

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Civil Revision Application No.28/2015

(The Commissioner, Akola Municipal Corporation Akola and another .vs.
Yonus Khan s/o Yusuf Khan and another)
with

Civil Revision Application No.29/2015

(The Commissioner, Akola Municipal Corporation Akola and another .vs.
Mohanpalsingh Baldevsingh Malhi and another)
with

Civil Revision Application No.30/2015

(The Commissioner, Akola Municipal Corporation Akola and another .vs.
Dinesh Murlidhar Lulla and another)
with

Civil Revision Application No.31/2015

(The Commissioner, Akola Municipal Corporation Akola and another .vs.
Sachin Subhash Zope and another and another)
with

Civil Revision Application No.32/2015

(The Commissioner, Akola Municipal Corporation Akola and another .vs.
Ramanlal Shankarlal Kothari and another)
with

Civil Revision Application No.33/2015

(The Commissioner, Akola Municipal Corporation Akola and another .vs.
Atul Maganlal Patel and another)
with

Civil Revision Application No.34/2015

(The Commissioner, Akola Municipal Corporation Akola and another .vs.
Sau. Sheela Naresh Rathi and ors.)
with

Civil Revision Application No.35/2015

(The Commissioner, Akola Municipal Corporation Akola and another .vs.
Manoharbai Laxmandas Sadhwani and another)
with

Civil Revision Application No.36/2015

(The Commissioner, Akola Municipal Corporation Akola and another .vs.
Dwarkanadas Chandanmal Agrawal and another)
with

Civil Revision Application No.37/2015

(The Commissioner, Akola Municipal Corporation Akola and another .vs.
Kisanrao Wamanrao Ingole and another)
with

Civil Revision Application No.38/2015

(The Commissioner, Akola Municipal Corporation Akola and another .vs.
Jaikisan Sundarlal Kalantri and others.)
with

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr.A.R. Deshpande, Advocate for Applicants in all Applications.
Mr. S.A. Mohta, Advocate for Respondent no.1 in C.R.A. Nos. 28/15,

29/15, 30/15, 32/15, 36/15 and 37/15.

Mr. M.G. Sarda, Advocate for Respondent no.1 in C.R.A. Nos.31/15, 33/15, 34/15 and 35/15.

Mr. J.B. Gandhi, Advocate for Respondent no.1 in CRA No.38/2015

CORAM : A.V. Nirgude, J.

DATED : April 21, 2015.

Heard.

2. All Civil Revision Applications are decided by this common order.

3. These civil revision applications arise from various suits filed by the respondents in which the defendants were common. They filed an application seeking dismissal of the suit mainly on the ground that the suits were barred for non-compliance of provisions of Section 487 of the Maharashtra Municipal Corporations Act, 1949 (for short "the Act"). According to them a notice of one month was essential before filing the suits. The sections objection raised was that the State of Maharashtra was a necessary party and since it was not made party to the suit, the suit is bad for non-joinder. These two objections were decided at the interim stage as preliminary issues. Both went against the defendants and, therefore, the defendants came before this Court in these revision applications.

4. The complaints disclosed rather shocking facts. All the respondents/plaintiffs are shop keepers. They have their shops in a building situated at Akola Municipal Corporation area. They came with a grievance that they are occupying shops in a building which belonged to the Municipal Corporation.

5. In 2010 a fresh lease agreement was registered between them on one side and the Municipal Corporation on the other. They were peacefully using

the shops for their business. They were paying all the dues to the Municipal Corporation. Despite this on 28.12.2014 at about 10 p.m. in the night, demolition squad of the Municipal Corporation came to their shops and started demolition with a help of JCB machine. They started demolishing the building in which the shops were situated. They particularly damaged entrances of shops and made holes in the walls so that the shops would render useless. Some of the shops are entirely demolished also.

6. According to the respondents/plaintiffs this was done without giving notice. According to them the action was so high-handed that it amounted to criminal offences under Indian Penal Code. The first of this suit came to be filed on 31.12.2014 and others followed in quick succession. Obviously they did not give a notice under Section 487 of the Act. Section 487 reads as under:-

“487. Protection of persons acting under this Act against suits:-

(1) No suit shall be instituted against the Corporation or against the Commissioner, or the Transport Manager, or against any municipal officer or servant, in respect of any act done or purported to be done in pursuance or execution or intended execution of this Act or in respect of any alleged neglect or default in the execution of this Act:-

(a) until the expiration of one month next after notice in writing has been, in the case of the Corporation, left at the chief municipal office and, in the case of the Commissioner or of the Transport Manager or of a municipal

officer or servant delivered to him or left at this office or place of abode, stating with reasonable particularity the cause of action and the name and place of abode of the intending plaintiff and of his attorney, advocate, pleader or agent, if any, for the purpose of such suit, nor

(b) unless it is commenced within six months next after the accrual of the cause of action.

(2) At the trial of any such suit:-

(a) the plaintiff shall not be permitted to go into evidence of any cause of action except such as is set forth in the notice delivered or left by him as aforesaid:

(b) the claim, if it be for damages, shall be dismissed if tender of sufficient amends shall have been made before the suit was instituted or if, after the institution of the suit, a sufficient sum of money is paid into Court with costs.

(3) Where the defendant in any such suit is a municipal officer or servant, payment of the sum or of any part of any such payable by him in, or in consequence of the suit, whether in respect of costs, charges, expenses, compensation for damages or otherwise, may be made, with the previous sanction of the Standing Committee or the Transport Committee from the Municipal Fund or the Transport Fund, as the case may be."

7. On plain reading of this provision, it is clear that this provisions is not meant for the complaint of the respondents. The provision protects Corporation and its Officers, Managers etc. in respect of such act which is done in pursuance or execution or intended execution of

this Act or in respect of any alleged neglect or default. In other words, this provision would not stop a suit in which allegations are made that the Officers of the Corporation had acted against law. The law on this subject is very clear. Not all suits filed against Corporation are barred under Section 487 of the Act. A leading judgment on this subject was delivered in 1965 by Full Bench of the Supreme Court in the case of **Poona City Municipal Corporation .vs. Dattatraya Nagesh Deodher** reported in **AIR 1965 Supreme Court 555**. Defence of Section 487 was raised against maintainability of the suit which was filed for recovery of excess tax recovered by the Municipal Corporation. The Supreme Court allowed the filing of such suit without giving a notice under Section 487 and observed as under:-

*"The benefit of this section would be available to the Corporation only if it was held that this deduction of ten per cent was "an act done or purported to be done in pursuance or execution or intended execution of this Act". We have already held that this levy was not in pursuance or execution of the Act. It is equally clear that in view of the provisions of S. 127(4) (to which we have already referred) the levy could not be said to be "purported to be done in pursuance or execution or intended execution of this Act." For, **what is plainly prohibited by the Act cannot be claimed to be purported to be done in pursuance or intended execution of the Act.** Our conclusion is that the High Court has rightly held that the suit was not barred by limitation."*

8. The act of demolition apparently was an act

prohibited not only by the Act but is apparently per se illegal. Even the other objection in respect of non-joinder of State of Maharashtra is a lame excuse. In my view State of Maharashtra is not necessary party in this suit. The Municipal Corporation is a body corporate and the act complained of is apparently committed by the Corporation and its Officers and no allegations are made against Officers of the State of Maharashtra. So State of Maharashtra is not necessary or proper property to this suit. These objections were raised mainly to prolong the suit and prevent the Court from passing mandatory orders of reconstruction. I hope if applications seeking mandatory temporary injunction are moved, such applications are taken up for hearing as soon as possible.

9. All civil revision applications are dismissed.

JUDGE

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