

THE HONBLE SRI JUSTICE M.SATYANARAYANA MURTHY

A.S.NO.205 OF 1997

JUDGMENT :

The unsuccessful plaintiffs in O.S.No.26 of 1995 on the file of I Additional District Judge, Visakhapatnam preferred this appeal against the decree and judgment dated 11.02.1997 whereunder and whereby the suit filed for permanent injunction was dismissed.

2. For convenience the rank given to the parties before the trial Court will be adopted through out the judgment.

3. The first plaintiff filed the suit for permanent injunction restraining the respondent –Municipal Corporation from interfering with the peaceful possession and enjoyment of the plaint schedule property in any manner whatsoever alleging that the same was originally purchased by late Manyala Chandrayya from late A.V.Jaggarao Bahadur under the registered sale deed, dated 23.09.1912. The said Chandrayya purchased the same for the benefit of the joint family consisting of himself and his brothers. They partitioned the property in the year 1941. In the said partition, the schedule property was allotted to the share of predecessor-in-title of the plaintiffs.

b) The property was let out to various tenants and they were paying rent to the plaintiffs. Thus, the plaintiffs are the absolute owners of the property.

c) While the matter stood thus, some of the inhabitants of the locality at the instigation of unscrupulous fellows approached the defendant requested to acquire the suit schedule property under the provisions of A.P. Slum Clearance (Acquisition of Land) Act, 1956 (for short the Act, 1956). Accordingly, the authorities of the defendant corporation without any right and without getting the question of law examined, proposed to declare the said site as slum under the provisions of the Act, 1956. In a meeting of the defendant dated 02.05.1988 one

of the subjects of the agenda was to pass a resolution to take steps to acquire the property after referring the matter to committee for slum clearance and also to the Special Officer, O.D.A., Visakhapatnam Municipal Corporation, Visakhapatnam, for taking further steps in the matter.

d) The plaintiffs further contended that the schedule property cannot be declared as slum area as the conditions pre-requisite for such a declaration are not prevailing in the locality where the schedule property is situated. It is also contended that the Act of 1956 was repealed by A.P. Ordinance 2 of 1982 and thereby the defendant is not competent to acquire the property as slum. Therefore, the proposed action of the defendant is arbitrary, illegal and prayed to pass a decree in favour of the plaintiffs and against the defendant restraining the defendant and its employers from interfering with the peaceful possession and enjoyment of the plaint schedule property.

4. The defendant filed written statement denying the material allegations, *inter alia*, contending that the corporation received a representation from the inhabitants of the locality with a request to acquire the schedule property due to unhealthy and unhygienic conditions prevailing in the locality and requested the Government to declare the area as a slum and provide them pucca houses to improve their living conditions. On that the Director, U.C.D Project, after receiving the applications from the residents of the locality, inspected the same and found that about 130 house dwellers were residing therein. Thereby, the said area was declared as slum area and the defendant taking steps for improvement of the same. Then the defendant went on explaining how the suit schedule property got all the qualifications to be declared as a slum area. It is further contended that the Act 1956 was still in force and that no permanent injunction be granted under the provisions of the Act, 1956 restraining the defendant from interfering with the peaceful possession and enjoyment of the property and prayed for dismissal of the suit.

5. Basing on the above pleadings, the trial Court framed the following issues:

1) Whether the suit schedule area is slum area?

2) Whether the plaintiffs are entitled to permanent injunction?

3) To what relief?

6. On 27.07.1993, the trial Court framed the following additional issue:

Whether the suit is maintainable in view of the provisions of A.P. Slum Improvement Act (Acquisition of Land), Act, 1956?

7. During the course of trial, on behalf of the plaintiffs, PWs.1 to 10 were examined and got marked Exs.A.1 to A.31 and Ex.X.1 to X.3. On behalf of the defendant, DWs1 to 3 were examined and got marked Exs.B.1 to B.3.

8. Upon hearing both counsel, the trial Court having found that the act of the respondent amounts to interference indirectly, the declaration to grant a decree on the ground that the jurisdiction of the Civil Court is ousted in view of the Section 13 of the Act, 1956.

9. Aggrieved by the decree and judgment dismissing the suit, the unsuccessful plaintiffs preferred the present appeal on various grounds, mainly contending that the trial Court did not appreciate the voluminous oral evidence and documentary evidence in proper perspective and that the representation was sent at the behest of the plaintiffs at the instigation of some unscrupulous persons in the locality and the same shall not be considered. However, the area was not declared as slum till today. But the trial Court on erroneous appreciation of evidence and law dismissed the suit on the ground of lack of inherent jurisdiction. The dismissal decree and judgment under challenge are erroneous and finally prayed to allow the appeal setting aside the decree and judgment passed by the Additional District Judge, Visakhapatnam in O.S.No.26 of 1995, dated 11.02.1997.

