

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RFA No.394/2010

% Date of decision : 16th December, 2011

WELL PROTECT MANPOWER SERVICES PVT. LTD. Appellant
Through : Mr. Tarkeshwar Nath and
Mr. Saurabh Kumar Tuteja,
Adv.

versus

COMMISSIONER MUNICIPAL CORPORATION
OF DELHI & ANR. Respondents
Through : Ms. Mansi Gupta, Adv.
for R-1.

**CORAM :-
THE HON'BLE MR. JUSTICE J.R. MIDHA**

JUDGMENT

1. The appellant instituted a suit for recovery of ₹8,59,743/- against the respondent towards the balance amount payable under the three agreements.
2. The learned Trial Court dismissed the suit on the ground that it has been instituted beyond the period of limitation of six months provided in Section 478(2) of the Delhi Municipal Corporation Act, 1957.
3. The appellant has challenged the judgment of the learned Trial Court on the ground that the suit does not fall within the ambit and scope of Section 478 of the Delhi Municipal Corporation Act. It is submitted that the period of limitation for filing of the instant suit is three years under the

Limitation Act. It is submitted that the cause of action for instituting the suit arose in October, 2005 and the suit was instituted within two and a half years of the said cause of action and, therefore, the suit was within the limitation.

4. Section 478(2) of the Delhi Municipal Corporation Act provides for a period of limitation of six months in respect of suits relating to any act done or purported to have been done in pursuance of the Act or under any rule, regulation or bye-law made thereunder. Section 478 of the Delhi Municipal Corporation Act is reproduced hereinbelow:-

“478. Notice to be given of suits. -

(1) 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.

(2) No suit, such as is described in sub-section (1), shall unless it is a suit for the recovery of immovable 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.

(3) Nothing in sub-section (1) shall be deemed to 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.”

5. The learned counsel for the appellant has referred to and relied upon the following three judgments:-

(i) In **Municipal Corporation of Delhi v. Sushila Devi, 1999 (4) SCC 317**, the branch of a dead roadside tree fell down resulting in the death of a person whose legal representatives instituted a suit for recovery of damages against the Municipal Corporation. The Supreme Court rejected the plea of the Municipal Corporation that the suit was barred by limitation provided in Section 478 of the Delhi Municipal Corporation Act. It was held that the suit would be governed by the Limitation Act. The findings of the Supreme Court are as under:-

“6. A bare reading of Section 478(1) shows that its applicability is attracted to a suit filed 'in respect of any act done or purporting to have been done' in pursuance of the Act or Rules, Regulations or Bye-laws made thereunder. The learned counsel for the Corporation submitted that an act includes an omission as well. The Court has found an omission on the part of the Municipal Corporation in discharging its duty to take care and therefore under Sub-section (2) the limitation for filing the suit was six months from the date of accrual of cause of action, i.e., 18th and 19th August, 1964.

7. The contention has to be rejected forthwith. The bundle of facts constituting the cause of action which has accrued to the claimants are -the ownership and possession of the tree vesting in the Corporation, its maintenance by the Corporation, fall of the branch of the tree over the deceased and the death consequent to the injury sustained. **The causa proxima, i.e., the immediate cause of action is the fall of the branch of the tree over the head of the deceased. The fall of the branch of the tree cannot be attributed to any act done or purporting to have been done in pursuance of the Act etc. by the Municipal Corporation or any officer or employee thereof. The liability has arisen and has been sought to be enforced by the claimants under the law of torts. The finding recorded in the suit and in the Letters Patent Appeal is one of negligence on the part of the Municipal Corporation. To such an action Section 478 does not apply at all.** The suit filed within a period of two years from the date of accrual of cause of action was governed by Article 82 of the Limitation Act, 1963 and was well within limitation. The plaintiffs' action was founded in tort. The plaintiffs have not rested their case on any statutory duty on the part of the Corporation and failure or negligence in performing such duty."

