

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Pronounced on: 10.02.2011

+ **CS(OS) No. 234/2011**

RAM PRATAP SINGH NAYYAR Plaintiff

- versus -

MUNICIPAL CORPORATION OF DELHI & ANR
.....Defendant

CS(OS) No. 235/2011

JOGINDER KAUR & ANR. Plaintiff

- versus -

MUNICIPAL CORPORATION OF DELHI & ANR
.....Defendant

CS(OS) No. 236/2011

SMT. AMARJEET KAUR Plaintiff

- versus -

MUNICIPAL CORPORATION OF DELHI & ANR
.....Defendant

CS(OS) No. 237/2011

JAGDISH KUMAR BAJAJ Plaintiff

- versus -

MUNICIPAL CORPORATION OF DELHI & ANR
.....Defendant

Advocates who appeared in this case:

For the Plaintiff: Mr. S.N. Gupta
For the Defendant: None.

CORAM:-
HON'BLE MR JUSTICE V.K. JAIN

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in Digest? | No |

V.K. JAIN, J. (ORAL)

1. These four suits are filed against Municipal Corporation of Delhi seeking possession of land, recovery of money and permanent injunction restraining the defendants from constructing drain on the area alleged to be in their unauthorized occupation.

2. The land forming subject matter of Suit No. 234/2011 is underneath built up property measuring 150 sq. yards, bearing No.WZ-403, situated in the area of Khayala Abadi Kanhiya Park alias Chand Nagar, New Delhi. The land forming subject matter of Suit No. 235/2011 is underneath built up property measuring 150 sq. yards, bearing No.WZ-1, Plot No.3, situated Vishnu Garden, New Delhi. The land forming subject matter of Suit No. 236/2011 is underneath built up property measuring 100

sq. yards, bearing No.WZ-412, situated at Chand Nagar, New Delhi. The land forming subject matter of Suit No. 237/2011 is underneath built up property measuring 250 sq. yards, bearing No.WZ-136A/3, situated at Vishnu Garden, New Delhi. Along with the suits applications being IA Nos. 1560/2011, 1564/2011, 1569/2011 and 1573/2011 under Section 80(2) of the Code of Civil Procedure have been filed seeking exemption from serving notice under Section 80 of CPC.

3. Section 478 of MCD Act to the extent it is relevant provides that no suit shall be instituted against the Corporation or against any municipal authority or against any municipal officer or other municipal employee or against any person acting under the order or direction of any municipal authority or any municipal officer or other municipal employee, in respect of any act done, or purporting to have been done, in pursuance of this Act or any rule, regulation or bye-law made thereunder until the expiration of two months after notice in writing has been left at the municipal office and, in the case of such officer, employee or person, unless notice in writing has also been delivered to him or left at his office or place of residence,

and unless such notice states explicitly the cause of action, the nature of the relief sought, the amount of compensation claimed, and the name and place of residence of the intending plaintiff, and unless the plaint contains a statement that such notice has been so left or delivered.

Sub-Section (3) of the above referred Section provides that the provisions of sub-section (1) shall not apply to a suit in which the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the institution of the suit.

4. The provisions of Section 478 of DMC Act are analogous to provisions of Section 53B of Delhi Development Act, which reads as under:-

“(1)No suit shall be instituted against the Authority, or any member thereof, or any of its officers or other employees or any officer or other employee of the Authority in respect of any act done or purporting to have been done in pursuance of this Act or any rule or regulation made there under until the expiry of two months after notice in writing has been, in the case of the Authority, left at its office, and in any other case, delivered to, or left at the office or place of abode of, the person to be sued and unless such notice states explicitly the cause of action, the nature

of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff and unless the plaintiff contains a statement that such notice has been so left or delivered.

(2) No suit such as is described in sub-Section (1) shall, unless it is a suit for recovery of immoveable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.”

5. The provisions of Section 53B of Delhi Development Act came up for consideration before a Division Bench of this Court in **D.C.M. Ltd. vs. Delhi Development Authority** 1995 III AD (Delhi) 952. In that case the suit was for declaration of title as regards immovable property and it was found that a notice as envisaged under Section 53B of Delhi Development Act had not been left or delivered at the office of DDA. It was held that Section 53B of the Delhi Development Act like Section 80 of the Code of Civil Procedure is mandatory and its compliance is imperative. It was further held that a suit not complying with such like provisions cannot be entertained by any Court and if instituted must be rejected under Order 7 Rule 11 of Code of Civil Procedure. In taking this view this Court relied upon the decision of Supreme Court in

Gangappa Gurupadappa Gugwad vs. Rachawwa and Others [1971] 2 SCR 691 and **Bichari Chowdhary vs. State of Bihar** [1984] 3 SCR 309.