10. During the course of argument, Sri M.S.R.Bala Subrahmanyam, would contend that the finding of the trial Court that the Civil Court has no jurisdiction

in view of Section 13 of the Act, 1956 is erroneous for the reason that the land was not declared as slum by following necessary procedure as on the date of filing of the suit. In the absence of any declaration under the provisions of the Act the defendant is not entitled to interfere with the peaceful possession and enjoyment of the schedule property by the plaintiffs, but the trial Court, without considering the right of the plaintiffs and the pre-requisites to declare the property as slum under the Act, passed the decree and judgment dismissing the suit. Therefore, the same is liable to be set aside and prayed to allow the appeal, passing a decree in favour of the plaintiffs.

11. None appeared for the Municipal Corporation, Visakhapatnam.

12. Considering the contentions of plaintiffs, perusing decree and judgment and evidence on record, the point for consideration is that:

Whether the civil Court is competent to grant injunction restraining the defendants to take possession of the schedule property while exercising powers under A.P. Slum Clearance (Acquisition of Land) Act, 1956?

POINT FOR CONSIDERATION:

13. As seen from the material on record, the plaintiffs are the owners of the property, but the defendant received a representation from the residents of the schedule property to acquire the same declaring the area as slum under the provisions of the Act, 1956. Ex.B.1 representation dated 08.10.1987 filed by the Nehru Yuva Jana Seva Sangham to the Municipal Corporation, Visakhapatnam, the property was inspected by the Project Director and prepared a plan marked as Ex.B.2, dated 24.05.1996. Ex.B.3 is the statement showing the names of beneficiaries for proposed Urban Permanent Housing Scheme. These three documents would go to show that an inspection was done by the Project Director and found that the area is not congenial for residential purpose as it is unhygienic. Therefore, proposed to acquire the property under the provisions of the Act, 1956. The main contention of the plaintiffs is that the land does not satisfy the pre-requisite to declare the property as slum under the provisions of the Act, 1956.

14. To substantiate the contention of the plaintiffs, the plaintiffs examined PWs.1 to 10 and all the witnesses in one voice stated that there are no prevailing pre-conditions to declare the property as slum under the provisions of the Act, 1956. At the same time, DWs1 to 3 testified in support of the defendant's case about the prevailing unhygienic conditions etc. The oral evidence is only oath against oath. However, as per the admissions made in the plaint, the property was proposed to be acquired under the provisions of the above Act to declare the same as slum and to take up steps to improve, under the provisions of the Act, 1956. When the defendant intends to acquire the property under the provisions of the Act, 1956, the Corporation cannot be restrained from taking steps to acquire the property and to interfere with the possession after its declaration. As long as the property is not declared as slum under the provisions of the Act, 1956 the defendant is not entitled to interfere with the possession. But the trial Court observed that the suit itself is premature since the declaration of the schedule property as slum under the provisions of the Act was not completed. However, it is evident from the record that the defendant is proposing to acquire the property under the provisions of the Act declaring the schedule property as slum, for its development raising pucca houses for the slum dwellers. Basis for negating the relief of permanent injunction is inherent lack of jurisdiction by Civil Court adverting to Section 13 of the Act. This finding is challenged by the unsuccessful plaintiffs before this Court on the ground that the bar under Section 13 of the Act, placed only when the schedule land is acquired under the provisions of the Act. In view of this contention, I feel it is appropriate to extract the specific provision under the Act for better appreciation and it is extracted hereunder:

“Bar of jurisdiction of civil Courts:-

Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of matter which the Government or the prescribed authority is empowered by or under this Act, to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

15. A close analysis of Section 13 of the Act, the civil courts have no

jurisdiction in respect of any matters which the Government or prescribed authority is empowered under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of power conferred by the Act. The proposed action to be taken by the defendant is to declare the property as slum after taking necessary steps as per the provisions of the Act. Therefore, the proposal to acquire the land is an act done by the defendant in exercise of powers conferred on it under the Act. In such a case, the civil Court's jurisdiction is ousted and no injunction shall be granted.

