

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Civil Revision Application No. 249 of 2015

Municipal Corporation of City of Jalgaon
Sardar Vallabbhai Patel Tower,
Navi Peth, Jalgaon, District Jalgaon
Through its Deputy Commissioner
Pradeep Ganpatrao JJagtal,
Age 37 year, Occupation : Service
R/o Jalgaon City Municipal Corporation
Jalgaon, Taluka & District Jalgaon. .. **Petitioner.**

Versus

Arjundas Khushiram Bajaj
Deceased, through legal heir
Shankarlal Arjundas Bajaj (Hemnani)
Age 49 years,
Occupation Trader,
R/o 74, Sant Hardasram Housing
Society, Ganeshnagar,
Jalgaon - 425 002. .. **Respondent.**

Shri. Pradip R. Patil, Advocate, for petitioner.

Shri. S.B. Yawalkar, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 11th DECEMBER 2015

JUDGMENT:

1) Rule. Rule made returnable forthwith. By consent heard both sides for final disposal.

2) The proceeding is filed by the Jalgaon Municipal Corporation to challenge the order made by the learned Civil Judge, Senior Division, Jalgaon on application filed under Order 7 Rule 11 of the Civil Procedure Code by the present petitioner. The suit is filed by present respondent and he opposed the application. The Civil Court has rejected the application.

3) Present respondent is occupying one shop premises belonging to the petitioner - Corporation. The period of lease is over and so a show cause notice is issued against the respondent by the Corporation as provided under section 81-B of the Maharashtra Municipal Corporations Act (hereinafter referred to as "the Act"). After receipt of this notice, present respondent filed application before Collector by mentioning that he was filing application under section 80(1) of the Act and he requested the Collector to declare him as a tenant under the provisions of the Maharashtra Rent Control Act, 1999. After hearing both sides, the Collector rejected the application and held that there was no such power with the Collector under section 80 of the Act. Then Regular

Civil Suit No.330 of 2013 came to be filed. Present respondent has claimed following reliefs in the said suit :-

(1) to set aside the aforesaid order made by the Collector;

(2) to give declaration that provision of section 81-B of the Act are not applicable against him;

(3) to give declaration that he is a tenant under the Maharashtra Rent Control Act 1999 and he is holding over the possession after expiry of the period of lease. He also prayed for declaration that his possession is legal. He has prayed for relief of injunction to protect his possession over the shop.

4) In the application filed at Exhibit 17 the Corporation contended that in view of the scheme of the Act, the Court has no jurisdiction.

5) The learned Civil Judge Senior Division has rejected the application by holding that the Civil Court has jurisdiction to grant aforesaid reliefs.

6) The learned counsel for the petitioner Corporation submitted that the application under section 80 of the Act in the present matter itself was not tenable. There is force in this submission. The provision of section 80(1) of the Act runs as under :-

"80 Decision of claims to property by or against the Corporation. (1) Where any immovable property or any right in or over any such property is claimed by or on behalf of the Corporation, or by any person as against the Corporation, it shall be lawful for the Collector after formal inquiry, of which due notice has been given, to pass an order deciding the claim."

7) This provision is independent of the provision of Chapter VIII-A of the Act. Chapter VIII-A gives power to the Corporation to evict person from Corporation premises. Admittedly, the premises in possession of the plaintiff, present respondent, belongs to the Corporation and so provision of Chapter VIII-A are applicable. The provision of section 80(1) is in respect of that immovable property of which the ownership of the Corporation is disputed by a person and there is dispute over the ownership. The inquiry under section 80 of the Act is like the inquiry made in respect of unclaimed properties. In that case, the dispute needs to be taken before the Collector. Section 80(2) shows that if any party to such proceeding is aggrieved by the order made by the Collector under section 80(1) of the Act he/it needs to file a suit in competent Civil Court to set aside such order. He can claim relief in the said suit which he or it were

claiming in the proceeding filed before the Collector. Thus, the purpose behind the provision of section 80 of the Act is totally different. It is clear that present respondent, plaintiff, has tried to use this proceeding to take the matter to Civil Court when Civil Court has apparently no jurisdiction to entertain the real dispute.

8) The learned counsel for the Corporation took this Court through provisions of sections 81-B, 81-E, 81-G and 81-H. These provisions together give a scheme in itself. Provision of section 81-B shows that if a lessee commits default in making payment of rent, this provision can be used. It shows that if a person is in unauthorized occupation of any Corporation premises, this provision can be used. There are some other grounds also mentioned in section 81-B of the Act. Detail inquiry is provided in the scheme and the scheme shows that Commissioner holding such inquiry has the same power as are vested in Civil Court under the Code of Civil Procedure 1908 when trying suit for the three purposes mentioned in section 81-E. Thus in the inquiry, the Commissioner is expected to consider the record

produced by both the sides, take evidence on oath of the parties and witnesses and then decide about the rights of the parties. Section 81-F of the Act shows that against this decision of Commissioner, appeal lies before the District Judge. If such appeal is not preferred then in view of the provision of section 81-G the order made by the Commissioner becomes final and if appeal is preferred the order made by the Appellate authority becomes final. It is specifically provided under section 81-G that such order of the Commission or order of the Appellate Authority cannot be called in question in any suit, application or execution proceeding.

