and where the plaintiff prays for a declaration that the defendant is a licensee, and on the expiry of the tenure of the licence the plaintiff is

entitled to enter into possession of the premises, and merely by way of consequential relief prays for a permanent prohibitory injunction restraining

the defendant from interfering with the possession of the plaintiff. Even if the alternative prayer for possession is considered as an independent

relief, such relief would only mean that the licensor seeks possession from the licensee. In this limited context this relief can also be interpreted to

be a relief which could be sought by any owner of any property against a trespasser.

31. This plaint and the reliefs sought therein can also be construed to mean the assertion of a contractual right created by the license agreement,

and the relief can be construed to be for the implementation of such right. Obviously, such a suit has not the slightest, or even a nebulous

connection with the nature and character of the suit contemplated by Section 164.

32. Thus, when the nature, character and ambit of the suit is examined, by a detailed interpretation of the plaint in question, it is impossible to hold

that the nature and character of the suit is such which would invite or permit the invocation or application of the jurisdictional bar contemplated by

Section 16.

33. In this specific fact situation, looking to the nature and character of the suit, where no action under the Act has been taken nor threatened,

where no relief under the Act is claimed, where no status is claimed or asserted under the Act, either in respect of the plaintiff nor the defendant,

where no specific character is assigned to the property under the Act, it is not possible to hold that the jurisdictional bar contemplated by Section

16 of the Act would apply to the suit proceedings in question.

34. Thus, even if the jurisdictional bar of Section 16 of the Act could be invoked and applied at any stage of a suit, the bar would be effective only

if the other factual conditions stipulated in Section 16 were satisfied. Since on the facts of the case, Section 16 is held not to be applicable to the

suit in question, the ancillary question as to whether the bar would apply at any stage of the pending proceedings is a question which becomes

academic, and also redundant in the present situation.

34.1 Consequently, the directions given in paras 22 and 23 hereinabove are revoked.

35. Another perspective having a bearing on the controversy in the present matter is also likely to be useful.

35.1 While enacting the said Act (Gujarat Act No. XII of 1973), the State Legislature was acutely conscious of the decision of the Supreme Court

in the case of Northern India Caterers (Private) Ltd. v. State of Punjab, reported in AIR 1961 SC 1581. The Legislature was conscious of the

principles laid down in the said decision which declared Section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act to be

unconstitutional on the ground that it is discriminatory and violative of Article 14 of the Constitution of India. The Legislature was conscious of the

need to avoid this constitutional hurdle, and it was for this reason that the State Legislature enacted Act No. XII of 1973, to replace the Bombay

Government Premises (Eviction) Act, 1955, which was till then applicable to the State of Gujarat. This conscious enactment of Act No. XII of

1973 on the part of the State Legislature is reflected in the statement of objects and reasons (Pan V, Gujarat Government Gazette Extraordinary,

December 14, 1972).

35.2 In the aforesaid context, the decision of the Supreme Court in the case of Northern India Caterers (Private) Ltd. (supra) requires to be

considered.

35.3 This decision, in the main, deals with the constitutional validity of Section 5 of the Punjab Public Premises and Land (Eviction and Rent

Recovery) Act, which does not have any direct bearing on the present controversy. However, the principles upon which the conclusion is based

and the logic and reasoning as explained by the Supreme Court behind the said decision, is instructive.

35.4 This decision of the Supreme Court is by a five Judges Bench, where the majority judgment is delivered by three of the Hon"ble Judges, and

minority opinion by two of the Hon"ble Judges.

35.5 What is relevant and is required to be noted is that the divergence of opinion between the majority and the minority is only as regards the

constitutional validity of Section 5 of the Punjab Act under consideration. What is more pertinent to the present controversy is the common view

expressed both by the majority Judges decision and the minority opinion, The common theme which runs through the observations and the findings

of both judgments is to the effect that the enactment relating to the special rights of the Government and laying down a special procedure under a

special Act for the purpose of dealing with unauthorised occupants in respect of Government property does not in any manner, even impliedly,

repeal or bring an end to, the right to pursue the ordinary remedy under ordinary civil law before a Civil Court of ordinary jurisdiction. The special

rights created by such a special statute are merely supplemental to the ordinary civil right which can be pursued before a Civil Court of ordinary

jurisdiction, and are not substitutive of such ordinary civil right.

