

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 271 OF 2023
WITH
INTERIM APPLICATION NO. 3533 OF 2023**

1. Fayzan Khan

Age: 40

R/o. B/301, Sabina Apartment,
Himalaya Society, Narayan Nagar,
Ghatkopar (East), Mumbai – 400 084.

2. Devendra Mishra

Age: 34

Room No. 147, Shanti Nagar,
Near Durga Mata Mandir,
S.P. Road, Wadala (East),
Mumbai – 400 037.
Mobile No. 8779908851

3. Firoz Ismail Khan

703, Navbharat SRA Society,
New Mill Road, Kurla (West),
Mumbai: 400 070.

4. Rajesh Kanojiya

Akash Darshan CHS,
CST Road, Vidyanagri
Manipada, Santacruz (East)
Mumbai: 400 098.

...Appellants/
Original Plaintiffs

Versus

ETHAPE
DNYANESHWAR
ASHOK
Digitally signed
by ETHAPE
DNYANESHWAR
ASHOK
Date: 2023.09.30
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1. Superintendent of Land Records,
Mumbai Suburban District
10th Floor, New Administrative Building,
Government Colony, Bandra (East),
Mumbai – 400 051.

2. Tehsildar – Andheri,
Opp. Bhavans College,

Andheri (West)
Mumbai.

3. City Survey Officer – Bandra Division,
Municipal Garage,
Milan Subway,
Santacruz (West), Mumbai.

4. The Collector
Mumbai Suburban District
10th Floor, New Administrative Building,
Government Colony, Bandra (East),
Mumbai – 400 051.

5. Slum Rehabilitation Authority,
Through its Chief Executive Officer,
Administrative Building,
Professor Anant Kanekar Marge,
Bandra (East), Mumbai – 400 051.

6. Executive Engineer (SRA)
Administrative Building,
Professor Anant Kanekar Marg,
Bandra (East), Mumbai – 400 051.

7. Klassik Vinyl Products Pvt. Ltd.
(Now Klassik Vinyl Products LLP)
Unit No. F/1, First Floor,
Shantinagar Co-operative Industrial
Estate Ltd. Vakola, Santacruz (East)
Mumbai : 400 055.

8. A.H. Wadia Charity Trust
Manager's Officer
A. H. Wadia Marge,
Kurla, Mumbai: 400 070.

9. State of Maharashtra
Through Principal Secretary,
Housing Department,
Govt. of Maharashtra
Mantralaya, Mumbai : 400 032.

...Respondents/
Original Defendants

* * *

Mr. Rohan Surve with Ms. Trupti Gaikar i/by V. Shukla and Associates, Advocate for the Appellants.

Mr. Yogesh Patil i/by Mr. Vijay D. Patil for Respondent No.5 and 6.

Mr. Vishal Kanade with Mr. Saket Mone i/by Mr. Makarand Savant for Respondent No.7.

* * *

CORAM : N. J. JAMADAR, J.
RESERVED ON : 21st JUNE, 2023.
PRONOUNCED ON : 29th SEPTEMBER 2023.

JUDGMENT :-

1. This Appeal under Section 104(1)(ffa) of the Code of Civil Procedure, 1908 (The Code, 1908) is directed against an order dated 4th February 2023 passed by the learned Judge, City Civil Court at Dindoshi (Borivali Division), Goregaon, Mumbai declining to grant leave to institute a suit under Section 91(1)(b) of the Code, 1908.

2. Shorn of unnecessary details, the background facts can be stated as under:

2.1 The appellants-complainants claimed to be public spirited persons. They professed to espouse the cause of the public on account of alleged inaction on the part of the authorities in prohibiting the wrongful acts of Respondent-Defendant No.7.

2.2. The substance of the grievance of the plaintiffs, which allegedly affects the public, is that land bearing CTS No. 4957 and 4957/1 corresponding to Survey No. 295, Hissa No.6 situated at Village Kole-Kalyan, Taluka Andheri (the suit property) belongs to Kumar Engineering Works and others. The Defendant No.7 claims to have acquired the adjacent property bearing CTS No. 4958-D, 4958-D/1 to 124 and CTS No. 4889, 4889/1 to 4, 4890, 4894/A, 4894-A/1 and 2 and 4894-B, 4894-B/1 to 5 admeasuring 4771.70 and 997.80 square metres respectively from A. H. Wadia Charity Trust- Defendant No.8, under an Indenture dated 3rd December 2007. Defendant No.7 has started implementing a Slum Rehabilitation Scheme over the aforesaid lands acquired from Defendant No.8.

