

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO. 67 OF 2014**

Maya Shrikant Sawant Dessai

49 years of age,

Daughter of Babani Dessai

Resident of H. No.1130,

Ghotmarad, Kakoda,

P. O. Curchorem Goa.

..... Appellant

V e r s u s

1. The Chief Secretary

Government of Goa,

Secretariat, Porvorim-Goa.

2. The Executive Engineer,

Works Division XIV,

W.R.D., Gogol,

Margao Goa.

..... Respondents

Mr. A. D. Bhobe, Advocate for the Appellant.

Mr. E. Afonso, Government Advocate for the Respondents.

CORAM: N. M. JAMDAR, J.

DATE: 25 FEBRUARY, 2015.

ORAL JUDGMENT:

Admit. Taken up for final disposal by consent.

2. Calling for record and proceedings is dispensed with in view of the nature of the order impugned.

3. By this appeal, the Appellant challenges the order

dated 21 July, 2014 passed by the District Judge, South Goa, Margao, allowing the application filed by the respondents for rejection of the plaint filed by the Appellant.

4. The Appellant has filed a suit contending that she is the one of the registered farmers in the command area of Seraulim Irrigation Project (SIP). It was the case of the Appellant that respondent no.2 had issued an auction notice inviting bids on behalf of the Governor of Goa from the interested parties situated in the command of SIP. The Appellant, pursuant to the auction notice, made an application for participation in the auction. She obtained the terms and conditions of auction of lease. According to the Appellant, when she obtained the terms and conditions she found that the terms and conditions were different from the auction notice. Appellant alleged several irregularities in the Auction. She alleged that one of the applicants had forwarded the application to participate in the auction beyond the stipulated time, which was entertained. She further contended that the officers who were in charge of opening the bids, allowed nine other persons who were not entitled to bid. The Appellant obtained certain information under the Right to Information Act and filed the present suit praying to set aside the tendering process. The Appellant averred in the plaint that the entire process was vitiated by fraud. According to the Appellant, the tendering process was illegal and there were several irregularities and auction was thus in bad faith.

5. In the suit, a written statement was filed by the respondents, in which it was contended that the suit is barred

by the provisions of Goa Command Area Development Act, 1997. Apart from denying the contentions on merits, the respondents also filed an application under Order 7 Rule 11 of Civil Procedure Code, 1908 praying that the plaint be rejected since it is barred by the Goa Command Area Development Act.

6. The learned District Judge heard the application and came to the conclusion that the Court has no jurisdiction to entertain the suit as well as the application for temporary injunction, as the suit is barred by the Goa Command Area Development Act. Accordingly by the impugned order, the plaint was rejected.

7. Section 50 (1) of the Goa Command Area Development Act, 1997 provides a bar in respect of jurisdiction of the Civil Court. Section 50 reads as under :

“50. Bar of jurisdiction of Civil Courts.—

(1) No order passed or proceeding taken by an officer or authority under this Act, shall be called in question in any court in any suit or application and no injunction shall be granted by any court in respect of any action taken or about to be taken by such officer or authority in pursuance of any power conferred by or under this Act. (2) No suit, prosecution or other proceeding shall lie against any officer or servant of the Government for any act done or purported to be done under this Act, without the previous sanction of the Government. (3) No

Officer or servant of the Government/staff members of Command Area Development Board Offices, shall be liable in respect of any such act in any civil or criminal proceeding if the act was done in good faith in the course of execution of duties or the discharge of the functions imposed by or under this Act. (4) Save as otherwise provided in this Act, no suit shall be instituted against the Government in respect of any act done unless the suit is instituted within six months from the date of the act complained of. (5) In the case of an intended suit against any Officer or servant of the Government/staff members of Command Area Development Board Offices under subsection (1), the person intending to sue shall be bound to give the Officer or servant, as the case may be, at least two months notice of the intended suit with sufficient description of the cause of action failing which such suit shall be dismissed. ”

8. The learned District Judge has held that tendering process and holding of auction would fall within the purview of the proceedings taken by the authority under the Act as duties are provided under section 11 (9) of the Act, and therefore in view of Section 50 (1) of the Act, a suit would not be maintainable. The learned District Judge also took note of Section 50 (3) of the Act, which states that if the Act is in good faith the offences cannot be proceeded with.

9. Though Section 50 (1) of the Act contains a bar of civil suit, it now well settled before the bar is made applicable, the pleadings in the plaint have to be considered. There have been various decisions of the Apex Court and this Court holding that inherent jurisdiction of Civil Court is not taken away if the action complained is nullity, that the authority has not acted in conformity with the fundamental judicial procedure or that the Act is not done in good faith. Therefore, it is not an absolute proposition of law, as held by the learned District Judge that the moment there is a statute barring the jurisdiction of the Civil Court, in no circumstances a civil suit will lie.

