

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Revision Application No.55 of 2015

(The Commissioner, Municipal Corporation, Akola
vs.

The Janata Central Wholesale & Retail Co-operative Consumer Stores Ltd., Akola)

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

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Court's or Judge's Orders

Shri J.B. Gandhi, Advocate for the Applicant.
Shri U.N. Vyas, Advocate for the Non-Applicant.

CORAM : A.S. CHANDURKAR, J.

DATE : NOVEMBER 21, 2015.

In view of notice for final disposal, the learned Counsel for the parties have been heard at length.

Challenge in the present civil revision application is to the order dated 20/06/2015 passed by the trial court on the preliminary issues that were framed with regard to the tenability of the civil suit. It has been held that the suit as filed is maintainable.

The facts giving rise to the proceedings are that it is the case of the non-applicant that it is a lessee of premises on the ground floor of a building which is owned by the applicant. The non-applicant is in possession since the year 1983.

It is the case of the non-applicant that the amount of lease rent was paid from time to time and the last payment was made on 19/10/2014. It is the further case that the taxes were also paid till 23/02/2015. On 14/05/2015, the suit premises

came to be sealed by the employees of the applicant and thereafter the President of the non-applicant society gave an undertaking on 16/05/2015 on stamp paper. A cheque of Rs.12,00,000/- was issued in the name of the applicant, after which the seal came to be removed. It is the further case that the said cheque dated 25/05/2015 was not liable to be encashed by the applicant, as entire payment of the dues had already been made. In this background, the non-applicant filed a suit for declaration that the applicant had no right to demand any amount from the non-applicant or to disturb its possession.

In aforesaid suit, the non-applicant filed an application for grant of temporary injunction. On behalf of the applicant, besides filing reply to the application for temporary injunction and written statement, an application under Section 9-A read with provisions of Order VII Rule 11 of the Code of Civil Procedure came to be filed. The trial court on 08/06/2015 framed two preliminary issues with regard to jurisdiction of the civil court to entertain the suit in absence of any statutory notice under Section 487 of the Maharashtra Municipal Corporations Act, 1949 (for short 'the said Act'). The other preliminary issue was with regard to the availability of alternate remedy under the provisions of the said Act.

The parties were thereafter heard and by the order dated 20/06/2015, the trial court held that the suit was not

barred for want of statutory notice and that provisions of Section 406 of the said Act would not prevent entertaining of the civil suit. This order is impugned in the present revision application.

Shri J.B. Gandhi, the learned Counsel for the applicant submitted that the suit as filed without issuing any notice under Section 487 of the said Act was not maintainable. According to him, the action taken by the applicant was in exercise of powers conferred by the said Act and as the prayer in the suit raised a challenge to such action, issuance of notice under Section 487 of the said Act was necessary. He further submitted that on 17/03/2015, a notice had been issued to the non-applicant seeking its clarification and, therefore, if at all the non-applicant intended to take any legal action, same could have been done by issuing notice under said provision before filing of the suit. No waiver was also sought for dispensing with such notice. In that regard, the learned Counsel placed reliance on the judgment in Akash Impex, Mumbai vs. Municipal Corporation of Greater Mumbai, reported in 2014(1) Mh.L.J. 498.

Insofar as the remedy under Section 406 of the said Act is concerned, it was submitted that a statutory remedy was available to the non-applicant, which had not been availed. The amount that was sought to be recovered, was in the nature of dues that were payable to the applicant. Said dues were in the

nature of rateable value as per provisions of Section 2(54) of the said Act. He also submitted that as per document dated 16/05/2015 and endorsement dated 25/05/2015, the non-applicant had agreed to pay amount of Rs.12,00,000/- towards deposit. In support of said submission, the learned Counsel placed reliance on the judgment in Greave Cotton Ltd. vs. Pimpri Chinchwad Municipal Corporation and others, reported in 2014(1) Mh.L.j. 655. He also referred to the orders passed by the Division Bench in Writ Petition Nos. 1403/2013 and 6831/2013. It was, therefore submitted that the trial Court erroneously decided both the preliminary issues and in fact the civil court had no jurisdiction to entertain the suit.

