

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

CIVIL REVISION APPLICATION NO.98 OF 2016

(Zonal Officer (Shetriya Adhikari), Akola Municipal Corporation, Akola and another
Vs. Pramod Dattatray Gokhale and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Dr. Anjan De, Advocate for Applicants.
Shri Shantanu Ghate, Advocate for Respondent Nos.1 to 3.

CORAM: DR. (SMT.) SHALINI PHANSALKAR-JOSHI, J.

DATE: 13th JULY, 2017.

This revision application is preferred against the order dated 21.10.2016 passed by 3rd Joint Civil Judge, Junior Division, Akola in Regular Civil Suit No.291/2016, thereby deciding the preliminary issue relating to jurisdiction of the Civil Court to entertain the said suit and answering it in affirmative.

The said suit was filed by the respondents, challenging the notice issued by the present petitioners – Municipal Corporation under Section 264 of the Maharashtra Municipal Corporation Act on the count that the construction has become dilapidated. As per the respondents, the notice was issued by the Municipal Corporation in collusion with the landlord who has earlier tried to evict the respondents, but was not successful. Hence, as certain *mala fides* were alleged made in the plaint, contending that the notice issued by the Municipal

Corporation under Section 264 of the Maharashtra Municipal Corporation Act therefore, needs to be declared as null and void.

Petitioner herein, which is the Municipal Corporation therefore, challenged the jurisdiction of the Civil Court itself to entertain the suit, in view of the provisions of Section 433-A of the Municipal Corporation Act. It was submitted that there is an express bar for Civil Court to entertain and try the suit, as contained in Section 433-A of the Act.

Learned Trial Court however, having regard to the averments in the plaint which alleged that the notice was issued in collusion with the landlord, found that, only the Civil Court has jurisdiction to decide whether the notice was issued *mala fide*, in collusion or otherwise and accordingly, the learned Trial Court held that Civil Court has jurisdiction to try and entertain the present suit.

However, as rightly submitted by learned counsel for appellant while deciding the preliminary issue of jurisdiction, that too merely on the basis of certain allegations made in the plaint that the notice was issued in collusion with the landlord and it was *mala fide*, which allegation, as observed by the Trial Court itself, “needs to be examined”, it was not proper on the part of the Trial Court to decide the preliminary issue of jurisdiction, without giving an opportunity of leading evidence to both the parties.

It is pertinent to note that in para 26 of its order, the Trial Court has specifically observed that, “the Civil Court has jurisdiction to examine whether the power invoked by the competent authority under the relevant provision is invoked in conformity with the provisions of the law. The Civil Court has also jurisdiction to examine whether competent officer has abused his power or has not acted in accordance with the provisions of law”. Therefore, unless such examination is carried out and that examination needs to be carried out on the basis of the oral evidence adduced by the parties, the Trial Court should not have decided this preliminary issue relating to jurisdiction of the Civil Court to entertain the suit.

Needless to state that the finding on preliminary issue of jurisdiction becomes final and that point will not remain open to be agitated at the time of hearing of the suit. Therefore, the interest of justice requires that, if in the opinion of the Trial Court itself, the allegations in the plaint are required to be examined and such examination can only take place when the parties are offered an opportunity to lead evidence, the impugned order passed by the Trial Court needs to be set aside and the opportunity of leading such oral evidence is required to be extended to both the parties for deciding this preliminary issue.

The revision is therefore, allowed. The impugned order passed by the Trial Court is set aside. The Trial Court is directed to decide the issue of jurisdiction as preliminary issue after giving an opportunity of leading oral and the

documentary evidence to both the parties. The Trial Court to decide the same as expeditiously as possible and preferably within a period of three months from the receipt of this order.

JUDGE

NSN