2.3. In order to usurp the suit property, the Defendant No.7 allegedly illegally and fraudulently got transferred the suit property in connivance with the State machinery.

2.4 Plaintiffs assert that in the year 2014, the City Survey Officer-Defendant No.3, carried out modification in the PR card in respect of CTS Nos.4957 to 4957/1. The plaintiff No.4 raised objection thereto. It transpired that the then Superintendent of Land Record has passed a fraudulent order

on 1st November 2014 effacing the Survey Nos.4957 and 4957/1 from City Survey Record and amending the City Survey Map. The plaintiffs claimed to have first assailed the said order before the Collector by preferring an application under Section 300 of Maharashtra Land Revenue Code, 1966 (Code 1966) and later on filed an Appeal before the Deputy Director, Land Records (D.D.L.R.) under Section 247 of the Code, 1966. The D.D.L.R., however, declined to entertain the Appeal questioning the locus of the plaintiffs.

2.5. The plaintiffs aver that the authorities of the State in collusion with the Defendant No.7 have wrongfully effaced property card in respect of CTS No No.4957 and 4957/1 and consequently the Defendant No.7 has started developing the SRA scheme by usurping the suit property which belongs neither to Defendant No.7 nor to Defendant No.8. Plaintiffs further assert that the Slum Rehabilitation Authority-Defendant No.5 had also committed a wrongful act in issuing an illegal LOI even in respect of the suit property. These wrongful acts of the authorities of the State and Defendant No.7 affect the interest of the public at large. Hence, the suit under Section 91 of the Code seeking a decree to quash part of LOI dated 23rd March 2018 issued by Defendant No.5 in

respect of the suit property and a declaration that the 7/12 extract and Form No.6 in respect of the suit property which stood in the name of Kumar Engineering Works and others are valid and binding on revenue and other State Authorities.

2.6. Since the plaintiffs professed to espouse the cause of the public, application seeking leave under Section 91(1)(b) came to be filed.

2.7. Respondent-Defendant No.7 resisted the application contending *inter alia* that the suit for the reliefs claimed in the plaint was not tenable before the Civil Court as the prayers in the prayers clauses (A) and (B) were barred by provisions contained in Section 42 of the Maharashtra Slum Areas (Improvement, Clearance And Redevelopment) Act, 1971 (Slum Act 1971) and Section 158 of the Code 1966, respectively. It was denied that the suit was in respect of the matter with necessitated leave under Section 91(1)(b) of the Code, 1908.

2.8. By the impugned order, the learned Judge, City Civil Court was persuaded to reject the application for leave holding *inter alia* that no public property was involved in the suit nor there was any public nuisance or wrongful act affecting or likely to affect the public interest.

3. Being aggrieved, the plaintiffs are in Appeal.

4. Mr.Rohan Surve, the learned Counsel for the appellants/plaintiffs would urge that the learned Judge, City Civil Court approached the issue from an incorrect perspective. At the stage of determination of grant of leave under Section 91(1)(b), the Court was required to *prima facie* consider whether the grant of leave was necessary. Whether the plaintiffs were entitled to the relief was a matter for adjudication at trial. However, the plaintiffs could not have been declined leave when there was overwhelming material to show that the authorities of the State in collusion with the Defendant No.7 had wrongfully carried out modification in the City Survey Record to cause wrongful gain to Defendant No.7. Mr. Surve would urge that the prayer for grant of leave to institute the suit, where the plaintiffs espouse the cause of public at large, ought to receive a liberal consideration. The learned Judge, City Civil Court, according to Mr. Surve, missed the substance of the matter and rejected the application by ascribing untenable reasons.

5. Mr.Surve would submit that the legislature has designedly liberalized the rule of "*locus standi*" so as to arrest the damage to public interest. The provisions of Section 91(1)

are not confined to acts of public nuisance but wrongful acts which seriously affect the public at large also furnish a sustainable ground to grant leave. In the case at hand, according to Mr. Surve, both Defendant Nos. 7 and 8 had conceded that they were not the holders of CTS No. 4957 and 4957/1 and yet by resorting to machinations the Defendant No. 7 usurped the land and has started developing SRA scheme in respect of the property which is not a slum.