10. In the case of ***“Commissioner, Akola Municipal Corporation Vs. Bhalchandra s/o. Govind Mahashabde”*** reported in (2003) (4) Mh.LT 45, the learned Single Judge of this Court (R. K. Deshpande, J.) considered the bar contained in Section 433A of Maharashtra Municipal Council and observed as under :

“7. Now, section 433A of the Maharashtra Municipal Corporation Act creating a bar of jurisdiction of the Civil Court, being relevant, is reproduced below:

*“433A. Bar of jurisdiction.
Save as otherwise provided in this Act, any notice issued, order passed or direction issued by the Designate Officer, under sections 260,*

*261, 264, 167 or 478 shall
not be questioned in any suit
or other legal proceedings.”*

*Undoubtedly, if the plaintiff comes before
the Civil Court alleging that a notice issued
under Section 260 of the said Act is illegal
in any manner and seeks a declaration to
that effect, then the bar of jurisdiction to
try such a suit under Section 433A of the
said Act shall operate. However,
nonetheless, the inherent jurisdiction of a
Civil Court in a suit challenging the notice
under Section 260 of the said Act, on the
limited grounds, viz. that the act of issuance
of such notice is nullity, or that while
issuing such notice, the mandatory
provisions of the said Act have not been
complied with, or that the Authority issuing
such a notice has not acted in conformity
with the fundamental judicial procedure, or
that it is an abuse of exercise of power, or
that the offending act has not been done in
good faith, remains intact, in view of the
aforestated law laid down in judicial
pronouncement. The Civil Court is not
precluded of its inherent jurisdiction to
entertain and decide such challenge to a
notice under Section 260 of the said Act,
on such limited grounds, particularly when
there is no forum available under the said*

Act to ventilate such grievances in respect of it. Hence, the question of law at Serial No.(i) is answered accordingly.”

11. In case of bar created under section 149 of the Maharashtra Town Planning Act in respect of jurisdiction of the Civil Court, the learned Single Judge of this Court (A. S. Oka, J.) in the case of **“Laxman Barkya Wadkar Vs. Mumbai Municipal Corporation”** in First Appeal No. 1635 of 2010 after following the decision of the Apex Court in the case of **“Dhulabhai Vs. State of Madhya Pradesh and another”** reported in AIR 1969 SC 78 and **“Kamal Mills Ltd. Vs. State of Bombay”**, reported in 1966 (1) SCR 64, held that if the allegations made in the plaint are that the action under the Act is a nullity, then Bar to the jurisdiction of civil court will not come in the way of entertaining the suit.

12. In the case of **“Mafatlal Industries Vs. Union of India”** reported in 1997 (5) SCC 536, the concept of jurisdictional error was considered by the Constitutional Bench. K.S. Paripoornan, J. in his Judgment held that concept of nullity may arise during the course or conclusion of the inquiry. He observed as under:

“338. The scope of the exclusionary clauses contained in the statutes has been considered in great detail with reference to the decisions of the superior courts in England and also the decisions of the Supreme Court of India by Justice

G.P. Singh (former Chief Justice, M.P. High Court) in "Principles of Statutory Interpretation", 6th edition (1996) at page 475. The law is stated thus:

“A review of the relevant authorities on the point leads to the following conclusions:

(1) An Exclusionary Clause using the formula 'an order of the tribunal under this Act shall not be called in question in any Court' is ineffective to prevent the calling in question of an order of the tribunal if the order is really not an order under the Act but a nullity.

(2) Cases of nullity may arise when there is lack of jurisdiction at the stage of commencement of enquiry e.g., when (a) authority is assumed under an ultra vires statute; (b) the tribunal is not properly constituted, or is disqualified to act; (c) the subject-matter or the parties are such over which the tribunal has no

authority to inquire; and (d) there is want of essential preliminaries prescribed by the law for commencement of the inquiry.

(3) Cases of nullity may also arise during the course or at the conclusion of the inquiry. These cases are also cases of want of jurisdiction if the word 'jurisdiction' is understood in a wide sense. Some examples of these cases are (a) when the tribunal has wrongly determined a jurisdictional question of fact or law; (b) when it has failed to follow the fundamental principles of judicial procedure, e.g. has passed the order without giving an opportunity of hearing to the party affected; (c) when it has violated the fundamental provisions of the Act, e.g., when it fails to take into account matters which it is required to take into account

or when it takes into account extraneous and irrelevant matters; (d) when it has acted in bad faith; and (e) when it grants a relief or makes an order which it has no authority to grant or make; as also (f) when by misapplication of the law it has asked itself the wrong question.”

With great respect to the learned author, I would adopt the above statement of law, as my own.”

13. A review of all these decisions is taken in the decision of “**Mr. Yogesh Megaji Gada Vs. The Municipal Corporation of Greater Mumbai and another**” in Writ Petition no.2243 of 2013 and others in respect of bar contained in Section 515-A of the Mumbai Municipal Act and the position that the bar of jurisdiction will not apply in aforesaid circumstances is restated. The jurisdiction has to be determined on the basis of the plaint. It will have to be seen whether the Appellant has based its case on the ground that the action complained is a nullity, being taken in bad faith or fraud .

14. Therefore the approach of the learned District Judge in dismissing the suit merely relying on the bar, without examining the pleadings in the plaint as to whether the

grounds enumerated above exist or not, will have to be corrected.

15. In the present case, the Appellant has pleaded that the action is vitiated by fraud and the officers have acted in bad faith. The protection to the officers is not available if case of bad faith is made out and that is a matter to be considered on merits. The learned Judge will have to consider the effect of these pleadings, before coming to the conclusion, that the suit is barred in view of Section 50(1) of the Act.

16. The appeal is allowed, with no order as to costs. The impugned Judgment and Order dated 21 July, 2014 is quashed and set aside. The application filed by the respondents under Order 7 Rule 11 stands restored to the file of the learned District Judge, to be disposed of in light of the legal position as discussed above. The parties will appear before the learned District Judge on 11 March, 2015 at 10:30 a.m.

N. M. JAMDAR, J.

AP/-