

ORDER BELOW EXH. 1

Defendant moved an application at Exh. 13 by contending that this court is not having jurisdiction to try and entertain the suit in view of section 149 of a Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as 'the Act'). Defendant has contended that plaintiff has challenged notice under section 55 of the said Act. Section 149 of the said Act bars jurisdiction of civil court to try and entertain the suit in respect of order passed under said Act. Defendant has, therefore, prayed to frame preliminary issue of jurisdiction and decide it by postponing other issues.

2] Plaintiffs have filed Say at Exh. 21 and countered the application. It is the contention of the plaintiffs that they have challenged impugned notice on various grounds which are specifically stated in the plaint. Said notice is the abuse of the exercise of the power by the officers of the defendant. Defendant has not acted in conformity with fundamental judicial procedure. It is the contention of plaintiff that civil court has inherent jurisdiction to entertain the suit. The civil court is empowered to decide the issues involved in the present suit. In sum, plaintiffs have contended that civil court has jurisdiction to try and entertain the present suit.

3] After hearing both sides, this court has pleased to frame preliminary issue of jurisdiction. Said issue is reproduced herewith along with finding and reason for the same.

Sr. No.	Issues	Findings
1	Whether this court is having jurisdiction to try and entertain the suit ?	No
2	What order ?	Suit is dismissed.

REASONS

4] Sum and substance of the argument advanced by Shri. S. S. Honrao, appearing on behalf of defendant is that section 149 of the said Act bars the jurisdiction of civil court to entertain an issue challenging the notice or the order under said Act. According to him, order passed by the officers of the Development Authority can not be questioned in the suit. In the said background, he requested to dismiss the suit for want of jurisdiction. To buttress his contentions, he relied on the case of Ulhasnagar Municipal Corporation Vs. Kailash Tikamdas Mulchandani, 2008(3), Bom.Cr. 725 and case of Kalyan Dombivali Municipal Corporation Vs. Prakash Mutha, 2008(3) Bom.Cr. 720.

5] In the first case of Ulhas Nagar(Supra), respondent had filed civil suit challenging the notice under section 52, 53 and 54 of the said act wherein it was contended that he had constructed three storied building without permission. By said notice he was called upon forthwith to stop the erection and also called upon to show cause why construction should not be removed. Petitioner had filed an application under section 9A of the Civil Procedure Code by contending that suit is bared under section 149 of the Act. The trial court has held that civil court has jurisdiction to try the suit. Said order was challenged before Hon'ble High Court in revision. Hon'ble Bombay High Court had considered earlier decisions and ultimately held that issuance of notice can not be questioned in any suit or other legal proceeding. Hon'ble Bombay Court set aside the decision of trial court and ruled that the suit is not maintainable before civil court in view of section 149 of the Act. In the later case of Kalyan Dombivali (supra), Hon'ble Bombay High Court has held that the Act has provided the mechanism for the preparation, publication and sanction of the development plan of any municipal area. The objection regarding the same can be conveniently

raised before the planning authority, the planning committee or the government.

6] Per contra, Shri. A. V. Shingade appearing on behalf of plaintiffs has emphatically submitted that defendant has issued notice to remove the construction. Said notice is issued by the defendant without authority and therefore, it is nullity. Plaintiffs have contended that in such situation, civil court retains jurisdiction to try and entertain the suit. To substantiate his said contentions, he relied on the case of Abdul Karim Ahmed Mansuri Vs. The municipal corporation of greater Mumbai and anr., 2013(6) ALL MR 323, Horil Vs. Keshav and anr., 2012 DGLS(Soft.) 23, The commissioner, Akola Municipal Corporation Vs. Bhalchandra Govind Mahashabde, 2013(5) ALL MR 190 and case of Satish Gaichadran Trivedi Vs. Gopal Ramnarayan Mundada and ors., 2015(4) Bom.Cr 626.

7] In the first case of Abdul Karim (Supra), Hon'ble Bombay High Court has considered the provision of section 433-A of the code. In the said case, reference of the landmark case of Dhulabai Vs. State of Madhya Pradesh AIR 1969, SUPREME COURT 78, has been given. So also, the reference of the case of Commissioner Akola Municipal Corporation (supra) has been give. The law laid down in the said case is that even if the jurisdiction of the civil court is specifically excluded, the civil court shall have jurisdiction to examine into the issues where the provisions of the Act have not been complied with, or statutory tribunal has not acted in conformity with the fundamental judicial procedure. In the case of Satish Trivedi (supra), it is observed by Hon'ble Bombay High Court that if any notice is issued by authority under the Act and a finality is attached to order, then jurisdiction of the civil court will be ousted. But, if the order

impugned is null and void, then jurisdiction of the civil court is not ousted. Civil court can examine whether the notice is null or void.

