

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.970 OF 2014
WITH
CIVIL APPLICATION NO.1177 OF 2014

Solapur Municipal Council & Anr. .. Appellants
Versus
Kafil Shabbir Moulavi & Anr. .. Respondents

Mr. Dilip Bodake for appellants
Mr. Surel Shah for respondent Nos. 1 and 2.

CORAM : DR.SHALINI PHANSALKARJOSHI, J.

DATE : 17th September 2018.

P.C.

Heard learned Counsel for the appellant and respondent.

2] This appeal takes an exception to the order dated 13th May 2014, passed by the District Judge, II, Solapur thereby allowing the R.C.A.No.68 of 2014 and setting aside the order dated 10th February 2014 passed by the 3rd Joint C.J.J.D. Solapur below Exh.1 in R.C.S.No.859 of 2013.

3] R.C.S.No.859 of 2013 was filed by the respondents

herein, seeking relief of declaration and injunction in respect of the notice dated 29th August 2013 issued by the Municipal Corporation of Gr. Mumbai under section 260 of the Mumbai Municipal Corporation Act, 1949 (for short Act). The trial court has framed the preliminary issue as to whether in the light of the provisions of section 433 of the Act, the civil suit is maintainable and held that in view of the clear bar laid down in the said section, the civil court has no jurisdiction to entertain such a suit which challenges the notice issued under section 260 of the Act and the action in pursuance of the said notice.

4] The Appeal Court, however, reversed the order passed by the trial court in the light of the judgement of Division Bench of this Court in the case of Abdul Karim Ahmed Mansoori Vs. Municipal Corporation of Greater Mumbai, (Writ Petition Lod.No.2237 of 2013) reported in **2013(6) All M.R. 323** and held the suit to be maintainable and accordingly as stated above, allowed the appeal and set aside the order passed by the trial court and restored the suit to its original file.

5] This judgement of the first appellate court is challenged by the learned Counsel for the appellant in this court by submitting that when the original plaintiff is seeking a clear relief of declaration challenging the notice issued by the Corporation under section 260 of the Act on the ground that it is illegal and void, the provisions of section 433-A of the Act are clearly applicable as they categorically lay down the bar of jurisdiction to the civil court to entertain such suit. It is submitted that the said section lays down that the notice issued or passed or direction issued by the designated office under section 260, 261, 264, 167 to 478 of the said Act, shall not be questioned in any suit or other legal proceedings.

6] Here in the case, according to the learned Counsel for the appellant, when the notice issued by the Corporation under section 260 of the Act is challenged by filing the suit, apparently the jurisdiction of the civil court was expressly barred and the trial court has rightly held so. The first appellate court has, however, misread the provisions and also did not properly considered the law laid down by this Court in the case of Abdul Karim Ahmed Mansoori (supra) and hence, the impugned order passed by the first appellate

court is required to be quashed and set aside.

7] Per contra, learned Counsel for the respondent has supported this order by taking this Court through various pleadings in the plaint to show as to how the jurisdiction of civil court is not barred in the light of the abovesaid decision of this Court in the case of Abdul Karim Ahmed Mansoori.

8] Since, both the parties are relying upon the above referred decision of this Court in the case of Abdul Karim Ahmed Mansoori and also the provisions of section 433-A of the Act, it would be necessary to reproduce the said provisions and the law laid down by this Court in the said judgement. In para 7 of the judgement, the Division Bench of this Court has reproduced the provisions of section 433-A of the Act and interpreted the same as follows:-

“433-A. Bar of Jurisdiction – Save as otherwise provided in this Act, any notice issued, order passed or direction issued by the Designated officer, under sections 260, 261, 264, 167 or 478 shall not be questioned in any suit or other legal proceedings.”

“Undoubtedly, if the plaintiff comes before the Civil Court alleging that a notice issued under section 260 of the said Act is illegal in any manner and seeks a declaration to that effect, then the bar of jurisdiction to try such a suit under section 433-A of the said Act shall operate. However, nonetheless, the inherent jurisdiction of a Civil Court in a suit challenging the notice under section 260 of the said Act, on the limited grounds, viz., that the act of issuance of such notice is nullity, or that while issuing such notice, the mandatory provisions of the said Act have not been complied with, or that the authority issuing such a notice has not acted in conformity with the fundamental judicial procedure, or that it is an abuse of exercise of power, or that the offending act has not been done in good faith, remains in tact, in view of the aforestated law laid down in judicial pronouncement. The Civil Court is not precluded of its inherent jurisdiction to entertain and decide such challenge to a notice under section 260 of the said Act, on such limited grounds, particularly when there is no forum available under the said Act to ventilate such grievances in respect of it. Hence, the question of law at Serial No.(i) is answered accordingly.”

“A plea of bar to jurisdiction of the Civil Court to entertain and decide the challenge to a notice under section 260 of the said Act on the limited grounds, has to be considered having regard to the contentions raised in the plaint, the averments disclosing the cause of action, and the reliefs sought for therein. All such averments must be considered as a whole and not in isolation.”

9] Thus, the law laid down by this Court is very clear and it categorically holds that there is no blanket bar on the jurisdiction of the civil court to entertain the suit, challenging the notice issued under section 260 of the Act because the inherent jurisdiction of civil

court cannot be ousted in the light of the various decisions of the Apex Court including the one in Dhulabai & Ors. Vs. State of Madhya Pradesh & Anr., reported in **A.I.R. 1969 S.C. 78**. It was held that a limited window is left open to entertain such a suit, viz., whenever, the very act of issuance of such a notice is challenged on the ground of it being a nullity or while issuing such a notice, the mandatory provisions of the Act having not been complied with or that the authority issuing such a notice has not acted in conformity with the fundamental jurisdictional procedure. In all these situations such a notice may be challenged and the civil court can entertain the suit, if it is averred that the issuance of notice is an abuse of exercise of power or it has not been done in good faith.

10] In view thereof, it is clear that no blanket bar to the jurisdiction of the civil court to entertain the suit challenging the notice issued under section 260 of the MNC Act, can be inferred, despite the bar laid down under section 433-A of the Act. Each case will depend upon its own pleadings and facts. Hence the court has to consider whether there are sufficient averments, which can bring the case within the four corners of the criteria laid down by the

Division Bench of this Court.

11] In the present case the respondents have made sufficient averments in the plaint and by way of amendment of the plaint also further details are brought on record to prima facie show as to how the notice issued under section 260 of the Act is illegal, null and void and it is issued without following due procedure or issued in violation of fundamental principles of natural justice. In the light of these averments in the plaint, the first appellate court has rightly held that the suit cannot be dismissed at the threshold itself, merely on the ground that it is filed to challenge the notice issued under section 260 of the said Act. The questions, which are raised by the respondents in their pleadings about the illegality and validity of the impugned notice are required to be considered on merits at the time of trial.

12] Therefore, the impugned order passed by the first Appellate court, restoring the suit to its original file being just in the light of the above referred division bench decision of this Court no interference is warranted therein. The appeal, being without merit

stands dismissed.

12] In view of dismissal of the appeal, the civil application no more survives and hence disposed of.

13] The order of status quo as passed by the first appellate court, while allowing the appeal is continued till the appearance of parties before the trial court.

14] Both the parties are directed to appear before the trial court on 16th October 2018.

15] It is needless to state that the suit being of the year 2013, the trial court to decide the same as expeditiously as possible.

Yogeshwar
Bhalchandra
Gokhale

Digitally signed by
Yogeshwar Bhalchandra
Gokhale
Date: 2018.09.27
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(Dr. Shalini Phansalkar-Joshi, J.)