9) The provision of Section 81-H of the Act is also important and it runs as under :-

"81-H Bar of jurisdiction : Subject to the provisions of this Chapter, no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person from any Corporation premises on any of the grounds specified in section 81-B or the recovery of the arrears of rent or the damages payable for use or occupation of such premises."

10) This provision shows that the decision given under the scheme cannot be challenged in Civil Court.

These provisions are sufficient to hold, in view of the facts and circumstances of the present case, that the matter falls under these provisions. Admittedly only show cause notice was given under section 81-B of the Act and then the aforesaid step was taken by the present respondent. This conduct itself shows that the plaintiff, respondent is attempting to protract the things.

11) The learned counsel for the petitioner placed reliance on the case reported as **(2004) 9 SCC 772 (Bharat Petroleum Corporation Ltd. v. P. Kesavan)**. In this case the Apex Court has laid down that when there is special enactment made in respect of some subject matter, provision of the special enactment over rides general law. There cannot be dispute over this proposition. The aforesaid provisions of the Act show that it is special scheme created under the special law for the properties belonging to Corporation.

12) Learned counsel for the Corporation placed reliance on another case reported as **1999 Bom.C.R. 145 (Ulhasnagar Municipal Corporation v. M/s Gulshan**

Contractors). In this case, this Court at Principal Seat has laid down that jurisdiction of civil court to entertain any suit or proceeding in respect of the eviction of any person from Corporation premises under section 81-B is barred. One more case was cited on this point which is reported as **2013 (3) Bom.C.R. 297** of this Court (between **Ramchandra Jivatram Chetwani** and **Pune Municipal Corporation**). In this case also this Court has laid down that when period of lease expires, possession of the person in whose favour the lease was made needs to be treated as unauthorized and illegal possession and the provisions of the Act need to be used. There cannot be any dispute over the propositions made in the aforesaid reported cases.

13) On the other hand, the learned counsel for present respondent, plaintiff, placed reliance on a case reported as **AIR 2004 SC 1801 (Sopan Sable v. Assistant Charity Commissioner)**. In this case in a suit, different reliefs were claimed and the main relief was regarding continuation of tenancy under the trust. Other reliefs were regarding inquiry into affairs of the trust. In view of these

circumstances, the Apex Court held that question of tenancy or right to tenancy could have been decided by Civil Court though the other disputes could not have been considered. It is further laid down that in such a case entire plaint cannot be rejected and so the proceeding can go on in respect of matter regarding which the Civil Court has jurisdiction. There cannot be any dispute over this proposition. Present matter is of different nature and the relevant provisions and the law developed is already discussed. Another case reported as **2013(6) ALL MR 251 (Rite Choice Trading Company v. Vikram Govind Rao)** was cited. While considering provision of section 9-A of the Civil Procedure Code, this Court made observations that averments made in the plaint like cause of action and the relief sought must be considered in its entirety. There cannot be dispute over this proposition. In another case reported as **2014 (1) All MR 684 (Shree Hanuman Mandir v. Satishchandra Bhalchandra Gurjar)** this Court observed that the suit was filed for title to the suit property and it can be decided by the Civil Court and it was not regarding administration, the management of the trust and so the jurisdiction was not barred. In that matter

also some reliefs were of the nature which were touching the management of the trust.

14) The learned counsel for the respondent placed reliance on a case reported as **AIR 1969 SC 78 (Dhulabhai vs. State of M.P.)**. In this case the Apex Court has laid down principles regarding exclusion of jurisdiction of civil Court as under :-

“(1) Where the statute gives a finality to the orders of the special tribunals, the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil court would normally do in a 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 principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion, the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected, a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant inquiry.

(7) An exclusion of jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.”

15) There cannot be dispute over the propositions made by the Apex Court in the case cited supra. The first principle itself shows when finality is given to the order made by the Special Tribunal, civil Court's jurisdiction must be held to be excluded. If provisions of the Act are not complied with or the Tribunal has not acted in conformity with the fundamental principles of judicial

procedure then Civil Court can step in. There is no such case and at present there is only show cause notice. The other principles show that if there are adequate and sufficient remedies provided under the scheme and rights and liabilities can be determined like by the tribunals then there is no jurisdiction to Civil Court. Thus as per the principles laid down by the Apex Court also the suit is not tenable.

16) It appears that in the aforesaid suit, application is also filed for relief of temporary injunction to prevent the Corporation from taking possession. This application also shows that the plaintiff, present respondent wants to give go by to the procedure established by law. That cannot be allowed. It is clear that the Civil Court has committed error in making aforesaid order. Further the learned counsel for the petitioner drew attention of this Court to the provision of section 3 of the Maharashtra Rent Control Act 1999 which has made clear that the Maharashtra Rent Control Act shall not apply to the property belonging to the local body. In view of this provision of law also the Civil Court cannot give the reliefs

claimed in the suit and so the jurisdiction is barred.

17) In the result, the order made by the learned Civil Judge, Senior Division, Jalgaon is hereby set aside. The application filed by the Corporation under Order 7 Rule 11 of the Civil Procedure Code is allowed. The plaint stands rejected. Rule is made absolute in aforesaid terms.

Sd/-
(T.V. NALAWADE, J.)

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