

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 277 OF 2009

Roha Municipal Council	..	Applicants
vs.		
Smt. Shahin Mohamed Akbar Alekar	..	Respondent

WITH
CIVIL REVISION APPLICATION NO. 278 OF 2009

Roha Municipal Council	..	Applicants
vs.		
Rafiq Gafoor Natuskar & Ors.	..	Respondents

WITH
CIVIL REVISION APPLICATION NO. 279 OF 2009

Roha Municipal Council	..	Applicants
vs.		
Smt. Noorjahna Isaq Noorji & Ors.	..	Respondents

WITH
CIVIL REVISION APPLICATION NO. 280 OF 2009

Roha Municipal Council	..	Applicants
vs.		
Samad Sheikh Ali Janjirkar	..	Respondent

WITH
CIVIL REVISION APPLICATION NO. 281 OF 2009

Roha Municipal Council	..	Applicants
vs.		
Narayan Chilaji More	..	Respondent

WITH
CIVIL REVISION APPLICATION NO. 282 OF 2009

Roha Municipal Council	..	Applicants
vs.		
Prakashchandra Sohanlal Gandhi	..	Respondent

Mr. N. V. Gangal for Applicants.
None for Respondents

CORAM : M. S. SONAK, J.
DATE: 29 APRIL 2015

P.C. :-

- 1] These six Civil Revision Applications can be disposed of by a common order.
- 2] The challenge in each of the Civil Revision Applications is to the orders dated 17 February 2009 made by the Civil Judge, Junior Division, Roha, holding that Civil Court has jurisdiction to try the suits.
- 3] The plaints in each of the suits are virtually identical in material respects. Accordingly, the impugned order in each of the Civil Revision Applications are also virtually identical in each of the material respects. In any case, the issue involved is whether in terms of Section 149 of the Maharashtra Regional and Town Planning Act, 1966 (said Act) the suits as instituted were at all maintainable before the Civil Court.
- 4] Upon a meaningful reading of the plaints, it is clear that the

challenge therein is to the notice dated 6 December 2006 issued under Sections 53, 54 and 55 of the said Act. In the prayer clause though no direct reliefs have been applied in respect of the said notice, it is clear that the reliefs applied for are on the basis that the said notices are illegal or unenforceable. In fact, implicit in the reliefs applied for, is the prayer challenging said notices issued under the said Act.

5] In matters of exercise of powers under Section 9A of the CPC or for that matter Order 7 Rule 11 of the CPC, meaningful reading of the plaint is contemplated. In the case of *T. Arivandandam vs. T. V. Satyapal & Anr.*¹, the Hon'ble Supreme Court had held that merely because by some clever drafting illusion of cause of action is created, that by itself will not preclude the Civil Court from exercising powers under Order 7 Rule 11 of the CPC. In the present case, merely on the basis of the manner of draft of the relief clause, it cannot be said that the basic nature of the suit is anything other than challenge to the action and notices under the provisions of the said Act. Section 149 of the said Act, reads thus:

"Finality of orders.

Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act

¹ (1977) 4 SCC 467

shall be final and shall not be questioned in any suit or legal proceedings.”

6] This Court, in the case of *Bales Sardara Paracha vs. Municipal Corporation of Greater Bombay & Anr.*², in context of notices under the said Act as also the provisions contained in Section 149 and 152 of the said Act, has observed thus :

“14. Section 55 of the MRTP Act, under which the impugned notice is issued, reads as under:-

“removal or discontinuance of unauthorised temporary development summarily.-

(1) Notwithstanding anything hereinbefore contained in this Chapter (Chapter IV), where any person has carried out any development of a temporary nature, unauthorisedly as indicated in sub-section (1) of section 52, the Planning Authority may by an order in writing direct that person to remove any structure or work erected, or discontinue the use of land made, unauthorisedly as aforesaid, within fifteen days of the receipt of the order; and if thereafter, the person does not comply with the order within the said period, the Planning Authority may request the District Magistrate or the Commissioner of Police, as the case may be, or authorise any of its officers or servants, to have such work summarily removed or such use summarily discontinued without any notice as directed in the order, and any development unauthorisedly made again, shall be similarly removed or discontinued summarily without making any order as

² 2005 (4) Bom. C.R. 577

aforesaid.

(2) The decision of the Planning Authority on the question of what is development of a temporary nature shall be final.

15. Section 149 which gives finality to the orders passed or directions issued by the State Government or orders passed or notices issued by any Regional Board, Planning Authority or Development Authority under the MRTP Act, reads thus :

“Finality of orders.

Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or legal proceedings.”

16] In my opinion, the language of section 149 is unambiguous and clear. The bar is clear and admits of no confusion. If Section 149 is read in the light of the Supreme Court's judgment in Illuri Subbayya's case, there can be no doubt that jurisdiction of the Civil Court is barred.

23] Having read the relevant provisions of the MRTP Act, I am of the confirmed opinion that Section 149 of the MRTP Act clearly excludes the jurisdiction of the Civil Courts so far as the challenge to the orders passed or directions issued by the State Government or orders passed or notices issued by any Regional board, Planning Authority or Development Authority under the MRTP Act are concerned. I am supported in my view by a decision of this Court (F.I. Rebello,

J.) (dated 18th October, 2002 in Appeal from Order No.912 of 2002), and judgment dated 29th November, 2004 in (Dr. Mohan N. Bhawe vs. The Municipal Corporation of Greater Bombay), delivered by Smt. Nishita Mhatre, J. in Appeal from Order No. 634 of 2003, reported in 2005(3) Bom. C.R. 300.

24. In view of the above, in my opinion, the trial Court has rightly dismissed the plaintiff's suit on the ground that in view of section 149 of the MRTP Act, it cannot be entertained. There is no merit in the appeal. The appeal is, therefore, dismissed."

7] Applying the law as laid down in the aforesaid decision, the impugned orders shall have to be set aside. Accordingly, the impugned orders are set aside and the plaint in each of the suits instituted by the respondents is rejected.

8] Rule is accordingly made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)