
(1979) 10 AHC CK 0070
In the Allahabad High Court
Case No : Civil Revision No. 843 of 1978

Vrindaban and Others

APPELLANT

Vs

Gaon Sabha Omri Kalam

RESPONDENT

Date of Decision : 17-10-1979

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1980) AWC 243 : (1980) RD 40

Hon'ble Judges : B.D. Agarwala, J

Bench : Single Bench

Advocate : S.D. Pathak, for the Appellant;

Final Decision : Allowed

Judgement

B.D. Agarwala, J.—This is Defendants' revision filed u/s 115 of the Code of Civil Procedure. The Gaon Sabha, Omri Kalan filed a suit for demolition against the Defendants. A written statement was filed. Amongst several pleas taken in defence, one of the pleas was that the suit was not maintainable as no resolution had been passed by the Land Management Committee authorising filing of the suit as required by paragraph 128 of the U.P. Gaon Sabha Manual. It may at this stage be noted that a plea was also raised that the suit was filed on account of enmity of the Defendants with the Pradhan of the Gaon Sabha.

2. Learned Munsif trying the suit framed issue No. 5 on the question of non-maintainability of the suit on this ground. This issue No. 5 was heard by the learned Munsif as a preliminary issue. He, by his order dated 29th October, 1977 held that the suit was maintainable. It is against this order of the learned Munsif that the present revision has been filed in this Court.

3. I have heard Shri S.D. Pathak, learned Counsel appearing for the Defendant-Applicants. He has submitted that since it had not been proved that there was any resolution passed by the Land Management Committee authorising filing of the suit against the Defendants Applicants, the suit was not maintainable as

provisions of Paragraph 128 of the Gaon Sabha Manual which were mandatory, were not complied with. In support of this submission, he has placed reliance upon the decision of the learned Single Judge of this Court in *Gram Samaj v. Dy. D.C.* 1969 AWR 500.

4. I find force in this submission of learned Counsel. The learned Munsif has committed manifest illegality in the exercise of his jurisdiction while deciding this preliminary issue on the question of maintainability of the suit on the aforesaid ground. Paragraph 128 of the U.P. Gaon Sabha Manual reads thus:

The conduct of Gaon Sabha litigation shall not depend upon the individual discretion of the Chairman of the Land Management Committee, but shall be a matter of a resolution of the Land Management Committee as a whole. In urgent cases, however, the Chairman can take action on his own and seek ratification of the Land Management Committee afterwards by including it in the agenda of the next ensuing meeting.

5. This provision clearly, in my opinion, is mandatory in nature as has also been held in the case of *Gram Samaj v. Dy. D.C.* (Supra). The Land Management Committee consists of many members. Conduct of Gaon Sabha litigation has rightly, in the wisdom of the Legislature, not been left to the sweet discretion of the Chairman of the Committee. There may be many and varied reasons which may in a given case lead or dissuade the Chairman to institute or defend a proceeding against any particular person, though otherwise, looking to the facts of the case, it may be in public interest, namely, in the interest of Gaon Sabha, to institute or defend that litigation. It appears that the Legislature took into account these possible situations and considered it in public interest to introduce the provisions of Chapter VI relating to Gaon Sabha litigation in the U.P. Gaon Sabha Manual.

6. Even the language used in Paragraph 128 of the Manual leads to only one conclusion, namely, that the provisions made therein must be held to be mandatory. There is nothing pointed out to me nor do I find in the context anything to the contrary which may lead me to take a contrary view. I am, therefore, of the opinion that Paragraph 128 of the Gaon Sabha Manual is mandatory.

7. Applying this provision, therefore, the only inference which can be drawn is that if a suit has been filed merely on the discretion of the Chairman, without any resolution having been passed by the Land Management Committee, such a suit is not maintainable. There is only one contingency which is itself taken into account; namely, that in urgent cases the Chairman can take action on his own risk but a further safeguard has been ensured even in this situation, namely, that this action of the Chairman must receive ratification of the Land Management Committee, afterwards, by including this matter specifically in the agenda of the next ensuing meeting of the Committee.

8. In the instant case, we are not concerned with a case of urgency. Such a case

has neither been pleaded nor any mention to this effect has been made in the judgment of the learned Munsif.

9. It has, therefore, next to be seen as to whether the Land Management Committee had passed a resolution in the instant case authorising institution of the suit. It is noteworthy that a specific plea had been taken in the written statement that no such resolution has been passed. In the face of the mandatory provision of Paragraph 128 of the Gaon Sabha Manual as held above, it was clearly the burden of the Plaintiff Gaon Sabha to prove it by leading evidence before the Court that such a resolution had been passed. In fact, copy of such a resolution ought to have been filed by the Plaintiff on its own; but even assuming that this may not be so necessary, but, certainly, once the Defendants had clearly pleaded that there was no such resolution and when that plea had strongly been pressed before the trial court, it was legally incorrect for the trial court to take the view that the burden would be on the Defendants to show that there was no such resolution and then to presume that such a resolution had been passed. The view of the trial court in this regard belies a correct approach in law. No copy of the said resolution was filed on behalf of the Gaon Sabha. Clearly, therefore, it must be held that the Plaintiff Gaon Sabha failed to prove that there was a resolution passed by the Land Management Committee. The view, therefore, of the learned Munsif in this regard is manifestly illegal.

10. The learned Munsif has ultimately held that Sri Hira Prasad had a right to proceed with the suit in view of some authority alleged to have been given in his favour by the Sub Divisional Officer. There appears no provision in the Gaon Sabha Manual which enables the Sub-Divisional Officer to authorise the filing of a suit on behalf of the Gaon Sabha. No such provision has been pointed out by the learned Munsif in his order. Chapter VI of the Manual deals with Gaon Sabha litigation. Clauses (5) and (6) of Paragraph 129 provides for prior permission of Sub Divisional Officer in the matter of entering into any compromise or agreement. Paragraph 131 which refers to Sub Divisional Officer deals with representation of the Committee by Gaon Sabha Panel Lawyers and procedure regarding their consultation and advice etc. This Chapter also, therefore, contains no provision enabling the Sub Divisional Officer to authorise the filing of a suit or other proceeding on behalf of the Gaon Sabha.

11. For reasons stated above, I am unable to uphold the order of the learned Munsif. The suit filed by the Gaon Sabha was not maintainable. This revision is, therefore, liable to be allowed.

12. I, therefore, allow this revision and set aside the order of the learned Munsif, Khalilabad dated 29th October, 1977. The suit of the Plaintiff, hence, stands dismissed as non-maintainable. Since the Gaon Sabha has not contested this revision, I make no order as to costs.