6. To bolster up this submission, Mr. Surve placed a strong reliance on the judgment of this Court in the case of **Omkar Pandit Bankar Vs. Ashok Laxman Jadhav**¹, a Division Bench Judgment of the Madras High Court in the case of **M/s Adani Wilmar Ltd. and Anr. Vs. Mr. A. S. Hansraj and Anr.**², a judgment of the Punjab and Haryana High Court in the case of **Mohinder Singh Vs. Surmukh Singh and Others**³, a judgment of the Andhra Pradesh High Court in the case of **Chavali Ranga Reddy Vs. Chavali Sesha Reddy and Others**⁴ and a decision of the Punjab and Haryana High Court in the case of **Bijay Shankar Halwasiya and Others Vs. Bhiwani Sudhar and Vikas Samiti, Bhiwani and Others**⁵. Reliance was also placed

1 2023 SCC OnLine Bom 338

2 2018 SCC OnLine Mad 1788

3 ILR Punjab and Haryana 2012 (2) 694

4 2007 SCC OnLine AP 153

5 2015 SCC OnLine P&H 12454

on a judgment of the Supreme Court in the case of **Kachrual Bhagirath Agrawal and Others Vs. State of Maharashtra and Others**⁶ wherein the nature and distinction between public and private nuisance was explained.

7. As a second limb of the submission, Mr. Surve would urge that in any event the SRA scheme is being developed illegally. It is necessary to curb menace of illegal and unauthorized development. From this standpoint also, according to Mr. Surve, the leave to institute the suit ought to have been granted. Attention of the Court was invited to the decisions of the Supreme Court in the cases of **Friends Colony Development Committee Vs. State of Orissa and Others**⁷, **Sri K. Ramadas Shenoy Vs. The Chief Officers; Town Municipal Council, Udipi and Others**⁸; **Pratibha Cooperative Housing Society Ltd. and Another Vs. State of Maharashtra and Others**⁹ and **Forward Constructions Co. and Others Vs. Prabhat Mandal (Regd.) Andheri and Others**¹⁰ wherein the Supreme Court laid emphasis on the necessity to firmly deal with unauthorized development and strict enforcement of the duties of the State authorities.

6 (2005) 9 SCC 36

7 (2004) 8 SCC 733

8 (1974) 2 SCC 506

9 (1991) 3 SCC 341

10 (1986) 1 SCC 100

8. As against this, Mr. Vishal Kanade the learned Counsel for the Defendant No.7 would submit that the prayers in the suit run counter to the case of the plaintiffs that they are espousing the cause of the public. In prayer clause (A), the plaintiffs seek quashing of the LOI; such relief cannot be granted by the Civil Court. The provisions contained in Section 42 of the Slum Act 1971 incorporate an express bar to entertain a suit of the present nature. In prayer clause (B), the plaintiffs seek a declaration that suit property vests in a third party. Such declaration can never form a subject matter of a suit instituted under Section 91 of the Code, 1908.

9. Mr. Kanade would urge that, disguised as a public interest, the plaintiffs are pursuing a private interest to settle score with defendant No.7. There is no element of public interest in the dispute in question. At any rate, both the reliefs claimed by the plaintiffs are barred by express statutory provisions as there are statutory remedies and, in fact, the plaintiffs had resorted to the remedies under the Code, 1966. Therefore, the learned Judge committed no error in declining to grant leave, submitted Mr. Kanade.

10. Section 91 of the Code 1908 reads as under:-

“91. Public nuisances – [(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,-

(a) by the Advocate-General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.]

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.”

11. By way amendment in 1976, the scope of Section 91 came to be expanded, in two ways. First, in addition to the Advocate General instituting a suit, such suit can now be instituted with the leave of the Court by two or more persons. Second, the words ‘wrongful act’ were added as a ground for action in public interest in addition to “Public Nuisance”. Resultantly two or more persons with the leave of the Court can institute a suit respect of wrongful acts which affect the public, apart from cases of public nuisance.