Shri U.N. Vyas, the learned Counsel for the non-applicant supported the impugned order. According to him, as the action of sealing the premises had been taken by the applicant without following the prescribed procedure, it was not necessary to issue statutory notice under Section 487 of the said Act. It was submitted that the nature of amount that was being claimed by the applicant had not been specified and, therefore, the demand itself was illegal. It was submitted that there was no provision for making demand of any deposit and, therefore, the remedy before the civil court alone could be availed. He further submitted that the remedy under Section 406 of the said Act was not available in these circumstances. In support of his

submissions, the learned Counsel placed reliance on the judgment of the Supreme Court in *The Poona City Municipal Corporation vs. Dattatraya Nagesh Deodhar*, reported in *AIR 1965 Supreme Court 555* and *Pune Municipal Corporation and another vs. Mohan Shrikrishna Assava* reported in *1992 Mh.L.J. 1468*.

I have considered the respective submissions and I have gone through the documents filed on record. The trial court after considering the respective pleading of the parties found that the non-applicant was in possession of premises belonging to the applicant and was covered by the definition “Corporation Premises”. The procedure as contemplated by Section 81-B in the said Act had not been followed. It was on that basis that it was found that the action of sealing the premises was not an act in pursuance of the provisions of the said Act. Similarly, it was found that the rent and taxes had been paid up to 31/03/2015 and the demand for deposit could not be challenged under Section 406 of the said Act.

It is to be seen that initially notice under Section 81-B of the said Act was issued on 02/12/2003, but the matter was not thereafter pursued. The premises were subsequently sealed on 14/05/2015 without being preceded by any notice whatsoever. There was a demand of deposit of Rs.12,00,000/- on behalf of the applicant. The issuance of cheque by the non-

applicant on 25/05/2015 and the same not being honoured is not very relevant at this stage.

The provisions of Section 487 of the said Act require issuance of notice prior to institution of a suit against the Corporation in respect of any act done or purported to be done in pursuance of provisions of the said Act. The provisions of Section 81-B of the said Act prescribed procedure for eviction from a Corporation premises. The record indicates that on 17/03/2015, a notice was issued by the Corporation stating that lease as granted has not been renewed. The action of sealing the suit premises took place on 14/05/2015 and thereafter when the suit was already filed, a notice on 30/05/2015 under Section 81-B of the said Act came to be issued. It is in that background that it has been *prima facie* found that the action of sealing the premises was without issuing any statutory notice and such notice was issued only on 30/05/2015 after the suit was filed. Thus, the finding recorded that the non-applicant was justified in invoking the jurisdiction of the civil court with regard to an action that was not in accordance with law appears justified.

If an action is taken by the Corporation, in a manner which is not prescribed by the provisions of the said Act, then question of issuing of statutory notice under Section 487 of the said Act to challenge such action cannot be insisted. The conclusion arrived at by the trial Court in that regard is,

therefore, justified. In the decision in *Akash Impex, Mumbai (supra)*, a notice under Section 354-A of the Mumbai Municipal Corporation Act had been issued, which was challenged by filing the civil suit. On the basis of an interim order passed by the civil court, the construction was completed and an attempt was made to get the suit structure regularized. In that context, it was found that as notice for removal of encroachment had been given, issuance of statutory notice was mandatory before filing the suit. Said decision is not applicable to the case in hand. As regards to remedy under Section 406 of the said Act is concerned, it has been found by the trial court that the non-applicant was not in arrears of either rent or taxes till 31/03/2015. The demand of deposit could not be challenged under Section 406 of the said Act as said demand of deposit was not as per the provisions of said Act. This conclusion also appears to be justified. The decision relied upon in the case of *Greave Cotton Ltd.* and *M/s. Khadim India Limited (supra)* are also distinguishable, as there was a specific demand of amounts that were payable under the said Act, which demand could be challenged under Section 406 of the said Act.

In view of the aforesaid discussion, it is clear that the preliminary issues answered by the trial court are in accordance with law and there is no reason whatsoever to interfere with said adjudication. By observing that the trial court shall decide the

suit in accordance with law after considering the evidence on record, it is held that there is no case made out to interfere with the impugned order. The revision application is, therefore, dismissed. No costs.

JUDGE

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