

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 63 of 2016

Judgement reserved on 16-09-2016

Judgement delivered on 23-09-2016

Rajeevbhushn S/o Brijbhushan Prasad Pandey, Aged about 42
Years, R/o Bade Math Para Sarangarh, Tahsil Sarangarh, District
Raigarh (Chhattisgarh).....(Plaintiff)

---- Appellant

Versus

Chief Municipal Officer, Nagar Panchayat Sarangarh, District Raigarh
(Chhattisgarh)

---- Respondent

For Appellant	:	Shri Vineet Kumar Pandey, Advocate
For Respondent	:	Shri R.S. Patel, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

(CAV Judgement)

1. The substantial questions of law involved, formulated and to be answered in the appeal preferred by the plaintiff are as under:

“(i) Whether both the Courts below are justified in dismissing the suit of the plaintiff for want of notice under Section 319 of the Chhattisgarh Municipalities Act, 1961 (for short 'the Act') ignoring sub-section (3) of Section 319 of the Act which mandates that sub-section (1) of Section 319 of the Act, 1961 shall not apply to any suit instituted under Section 54 of the Specific Relief Act, 1877 Equivalent to Section 38 of Specific Relief Act, 1963?

(ii) Whether both the Courts below are justified in holding that suit filed by plaintiff under Section 319 (1) of the Act, 1961 is applicable and dismissing the suit by recording a perverse finding?”

2. In order to answer the substantial questions of law, following facts are required to be noticed.

2.1. The plaintiff filed a suit for permanent injunction and for declaring the order of the Chief Municipal Officer (for short 'CMO') dated 19-10-2001 as null and void stating inter-alia that the order passed by the CMO directing eviction by order dated 19-10-2001 is null and void as the plaintiff is the tenant and defendant Nagar Panchayat be restrained from evicting the plaintiff from suit accommodation.

2.2. The defendant filed his written statement before the trial Court and raised a plea that the plaintiff has not served notice to the defendant under Section 319(1) of the Chhattisgarh Municipalities Act, 1961 (for short 'the Act'), therefore, the suit is barred as per provisions contained in sub-section (1) of Section 319 of the Act and also filed an application under Order 7 Rule 11 CPC for rejecting the plaint.

2.3. Trial Court by its order dated 09-01-2015 in exercise of power conferred under Order 7 Rule 11 (d) of the CPC rejected the plaint holding that notice was required to be served under Section 319 (1) of the Act before instituting the suit.

3. On an appeal being preferred, the First Appellate Court concurred with the finding of the trial Court and dismissed the first appeal leading to filing of this second appeal under Section 100 of the CPC in which the substantial questions of law have already been framed and incorporated in the opening paragraph of this judgement.

4. Shri Vineet Kumar Pandey, learned counsel for the appellant would submit that the suit was filed by the plaintiff for declaring the order of CMO dated 19-10-2001 to be null and void as such, suit was filed under Section 38 of the Specific Relief Act and by virtue of provision contained in sub-section (3) of Section 319 of the Act, provision of Section 319(1) of the Act shall not be applicable, therefore, the suit was maintainable before the trial Court without serving notice under Section 319 (1) of the Act of 1961 and it should not have been dismissed. Both the Courts below have grossly erred in rejecting the plaint in exercise of power conferred under Order 7 Rule 11(d) of the CPC.

5. On the other hand, Shri R.S. Patel, learned counsel appearing for the respondent would support the impugned order and submit that such a suit was not maintainable for want of notice under Section 319 (1) of the Act of 1961 and it has rightly been dismissed by the trial Court and the First Appellate Court has rightly affirmed the same and placed reliance upon a decision in the matter of **Municipality Through Chief Municipal Officer, Raghogarh V. Gas Authority of India and others**¹

6. I have heard learned counsel for the parties, considered rival submissions made therein and gone through the record of the trial Court as well as the appellate Court extensively.

7. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to reproduce Section 319 of the Act which reads as under:

¹. AIR 2006 Madhya Pradesh 17

“319. Bar of suit in absence of notice.-- (1) No suit shall be instituted against any Council or any Councillor, officer or servant thereof or any person acting under the direction of any such Council, Councillor, officer or servant for anything done or purporting to be done under this Act, until the expiration of two months next after a notice, in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of a Council delivered or left at its office, and, in the case of any such member, officer, servant or person as aforesaid, delivered to him or left at his office or usual place of abode; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Every such suit shall be dismissed unless it is instituted within eight months from the date of the accrual of the alleged cause of action.

(3) Nothing in this section shall be deemed to apply to any suit instituted under Section 54 of the Specific Relief Act, 1877 (1 of 1877).”

