

OD-12

IA NO. GA/1/2020
(Old No: GA/512/2020)
In CS/12/2020
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

RAM NATH SINGH AND ORS
Vs.
JASPAL SINGH CHANDHOK AND ORS

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Date: 29th September, 2022.

Appearance:

Mr. Dipnath Chowdhury, Adv.
Mr. Subir Sabud, Adv.
Mr. Prasenjit Roy, Adv.
...for the plaintiff

Mr. Swatarup Banerjee, Adv.
Ms. Sonali Mukhopadhyay, Adv.
....For the respondent no. 1.

ORDER

The petitioner has filed the instant application for appointment of Special Officer to ascertain whether the essential service of building like uninterrupted

water supply, lift services and free ingress and egress are available in the building i.e. 30, Ganesh Chandra Avenue, Kolkata-700013.

Learned Counsel for the defendant no. 1 has raised the point of maintainability on the ground that defendant no. 3 is the Kolkata Municipal Corporation and prayer (d) of the plaint is against the defendant no. 3 but neither any notice under Section 80 is served to the defendant no. 3 nor any leave is sought for filing of the suit against the defendant no. 3 without issuance of notice under Section 80 of CPC. It is further submitted that the plaintiff has made an averment in the plaint as well as in the prayer that the defendant no. 1 is in collusion with the defendant no. 3 without sanction of building plan had wrongfully constructed 4th, 5th and 6th floor of the building and it cannot be said that an independent prayer is made against the defendant no. 3. Counsel for the defendants further submits that the suit filed by the plaintiff suffers from non joinder of parties as the other co-owners of the said building are enjoying all the facilities and they have not been made party to the suit who are the necessary party in the instant suit.

Counsel for the defendant in support of is contention has relied upon the following judgments :

- a. (1966) 1 SCR 986 (*Sawai Singhai Nirmal Chand -versus- Union of India*)
- b. (1984) 2 SCC 627 (*Bihari Chowdhary and Another – versus- State of Bihar & Others*).
- c. 2000 SCC Online Mad 2506 (*Assistant Divisional Engineer & Another – versus- Mymoon Bi (Died) and others*)

- d. 2000 SCC Online Cal 131 (Calcutta Municipal Corporation - versus- Sibamoy Chakraborty)*
- e. (2006) 12 SCC 119 (State of A.P. & Others – versus – Pioneer Builders, AP).*

Learned Counsel for the plaintiff has referred Section 79 and Section 80 of the Code of Civil Procedure and submits that Kolkata Municipal Corporation is not a State Government. Ld. Counsel for the petitioner further referred Section 445 and section 425 (o) of the Kolkata Municipal Corporation Act and submits that as per this Sections, an approval is required from the State Government and thus Section 80 is not applicable in the case of Kolkata Municipal Corporation. Ld. Counsel for the plaintiff submits that the plaintiff has prayed for separate relief against the defendant no. 3 and if at all it is held that no relief can be granted against the defendant no. 3 on the ground of non issuance of Section 80 notice, relief against defendant no. 3 will be rejected but the whole suit cannot be dismissed. Ld. Counsel for the plaintiff submits that the plaintiff is not getting the facilities of uninterrupted water supply, lift service and ingress and egress and thus there is no necessity to make the other occupants of the said building as party to the instant suit.

Counsel for the plaintiff has relied upon the judgment reported on 2017 Supreme Court 4477 (Sejal Glass Ltd. – versus- Navilan Merchants Pvt. Ltd.).

Heard, the ld. Counsel for the respective parties, considered the pleadings, materials available on record and the judgments relied by the parties.

Section 79 and section 80 of the CPC reads as follows :

“79. Suits by or against Government. - In a suit by or against the Government, the authority to be named as plaintiff of defendant, as the case may be, shall be-

(a) in the case of a suit by or against the Central Government, [the Union of India], and

(b) in the case of a suit by or against a State Government, the State.

80. Notice. – [(1)] [Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu & Kashmir) or against a public officer in respect of any act purporting to be done by such officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of-

(a) in the case of a suit against the Central Government, [except where it relates to a railway,] a Secretary to that Government;

[(b) in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;]

[(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;]

(c) in the case of a suit against [any other State Government], a Secretary to that Government or the Collector of the district; [* * *]

(d) [* * *]

and, in the case of a public officer, delivered to him or left at this office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu & Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be,

a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice-

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated.”