8] It is not disputed that section 149 of the Act provides that every order passed or directions issued by the State Government, or order passed or notice issued by any Regional Board, planning authority or development authority under the Act shall be final and shall not be questioned in any suit or other legal proceeding. In sum, notice issued or order passed under said Act, if attains finality, can not be questioned before civil court. However, there are some exceptions to the rule which are time and again reiterated by the Hon'ble Supreme Court and Hon'ble Bombay High Court. Where the statute gives a finality to the order of the special tribunal, the civil court jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in the suit. Such provision, however, does not exclude those cases where the provisions of the particular act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principle of judicial procedure. Secondly, where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular act to find out the adequacy or the sufficiency of the remedy provided may be relevant, but it is not decessive to sustain the jurisdiction of the civil court.

9] In the light of aforesaid settled the proposition of the law, it is necessary to turn towards the factual aspect of the present case. In the present case, plaintiffs have come with a case that they are owners of the suit property. They have erected construction admeasuring 1550 sq.ft in the suit property and started hotel business therein by name and style 'Hotel Suruchi Fast Food and Pure Veg.' Said property is assessed by the Pimpri Chinchwad Municipal Corporation for the purpose of taxes. Plaintiffs have

taken electricity connection and other permission for running said business. At about 20 to 25 workers are employed in the said business. In the said background, defendant issued impugned notice dated 09-03-2015 asking the plaintiffs to remove construction within 15 days. According to plaintiffs, said notice is not according to section 55 of the said Act nor defendant is empowered to issue said notice. Hence, plaintiffs have challenged said notice before this court.

10] It can not be disputed that section 55 of Maharashtra Regional Town Planning Act, empowers the development authority to remove temporary construction within 15 days from the receipt of said order. Further said section provides that if concern person does not follow the order then development authority may remove such construction without any further notice. Plaintiffs have also produced impugned notice at Exh. 3/1. Said notice is also showing that by virtue of said notice the defendant asked the plaintiffs to remove the construction within 15 days. In sum, it appears that said notice issued by defendant is according to provisions of section 55 of the said Act.

11] The pleadings of the plaintiff is not at all disclosing any reason as to how impugned notice can be termed as illegal or nullity. Pleadings of the plaintiffs are also silent on the point that as to how defendant authority has not acted in conformity with judicial procedure. While advancing the argument, learned counsel appearing on behalf of plaintiffs submitted that suit property does not come within the jurisdiction of the defendant and therefore, it has no right to issue the notice under section 55 of the said Act. However, defendant has produced copy of award at Exh. 24/1 which is showing that S.No. 4/18 situated at village Thergaon has been acquired by the government. Defendant has also produced the map at Exh. 24/2

showing that suit property comes within the development plan of village Thergaon. In sum, it can not be disputed that suit property comes within the development plan or territorial jurisdiction of defendant planning authority.

12] After having considered the pleadings and law regarding ouster of jurisdiction under section 149 of the Act, it can be inferred that civil court has jurisdiction to try and entertain the suit only in case where statutory authority has not acted in conformity with judicial procedure. In the case in hand, neither pleading nor any other material before the court is indicating that impugned notice was issued without any authority. So also plaintiffs have failed to show that said notice was issued in violation of principle of judicial procedure. In the said background, it can be inferred that said notice has attained the finality. In view of section 149 of the Act, said notice can not be challenged before civil court. In the result, issue is answered in negative and proceed to pass following order.

ORDER

1] Suit is dismissed for want of jurisdiction.

2] No order as to costs.

Sd/-

Date : 19-04-2016

Jaydip J. Mohite

Pune

6th Jt. Civil Judge, Senior Division, Pune

I affirm that the contents of this P.D.F. file order is same work for word as per original order.

Name of Steno : Mrs. Pranjali Bokil
Court Name : Shri. Jaydip J. Mohite
6th Jt. Civil Judge, Sr. Dvn., Pune
Date of PDF : 26/04/2016
Order signed by P.O. On : 19/04/2016
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