8. A careful perusal of the above stated provision would show that sub-section (1) of Section 319 of the Act bars the suit in absence of notice to the Council. However, sub-section (3) of Section 319 of the Act carves out exception which provides that Section 319(1) of the Act would not apply to any suit instituted under Section 54 of the Specific Relief Act, 1877 which is equivalent to Section 38 of the Specific Relief Act, 1963.

9. At this stage, it would be appropriate to notice Section 38 of the Specific Relief Act, 1877 which reads as under:

“38. **Perpetual injunctions when granted** .- (1) Subject to the other provisions contained in or referred to by this chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.

(2) When any such obligation arises from contract, the court shall be guided by the Rules and provisions contained in Chapter II.

(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property the court may grant a perpetual injunction in the following cases, namely;

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.”

10. Section 38 of the Specific Relief Act, 1877 provides the contingencies when perpetual injunction is to be granted. The aforesaid provision would show that bar of Section 319 (1) of the Act would not apply when a suit is for perpetual injunction alone.

11. In a decision reported in the matter of **Nagarpalika Parishad, Mandsaur Vs. Saravdaman**², the Madhya Pradesh High Court has held that no notice is required for a suit for injunction and declaration, if the two reliefs are claimed in one suit and observed as under:

². 1972 M.P.L.J. SN 144

“Agreeing with the interpretation put by Dixit C.J. on Section 17 of the Dewas Municipalities Act reported in *Kanhayalal v. Nagar Palika Dewas*, (1958 M.P.L.J. 676) and holding it to be in '*pari materia*' it was observed:

“A mere notice by the council cannot be termed as an act done. The assertion of title to a property cannot be said to be doing an act or purporting to do an act and as such the suit filed by the plaintiff cannot be said to be one for any act done or purporting to be done under the Act by the Council or any officer. The relief of declaration that the encroachment cannot be removed as the property belongs to the non-applicant is merely an ancillary relief of the declaration of title. Mere combining of the two reliefs of declaration and injunction in the same suit would not attract the provisions of sub-section (1) of Section 319.” (Revision dismissed).”

12 The Madhya Pradesh High Court in the matter of **Nagar Palika Parishad, Mihona and another Vs. Ramnath and another**³ relying upon the judgement of **Nagar Palika Parishad, Mandsaur** (supra) held that suit for declaration of title and permanent injunction is saved by virtue of provision contained in sub-section (3) of Section 319 of the Act of 1961 and therefore, in such a suit bar contained in Section 319 (1) of the Act of 1961 is not applicable and dismissed the second appeal preferred by Nagar Palika Parishad – defendant therein.

13. The Nagar Palika Parishad questioned the order before the Supreme Court. The Supreme Court did not approve the order of the High Court and in the matter of **Nagar Palika Parishad, Mihona and**

³. (2012) 3 MPHT 360

another Vs. Ramnath and another⁴, their Lordships have held that Section 319(3) which is exception to 319(1) of the Act would not be applicable where the suit is filed for declaration of title of property coupled with permanent injunction and allowed the appeal of the Nagar Palika Parishad and held as under:

9. Along with the trial court and the appellate court, the High Court also failed to appreciate the aforesaid fact and also overlooked the valuable interest and right of public at large to use the suit land which is a part of public street. Further, in absence of challenge to the notice of eviction issued by the appellant, it was not open to the trial court to decide the title merely because permanent injunction coupled with declaration of title was also sought for.”

14. In the light of the judgement of the Supreme Court in the matter of **Nagar Palika Parishad Mihona** (supra), if the facts of the case are examined, it is quite vivid that present is a suit for declaration that the order of the Chief Municipal Officer dated 19-10-2001 is null and void and also suit for seeking permanent injunction. Thus, it is not a bare suit for permanent injunction under Section 38 of the Specific Relief Act and it is a suit for declaration as well as permanent injunction. Therefore, the provision enumerated in Section 319 (1) of the Act would apply with full force and Section 319 (3) of the Act would not be applied and the suit could not be filed by the plaintiff/appellant without service of notice under Section 319 (1) of the Act to respondent/defendant.

⁴. (2014) 6 SCC 394

15. In view of the aforesaid analysis, it is held that both the Courts below are justified in holding that Section 319 (1) of the Act would apply and Section 319 (3) of the Act would not apply in the facts of the case as suit was not only for perpetual injunction. Therefore, I have no hesitation in holding that both the Courts below have not committed any legal error in rejecting the plaint for want of notice under Section 319 (1) of the Act. The substantial questions are answered against the plaintiff/appellant and the second appeal is dismissed by affirming the rejection of plaint by the Courts below, leaving the parties to bear their own cost(s).

16. A decree be drawn accordingly.

Sd/-
(Sanjay K. Agrawal)
JUDGE