Section 425 (o) and 445 of the Kolkata Municipal Corporation Act reads as follows :

“425-O. When heritage building ceases to be heritage building:- If the Corporation decides that any heritage building has ceased to be of public interest or has lost its importance for any reason whatsoever, it may, with the approval of the State Government, declare that such heritage building has ceased to be a heritage building for the purposes of this Act. 425P.

445. Improvement schemes:- (1) Notwithstanding anything contained in any other law in force for the time being, the Corporation may, with the approval of the State Government, prepare such improvement scheme for the purpose of effecting environmental or general improvement of bustees as it may consider necessary, and publish a copy such scheme in such manner as may be prescribed.

(2) The improvement scheme may provide for all or any of the following matters: -

(a) water-supply including sinking of tube-well, laying of water pipelines, installation of overhead reservoirs, flushing arrangements for privies and the like,

(b) drainage and sewerage including connections with any existing channel or sewer main or laying or diverting of drains,

(c) conversion of service privies into septic tank privies or water-borne privies connected with sewer mains,

(d) sewage and garbage removal,

(e) raising, lowering or levelling of land and improvement of pathways and passages,

(f) lighting including laying of cables or overhead lines,

(g) improvement of huts or other structures, and

(h) such other matters as may be considered necessary for carrying out the objects of this Chapter.

(3) While approving any improvement scheme, the State Government shall take into account the activities of other agency or authority affecting all or any of the matters referred to in sub-section (2)."

The judgments relied by the Counsel for the defendant (Supra) specifically explicit that it is settled law that the suit against the Government or a Public Officer, to which the requirement of a prior notice under Section 80 of CPC is attracted, cannot be validly instituted until the expiration of the period of two months next after the notice in writing has been delivered to the authorities concerned in the manner prescribed for in the section and if filed before the expiry of the said period, the suit is not maintainable. In the said judgments, it is also held that Section 80 is express, explicit and mandatory.

The Hon'ble Supreme Court had also held that when the language used in the statute is clear and unambiguous, it is then plain duty of the Court to

give effect to it and considerations of hardship will not be legitimate ground for faithfully implementing the mandate of the legislature.

The judgment referred by the plaintiff in the case of Sejal Glass Ltd. (Supra), the Hon'ble Supreme Court had dealt with the provisions of Order 7, Rule 11, Order 5, Rule 16 and Order 14, Rule 2 and held that the said issues are to be dealt with after filing of written statement and may try as preliminary issue.

In the instant case, the plaintiff has made the Kolkata Municipal Corporation as defendant no. 3 and in paragraph 27 of the plaint, the plaintiff has made the following averment against the Municipal Corporation which reads as follows :

“27. That in addition to the aforesaid wrongful Act, the Defendant No. (1) in collusion with the Defendant No. (3), KMC also made wrongful Constructions on the Top Floor of the Building without having sanctioned plan of the KMC. The Building was partially 4 (four) storied and partially 5 (five) storied but now the defendants have constructed entire 5th floor and entire 6th Floor without having sanctioned Plan by KMC. Constructions of extra Floor on the top of the Building have put the building in endanger condition due to weak foundation of the building (66 years of old).”

In prayer (d) in the plaint, the following reliefs have sought for against the Municipal Corporation :

“d) Decree for Declaration that the wrongful construction(s) as made on the 4th, 5th and 6th Floor of the Building as wrongfully by the Defendant No. (1) in collusion with Defendant No. (3), KMC without having sanctioned plan of KMC are required to be demolished and or to be removed for safety and security of the Building.”

As the plaintiff has made a specific averment against the defendant no. 3 i.e. Kolkata Municipal Corporation and prayed for relief against the defendant no. 3 but admittedly has not given any notice to the Kolkata Municipal Corporation under Section 80 of the CPC nor any leave is obtained for filing of the suit without notice and thus this Court finds that the suit filed by the plaintiff is not maintainable under law.

Section 2 (81B) defines State Government which reads as follows:-

“(81B) : “State Government means the Government of the State of West Bengal in the Department of Urban Development and Municipal Affairs.”

The submissions made by the Ld. Counsel for the plaintiff that as per section 445 and 425(o) the Kolkata Municipal Corporation is not the State cannot be accepted.

In view of the above, this Court held that the suit filed by the plaintiff is not maintainable and thus the C.S. No. 12 of 2020 is dismissed as not maintainable and consequently G.A. 1 of 2020 is also dismissed.

(KRISHNA RAO, J.)

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