

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7260 OF 1996@@
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Shaik China Bakshi ... Appellant (s)

Vs.

Commissioner of Special Officer, Ponnur ... Respondent (s)

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The plaintiff-appellant is the owner of an extent of 4 cents comprised in Survey No. 41/1 and 2 cents in Survey No. 400/6, situated on the northern side of Guntur Bapla Road within the municipal limits of Ponnur. The plaintiff-appellant raised construction on the said plot of land in the year 1964 with the prior approval of the Gram Panchayat. On 13th July, 1976 the defendant-respondent demolished the aforesaid construction without giving any notice to the appellant. It is under such circumstances, on 14th July, 1977 the plaintiff-appellant herein filed a suit for recovery of amount of Rs.19,000/- towards damages against the defendant-respondent for illegal demolition of his godowns. The trial court was, inter alia, of the view that the plaintiff-appellant had no notice from the defendant-respondent before demolition of the godowns, that, the provisions of Section 369 of the Andhra Pradesh Municipality Act, 1965 (hereinafter referred to as 'the Act'), has no application, and as such the suit was brought within time and that the plaintiff-appellant is entitled to compensation under Section 192 of the Act. With these findings, the suit was decreed. On appeal by the defendant-respondent, the learned single Judge of the High Court allowed the appeal and set aside the decree only on the ground that the suit filed by the plaintiff-appellant was beyond the period prescribed under Section 369 of the Act, although the learned Single Judge affirmed the other findings of the trial court. Aggrieved, the plaintiff-appellant preferred a Letters Patent Appeal before the Division Bench of the High Court. However, the same was dismissed. It is against the said judgment, the plaintiff-appellant is in appeal before us.

Learned counsel appearing for the plaintiff-appellant urged that the demolition of two godowns being illegal and ultra vires, the provisions of Section 369 of the Act cannot be pressed into service and, therefore, six months period mandated under Section 369 of the Act is not applicable in the present case. We find substance in the argument. It is not disputed that the construction made by the plaintiff-appellant was on his own land and the same was made after the prior approval of the concerned authority. It is also not disputed that no notice was ever served to the

plaintiff-appellant qua these properties and that notices B-1 and B-2, which are alleged to be the copies of the notices, were meant for some other construction and not to the appellant's construction. In that view of the matter, the demolition of the appellant's godowns was not intended for demolition. Thus, the demolition made by the respondent was neither purporting to exercise power under the provisions of the Act nor in respect of any act done in pursuance of execution of the Act. Learned counsel for the respondent conceded that demolition carried out was under mistaken identity of the premises. Under such circumstances, the provisions of Section 369 of the Act were not attracted and so the suit filed by the appellant was well within the period of limitation.

For the aforesaid reasons, this appeal deserves to be allowed. The judgment under challenge is set aside. The decree of the trial court is restored.

The appeal is allowed. There shall be no order as to costs.

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(V.N. KHARE)

.....J.
(ASHOK BHAN)

NEW DELHI
OCTOBER 31, 2002