(Emphasis Supplied)

(ii) In **M/s Niagra Hotels & Builders (P) Ltd. v. Union of India & Ors., 65 (1997) DLT 826**, a suit for recovery of excess amount of duty on transfer of property was resisted by the Municipal Corporation on the ground that it was filed beyond the period of limitation under Section 478(2) of the Delhi Municipal Corporation Act. It was held that the suit was not in respect of any act done or purported to have been done in pursuance to the provisions of the Act or any rule, regulation

or bye-law made thereunder but was for recovery of excess amount of duty on transfer of property collected by the Municipal Corporation and, therefore, the same would be governed by the normal law of limitation applicable to the filing of such suit which is three years. The relevant findings of this Court are as under:-

“10.2.The above contention of the defendant MCD, in my opinion, is not tenable on the short ground that the limitation of six months, prescribed in Section 478(2) of the Act, is applicable only in respect of those suits which fall within the ambit and scope of Section 478(1) of the Act, namely, filed in respect of any act done, or purported to have been done in pursuance of the Act or any rule, regulation or bye-law made thereunder. The nature of the present suit, filed by the plaintiff, is decidedly not such so as to fall within the ambit and scope of Section 478(1) of the Act because the present suit filed by the plaintiff is for the recovery of the amount which has been charged as duty on transfer of property in excess of the amount payable under the provisions of Section 147(2)(b)(v) of the Act.”

“10.4. A similar question with regard to the scope of Section 478(2) of the Act also came up for consideration of this Court in case *The Municipal Corporation of Delhi v. The Delhi Stock Holders (I & S) Association Limited*, (RSA No. 327D/ 1962 decided on 25.1.72). In the abovesaid case, this Court, relying on the abovesaid decision of the Supreme Court and also on another decision of the Supreme Court in case *Tilok Chand Moti Chand v. H.B. Munshi [(1969) 2 SCR 8241]* has held that in such like cases, not covered within the ambit and scope of Section 478(1) of the Act, the period of limitation for filing the suit would not be governed by the provisions of Section 478(2) of the Act and the period of limitation in such like cases, would be three years as provided under the normal law of limitation governed by the Limitation Act, 1963.

10.5. ***As already stated, the present suit filed by the plaintiff-Company is not in respect of any act done or purported to have been done in pursuance of the provisions of the Act or any rule regulation or bye-law made thereunder, but the same is for the recovery of the excess amount of duty on transfer of property, collected by the defendant MCD and thus, in my opinion, the period of limitation for filing the present suit, in the facts and circumstances of the present case, would not be governed by Sub-section (2) of Section 478 of the Act and the same would governed by the normal law of limitation, applicable to the filing of such like suits, which is three years. ..."***

(Emphasis Supplied)

(iii) In **DTC v. Beant Kaur, 1988 ACJ 463**, this Court held that Section 478 of the Delhi Municipal Corporation Act has no application to a claim for compensation filed under the Motor Vehicles Act. The relevant findings of this Court are as under:-

"(6) ... A notice under Section 478 would be necessary only when an action is questioned under the Act. The accident does not relate to any of the statutory functions of the appellant under the Act and, therefore, in my opinion, a claim petition cannot be dismissed for want of notice under Section 478 of the Delhi Municipal Corporation Act. It is not necessary to serve such a notice before filing a petition under Section 110-A of the Act."

(Emphasis Supplied)

6. The learned counsel for the respondent has referred to and relied upon the judgment of this Court in the case of **Shri G.C. Sharma v. Municipal Corporation of Delhi, ILR**

(1979) 11 Delhi 771. This Court held a suit for recovery of damages arising out of the cancellation of licence of an Architect to be barred by Section 478 of the Delhi Municipal Corporation Act because the licence was cancelled in pursuance of the Act. The findings of this Court are as under:-

“9. The power to grant, suspend and revoke a license is contained in S. 430 of the Act. It provides that license may be granted by the Commissioner or by an officer empowered to grant the same on payment of fees. The Commissioner or the officer by whom the license is granted is also given power to suspend or revoke the license.

10. Was the Corporation in cancelling the license acting or purporting to act in pursuance of the Act? That is the question. The trial judge answered the question in the affirmative, and I think that he was right in so doing.