16. According to Section 9 C.P.C. the civil Courts are competent to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

17. In the instant case, there is a specific bar under Section 13 of the Act to entertain the suit or to grant an injunction restraining the defendant from taking any action under the provisions of this Act. Therefore, in view of express bar, the civil Court cannot entertain the suit and grant no injunction. The normal principle is that in case of implied bar, if the statute provides machinery for redressal of the aggrieved person, the jurisdiction of the civil Courts or the Tribunals is excluded. In one of the classic judgment of the Apex Court in **Kamala Mills Limited V State of Bombay** , Constitution Bench of Apex Court held as follows:

“Exclusion of jurisdiction of civil court expressly or impliedly, words of statutory provision on which plea of bar is rested, the scheme of relevant provision, their object and purpose to be seen. Court will consider whether remedy in special statute is sufficient or adequate. Such determination is relevant but not decisive in case of expressed bar. In case of plea of implied bar such determination may be decisive. Special right and liability created by special statute determinable by special tribunal. Even then court will enquire whether remedies normally available in civil court are prescribed by such statute.”

18. In another judgment in **Dhulabhai v. State of Madhya Pradesh** wherein the constitutional bench of the Apex Court laid down certain guidelines, which are

as follows:

“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 Courts 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 enquiry.

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

19. If the principles laid down by the Apex Court in the above two judgments are applicable to the present facts of the case, the bar under Section 13 of the Act is an express bar. In such a case, providing machinery for redressal of the

grievance of the plaintiffs under the Act needs no consideration. Therefore, it is clear from Section 13 of the Act, the civil Court cannot restrain the defendant to take action under the provisions of the Act and in the meeting of the defendant one of the items of agenda is to refer the matter to a Committee of Slum Improvement and Special Officer, O.D.A., Visakhapatnam Municipal Corporation and thereafter, the defendant will take necessary further steps to declare the property as slum under the provisions of the Act, 1956. Therefore, the action to be taken by the defendant is only in pursuance of the bar conferred on the defendant. Hence, the defendant cannot be restrained from acting in accordance with powers conferred on it, in view of the express bar contained under Section 13 of the Act, 1956. A similar case came up before the Apex Court in **Ramesh Gobindram v Sugra Humayun Mirza Wakf** , the Apex Court held as follows:

“the jurisdiction of the Civil Court is ousted in view of the confirmation of jurisdiction on the special tribunal under the Wakf Act.”

20. In another case reported in **Church of North India v. Lavajibhai Ratanjibhai** , the Supreme Court laid down two tests for considering the ouster of the jurisdiction (1) in considering ouster of jurisdiction, the scheme of the Act, its object and purport must be considered and (2) the averments in the plaint and the reliefs sought has also to be considered in its entirety. In view of the admission made by the plaintiffs that the defendant is proposing to take steps to declare the property as slum under the Act, 1956, but no remedy is provided to the plaintiffs under the statute, in such a case, the remedy available to the plaintiffs is only a public law remedy and not by way of suit in a civil court. Therefore, in view of the express bar contained under Section 13 of the Act, the civil Court lacks inherent jurisdiction to grant any injunction restraining the defendant from taking steps under the provisions of the Act, 1956. The trial Court on appreciation of entire material available on record with reference to Section 13 of the Act rightly concluded that the civil Court's jurisdiction is ousted and it cannot grant injunction restraining the defendant from interfering with the possession and enjoyment of the property. Hence, I find no legal infirmity in the finding of the trial Court regarding ouster of jurisdiction of the

civil Court to grant injunction under the provisions of the Act, since, the defendant is acting in pursuance of the power conferred on it under the provisions of the Act, 1956. Therefore, I find no ground to disagree with the findings of the trial Court with regard to the jurisdiction of the civil Court. Hence, the finding of the trial Court is hereby confirmed holding that the trial Court is lacking inherent jurisdiction and cannot grant an injunctive relief restraining the defendant from interfering with the peaceful possession and enjoyment of the plaintiffs, after its declaration as slum following necessary procedure.

21. As I find that the civil Court is lacking inherent jurisdiction, the other aspects regarding possession etc needs no consideration. Under Order 21 Rule 5, the Court shall state its decision on each issue with the reasons thereof, unless, the findings upon any one or more of the issues are sufficient for the decision in the suit. Here the issue is answered that the civil Court lacking inherent jurisdiction and the finding on it is sufficient to decide the entire suit. Therefore, I need not record any finding with regard to the possession and alleged invasion of legal right of the plaintiffs by the defendant. Hence, no finding is recorded on the other issues involved in the suit.

22. In view of my foregoing discussion, I find no grounds warranting interference of the decree and judgment of the trial Court and the appeal is devoid of merits and deserves to be dismissed.

23. In the result, the appeal is dismissed, but without costs in the circumstances.

24. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

JUSTICE M.SATYANARAYANA MURTHY

Date: 20.03.2015

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