35.6 In para 6 of the judgment in the case of Northern India Caterers (Private) Ltd. (supra) (the paragraphs of both the majority and the minority

decision run consecutively), the Supreme Court had occasion to observe as under :

The impugned Act is neither in negative terms nor in such terms which results in negating the right of the Government as a landlord to sue for

eviction under the ordinary law. Nor is it possible to say that the co-existence of the two sets of provisions relating to eviction lead to

inconvenience or absurdity which the legislature would be presumed not to have intended. The impugned Act no doubt deals with the

Government's right to evict the occupants and tenants of public premises. In that sense, it is an Act dealing with a particular subject-matter, but

that fact by itself would not lead to the inference that the legislature intended to take away the Government's right to file a suit for eviction. As the

Reasons and Objects, relied on by the High Court, show the legislature intended to provide an additional remedy to the Government a remedy

which it thought was speedier than the one by way of a suit under the ordinary law of eviction. In our view, there is nothing in the Act to warrant

the conclusion that it impliedly takes away the right of suit by Government or that, therefore, it is substitutive and not supplemental. Nor is it

possible to say that the coexistence of the two remedies would cause such inconvenience or absurdity that the Court would be compelled to infer

that the enactment of the Act resulted in an implied deprivation of the Government's right to sue in the ordinary Courts.

In para 16 of the said decision the Supreme Court observed as under :

The Act does not create a new right of eviction. It creates an additional remedy for a right existing under the general law. It does not repeal the

law giving the remedy of a suit or bar the jurisdiction of Civil Courts to try a suit for eviction. The Government is at liberty to proceed against the

occupant either under the Act or by way of a suit.

In para 22 of the said decision it is observed as under :

22. The Government has the option of proceeding against an unauthorised occupant of public premises either under the Act or by a civil suit. On

the question whether such an option offends Article 14, our decisions upholding the validity of the Revenue Recovery Acts are conclusive. The

Revenue Recovery Acts do not deny the equal protection of the laws because the Government has the free choice of recovering its revenue either

by a suit or by a proceeding under those Acts.

In paragraph 27 of the said judgment it is observed as under :

... He is not denied the equal protection of the laws because the Government has the option of proceeding against him either by a suit or under the

Act.

35.7 Thus, as aforesaid, the special statute viz. Section 5 of the Punjab Act creates a special remedy which is available to the Government, which

may be applied at its option to obtain the eviction of unauthorised occupants on government property, without in any manner adversely affecting

the government's right to approach the Civil Court for relief which may be available to it either under the C.P.C. or any other applicable law.

35.8 The significance and importance of these observations is that merely because there is a special statute to govern special circumstances, which

the Government may resort to at its option does not ipso facto extinguish the ordinary civil right. Thus, these principles must be borne in mind when

it is contended that Section 16 of the Act is a special provision for ousting the jurisdiction of the ordinary Civil Court. In other words, if we bear in

mind the aforesaid principles laid down by the Supreme Court in the case of Northern India Caterers (Private) Ltd. (supra), the jurisdictional bar

sought to be created by Section 16 of the Act must be interpreted in a most stringent manner, and the application of the bar cannot be made on a

casual or liberal interpretation of Section 16 of the Act.

35.9 It is precisely on the applications of these principles that I have interpreted the application of the jurisdictional bar to the facts of the case, and

have interpreted the plaintiff's suit in the context of the plaint as discussed hereinabove.

35.10 In view of the aforesaid discussion, I am of the view that the said Act only creates special rights in favour of the Government and the

specified bodies to resort to this special remedy, without extinguishing the ordinary remedy to resort to a suit before a Civil Court.

36. I, therefore, hold that so far as the plaintiffs suit is concerned, the same would not be hit by the bar of Sec. 16 of the said Act.

***** [Rest of the Judgment is not material for the Reports.] Appeal allowed to be withdrawn.