11. The words "in respect of any act done, or purporting to have been done, in pursuance of this Act" are of capital significance. These words are wider than words such as 'done or intended to be done' used in other enactments. The words "act done or purporting to have been done" are the most comprehensive words. The word "purporting" covers a profession by acts or by word or by appearance of what is true as well as what is not true. (Koti Reddi v. Subbian, AIR 1918 Mad. (FB) 62.”

“23. These are words of great weight and authority. They directly apply to this case. **The test, therefore, is : Was the act done in statutory capacity or private capacity? Or to put it in other words : Has the act been performed under colour of a statutory duty ? (Secy. of State v. Lodna Colliery, AIR 1936 Pat. 513 (517) (11). If it is done or is professed to be done in pursuance of the enactment the statute will afford the protection.** As Mahajan J.

tersely put it, "It is not necessary that the act should be directly justifiable under the enactment, as this would reduce the protection to a mere nullity." (Mohd. Sadaat Ali v. Administrator, Corporation of City of Lahore, AIR 1945 Lahore 324 (330) (FB) (12). A person acting under statutory powers may erroneously exceed the powers given by a statute yet he is acting or purporting to act in pursuance of the statute. (Halsbury 3rd (Simond's) ed. Vol. 24 Para 340 p. 188). In strictness, anything not authorised by a statute cannot be in "pursuance" of it, whilst if authorised it would need no other protection. But the statute affords protection even when an actionable wrong has been committed. Such is the significance of the word 'purporting' used in the section. The ordinary right of the subject to his remedy is cut down by stringent provisions as to time and notice of action.

24. The object of such a provision as S. 438 is to afford protection to persons acting in pursuance of the enactment against belated claims. A short period of limitation is, therefore, provided. The protection afforded by s. 478 is not an absolute protection. It does not bar suits, but only requires that they must be brought within six months. Its effect is to limit, as against the general public and in favor of certain persons, the period for bringing actions already fixed by the law of limitation. It is a restriction of the ordinary right of the subject."

(Emphasis Supplied)

7. The principles laid down by the Courts in the aforesaid judgments are summarised as under:-

Section 478(2) of the Delhi Municipal Corporation Act provides for a limitation of six months in respect of any act done or purported to have been done in pursuance of the provisions of the Act or any rule, regulation or bye-law made thereunder. The test to be applied for such determination is:

Whether the act was done in statutory capacity or has the act been performed under the colour of statutory duty? Section 478(2) shall apply, if the act is done or purported to have been done in pursuance of the provisions of the Act or any rule, regulation or bye-law made thereunder.

8. In the present case, the appellant had three agreements with the respondents for watch and ward (security) of the properties of the corporation. The respondent made the payment of ₹23,10,711/- to the appellant after deducting ₹8,59,743/- towards the loss on account of the theft in the properties. The respondent has made deduction of ₹8,59,743/- under the agreements and not in pursuance of the Act or under any rule, regulation or bye-law made thereunder. The rights and obligations of the parties shall be governed by the agreements between them. The deduction has not been done in statutory capacity or under the colour of a statutory duty. Section 42(w) read with Section 201 would not make the acts done by the respondent under the agreements to be statutory. As held by the Supreme Court in **MCD v. Sushila Devi** (supra), the causa proxima i.e. immediate cause of action is the deduction on account of the loss suffered by the Municipal Corporation due to the theft. The deduction cannot be attributed to any act done or purporting to have been done in

pursuance of the Act or any rule, regulation or bye-law made thereunder. The findings of the learned Trial Court are contrary to the well settled principles laid down by the Supreme Court in the case of **MCD v. Sushila Devi** (supra).

9. In the facts and circumstances of this case, the appeal is allowed and the judgment of the learned Trial Court is set aside. Since the learned Trial Court has dismissed the suit on the ground of limitation and has not given any finding on merits, the case is remanded back to the learned Trial Court for fresh decision on merits.

10. Both the parties shall appear before the learned Trial Court on 6th January, 2012 when the learned Trial Court shall fix the date for hearing both the parties on merits. The LCR be returned back forthwith.

J.R. MIDHA, J

DECEMBER 16, 2011

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