

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1332 OF 2011

Maharashtra Industrial Development Corporation ... Appellant
vs.
M/s. Rasikraj Enterprises and Others ... Respondents

Mr. Prashant Chavan a/w. Mr. P.M. Lokesh i/b. J. Pandey, for the Appellant.
Mr. Kuldeep Nikam, for the Respondents.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 1st FEBRUARY, 2016

P.C.:

. This Appeal from Order is directed against the judgment and order dated 14th June, 2011 passed by the learned District Judge, Pune in Civil Appeal No. 616 of 2010 thereby holding that the Civil Court has jurisdiction to try and entertain and set aside the order of the trial Court.

2. The Respondents have filed a suit challenging the notice of termination dated 25th August, 2010 issued by Maharashtra Industrial Development Corporation (In short "MIDC") i.e. present

Appellant. MIDC has entered into a contract with the Respondents on 6th April, 1999 in respect of plot D-117, Ranjangaon Industrial area. However, as per the case of the Plaintiff, the plot was handed over in 2001. As per the contract, the Respondents were supposed to complete the construction of the structure within 48 months i.e. upto 2003. As the construction had not taken place in accordance with the contract, the Appellant issued preliminary notice on 28th January, 2010 and then issued final notice of termination on 25th August, 2010. The Plaintiff challenged this notice on the ground of *nullity* that the notice was not issued in accordance with the law and filed suit before the Civil Court. The Appellant-MIDC challenged the jurisdiction of the Civil Court on the basis of Section 8-A of the Bombay Government Premises (Eviction) Act, 1955 (In short “the Act”). The trial Court accepted the plea of MIDC and ordered that the Civil Court is barred to try and entertain the suit under Section 8-A of the Act and the plaint was rejected under Order 7 Rule 11(d) of the Code of Civil Procedure on 1st October, 2012 against which Appeal No. 616 of 2010 was filed by the Respondent-Plaintiff. The learned District Judge, on 14th June, 2011 allowed the Appeal and remanded the matter to the Civil Court. Hence, this Appeal.

3. The learned counsel for the Appellant submitted that under Section 29 of MIDC Act 1961, the Bombay Government Premises (Eviction) Act, 1955 is applicable. Therefore MIDC issued a notice for cancellation of agreement for eviction from the plot to the Respondents under Section 4 of the Act. He further submitted that under Section 8-A of the Act, the Civil Court has no jurisdiction to entertain any proceeding in respect of eviction of any person from the Government premises on any ground specified in Section 4 of the Act. He relied on ground III of Section 4 that the Bombay Government Premises (Eviction) Act, 1955 as the Respondents failed to comply with the permission and conditions of the original contract as no construction has taken place within the stipulated period, he relied on the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971. He further submitted that considering the averments in the plaint, the Respondents have nowhere specified about the nullity and therefore the order passed by the learned District Judge deserves to be set aside and the order of the Civil Court is to be maintained and the matter is to be sent before the Competent Authority.

4. Per contra, the learned counsel for the Respondents

submitted that the suit is filed for declaration that the impugned notice is *ultra virus* and not valid as per the provisions of the Bombay Government Premises (Eviction) Act, 1955. He submitted that the said issue whether the Respondents have good case on merit or not cannot be looked into by learned civil Judge or the learned District Judge at this stage but when there is a challenge on the ground of nullity then that notice can be entertained by the civil Court. In support of his submission, he relied on the judgment in the case of *“Dhruv Green Field Ltd. vs. Hukam Singh and Others”*¹. He further relied on the judgment of the full bench in the case of *“Lala Ram Swarup and Others vs. Shikar Chand and Another”*².

5. Heard the learned counsel for the parties. Perused the plaint, so also the orders of both the Courts. The applicability of the provision of Sections 4 and 8-A the Bombay Government Premises (Eviction) Act, 1955 is not disputed by both the parties. The fact about the contract and handing over the premises is also not disputed. A short point is required to be decided whether Civil Court has jurisdiction to try and entertain the suit challenging the notice on

1. (2002) 6 Supreme Court Cases 416.

2. 1966 AIR 893.

the ground of nullity; when the jurisdiction of the Civil Court is expressly or impliedly barred under the law. In other words, when nullity is pleaded in the plaint which then whether Civil Court has jurisdiction to try or entertain the said notice or order.

6. Under Section 4(3) of the Bombay Government Premises (Eviction) Act, 1955, the Appellant-MIDC has issued a notice to the Respondents as the construction was not carried out within the stipulated period of 48 months. The notice is to be given by the Competent Authority as defined under the Act. My attention was drawn to the averments made in the plaint where the Plaintiff has pleaded that the notice issued under Section 4 of the Bombay Government Premises (Eviction) Act, 1955 is not in accordance with the procedure laid down. In the plaint, some instances are given highlighting the deviation from the procedure contemplated under Section 4 of the Act. It is a settled position of law that when nullity is pleaded then whether such order or notice is valid or not, is the issue to be determined while deciding the issue of jurisdiction. Thereafter, the Civil Court to try the matter on merit. Under Section 8-A of the Act, the jurisdiction of the Civil Court is expressly barred. The Hon'ble

Supreme Court has held in the case of “*Dhruv Green Field Ltd.*”(supra) as follows:

Para 10: *“In the light of the above discussion, the following principles may be restated:*

(1) If there is express provision in any special Act barring the jurisdiction of a civil Court to deal with matters specified thereunder the jurisdiction of an ordinary civil Court shall stand excluded.

(2) If there is no express provision in the Act but an examination of the provision contained therein leads to a conclusion in regard to exclusion of jurisdiction of a civil Court, the Court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act; if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the civil Court is barred, if, however, no such adequate and effective alternative remedy is provided then exclusion of the jurisdiction of the civil Court cannot be inferred.

(3) Even in cases where the jurisdiction of a civil Court is barred expressly or impliedly, the Court would nonetheless remain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity.”

7. In the case of “*Dhruv Green Field Ltd.*”(supra), first two

paras are in favour of the Appellant. However, para No. 3 states that the jurisdiction of the Civil Court cannot be taken out if at all challenge is given on the ground of nullity. Even in the case of “*Lala Ram Swarup*” (*supra*) the learned judge of the Supreme Court in para 16 held as follows:

“Para 16 : This conclusion, however, does not necessarily mean that the plea against the validity of the order passed by the District Magistrate, or the Commissioner, or the State Government, can never be raised in a civil Court. In our opinion, the bar created by the relevant provisions of the Act excluding the jurisdiction of the civil Courts cannot operate in cases where the plea raised before the civil Court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity.

*In this connection, we may incidentally refer to a recent decision of this Court in *Lala Shri Bhagwan and Anr. vs. Shri Ram Chand and Another*(1). In that case, this Court upheld the decision of the Allahabad High Court which had set aside the order passed by the appropriate authority.”*

8. Thus, when nullity is pleaded, then the Civil Court has jurisdiction to try the issue though jurisdiction of the Civil Court is

otherwise barred and the plaint cannot be returned under Section 7 of the Act. Thus, the order passed by the trial Court is rightly set aside and remanded by the learned Judge of the District Court.

9. Accordingly, Appeal from Order stands dismissed.

10. The parties to appear before the trial Court on 15th February, 2016 at 11.00 a.m.

11. The trial Court to proceed with the matter and decide the same preferably within one year.

(MRS.MRIDULA BHATKAR, J.)