Since injunction is not the only relief claimed in the suit, the plaintiff having claimed possession as well as recovery of money, the suit is not saved by sub-section (3) of Section 478 and consequently it is hit by the provisions of sub-section (1) of Section 478 of the DMC Act.

6. There is no provision in DMC Act for any exemption from the requirement of serving notice under sub-section (1) of Section 478 of DMC Act. Section 80(2) of the Code of Civil Procedure, to the extent it is relevant provides that a suit to obtain an urgent or immediate relief against the Government or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1). Since MCD is not Government, the provisions of sub-section (2) of Section 80 of Code of Civil Procedure do not apply to a suit filed against it.

7. This issue came up for consideration before a Division Bench of this Court in **Smt. Prinda Punchi and**

Anr. vs. Municipal Corporation of Delhi and Ors. 2005 IV

AD (Delhi) 639. In that case, an application had been filed by the appellant under Section 80(2) of the Code of Civil Procedure seeking leave to institute the suit without service of statutory notice. Noticing that there is no provision for such a leave under Section 53B of Delhi Development Act, the Court and examining the provisions contained in Section 80(2) of the Code of Civil Procedure, Section 53B of Delhi Development Act and Section 478 of Delhi Municipal Act, the Court inter alia observed as under:-

A bare perusal of the statutory provisions shows that the legislature had carefully worded the statutory provisions keeping in view the spirit, indictment and purpose of the discretion conferred to waive the requirement of the statutory notice. Keeping in view the exigencies of the matter, Section 53B of the Delhi Development Act knows of no exemptions or waiver. The aforesaid provision of section 53B was enacted long after enactment of the provision of sub-section (2) of section 80 of the CPC. The legislature was aware of the said provision of sub-section (2) of section 80 CPC when section 53B of the Delhi Development Act was enacted. Consciously the legislature did not incorporate in section 53B of the Delhi Development Act any exception as that of sub-section (2) of section 80 CPC. therefore, it would not be appropriate to include and add such provision as that of

sub-section (2) of section 80 CPC into the provision of section 53B of the Delhi Development Act. On the contrary the legislature has consciously referred to a suit for declaration of title in Section 53B(2) of the statute. It is settled law that a statute has to be enforced as it exists. No words can be imported into the specific language used by the legislature.

The law of interpretation of statutes clearly provides that there can be no addition or subtraction to the language of a statute when the same is clear and unambiguous. There is no unambiguity or uncertainty in the language of section 53B and, therefore, there is no scope of adding any words to the said existing provision in the statute.

Finding that the appellant was disputing title and therefore had to bring a suit for declaration and there being no provision in Section 53B of Delhi Development Act for leave of the Court to bring a suit without any notice like notice under Section 80(2) of the Code of Civil Procedure, it was held that in a suit seeking a decree for declaration as also mandatory injunction a notice had to be given under Section 80 of Code of Civil Procedure as also under Section 53(B) of Delhi Development Act.

8. Hence, Section 80(2) of Code of Civil Procedure cannot be applied in a suit attracting applicability of Section 478 of DMC Act, 1957 or Section 53B of Delhi Development

Act. In any case it cannot be said that the relief of possession and recovery of money sought by the plaintiff are urgent or immediate reliefs. Hence, sub-section (2) of Section 80 of Code of Civil Procedure in any case is not attracted.

9. Order VIII Rule 11 of the Code of Civil Procedure, to the extent it is relevant, provides that the plaint shall be rejected where the suit appears from the statement in the plaint to be barred by any law. Since the suits are apparently barred by the provisions contained in Section 478(1) of DMC Act, the plaints are rejected under Section 11(d) of the Code of Civil Procedure. The plaintiff in each case shall be at liberty to present a fresh plaint after serving the requisite notice under Section 478(1) of the DMC Act on the defendants. The plaint be accordingly returned to the plaintiff for being presented after serving requisite notice.

(V.K. JAIN)
JUDGE

FEBRUARY 10, 2011

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