12. In the case of M/s Adani Wilmar Ltd and Ors. (supra) a Division Bench of the Madras High Court considered the scope of the provisions contained in Section 91 in the light of the legislative object in incorporating the 1976

amendment and repelled the submission that the words “wrongful act” be read ejusdem generis public nuisance. The observations of the Division Bench in paragraph Nos. 11 and 12 are material and hence extracted below.

“11. We are of the considered view that the language as used under Section 91(1) of CPC is clear and unambiguous and the same can be understood in its natural and ordinary sense. There is no requirement to refer to the General Clauses Act or the Penal Code, 1860 in order to understand the meaning of the words employed under Section 91 (1) of CPC. The word wrongful acts has to be understood as any legal wrong that prejudicially affects a legal right of any person. The averments made in the plaint by the plaintiffs against the defendants sufficiently falls within the scope of the word “wrongful acts”. Even for the purpose of understanding the word “public nuisance” it is not necessary to employ the meaning to it under Section 268 of IPC for the reason that it is a criminal statute where rules of strict interpretation is followed. The ordinary meaning of the “public nuisance” will encompass any act affecting the public at large which seriously interfere with the health, safety, comfort or convenience of the public generally by virtue of an act of any person or entity. The plaintiffs have made necessary averments in the plaint touching upon the aspect of the “public nuisance” also against the advertisement given by the defendants.

12. The scope of a suit filed under Section 91 CPC by the very language used in the provision gives a very wide amplitude. A plain reading of the Section would go to show that in case of a “public nuisance” or other “wrongful acts” affecting, or likely to affect the public, false within the scope of Section 91(1) CPC. The word “other” also assumes significance as it clearly drawn a distinction from the word “public nuisance”. Similarly the words “likely to affect” taken within its sweep will include any possible act in future. Thus, the overwhelming factor is that of public interest. This is once again made clear by dispensing with the personnel injury termed “special damage”. Two or

more persons can file a suit on this nature with the leave of the Court even though no special damage has been caused to such persons by reason of such “public nuisance” or “other wrongful acts”. In our considered opinion, even an advertisement which is likely to affect the public at large can fall within the scope of Section 91 CPC. Taking into consideration the intention of the legislature enabling the filing of a suit by any two persons, after getting the leave of the Court, whenever any act causes “public nuisance” or “other wrongful acts” affecting or likely to affect the public and also taking into consideration the wide amplitude of the language used under Section 91 CPC, this Court cannot give a restricted meaning as sought to be projected by the learned senior counsel for the appellants. The provisions of Section 91 CPC is an important tool for remedying the grievances of a large number of individuals who cannot file independent suits. Such an important right guaranteed under the said provision cannot be defeated by giving it a restrictive interpretation.”

13. In the case of Mohinder Singh Vs. Surmukh Singh and Others (supra), the Punjab and Haryana High Court observed that, under Section 91(1) of Code the scope of *locus standi* to file a suit has, in fact, been enlarged. Even persons to whom no special damage has been caused on account of a wrongful act or public nuisance may institute a suit upon complying with the conditions stipulated in Section 91(1) of the Code, 1908. However, such provisions cannot be construed to restrict the right of a person to file a suit in view of a wrong caused independently of such provision.

14. In Chavali Ranga Reddy (supra), a learned Single Judge of the Andhra Pradesh High Court observed as under: -

“8. After amendment as above, the position is as follows. A suit for declaration and injunction or other appropriate relief can be instituted in the case of (i) a public nuisance; (ii) other wrongful act affecting or likely to affect the public. Such a suit can be instituted by two categories of persons, namely, the Advocate General of the State or, two or more persons even if no special damage is caused. In this case, there are two plaintiffs, and therefore, there is compliance with Section 91(1)(b) of CPC. Even otherwise Sub-section (2) of Section 91 of CPC does not take away the general right of every person to seek redressal in a civil Court if any right is affected.”

15. The legislative object behind relaxing the rule of *locus standi* was elucidated by the Punjab and Haryana High Court in the case of Bijay Shankar Halwasiya and Others (supra) in following words: -

“11. When focussed attention is paid to this provision, it transpires that Section 91(1) CPC provides a dynamic concept for action in matters of public nuisance or other wrongful acts etc. It is the cause and interest of public which is to be secured. It remains a fact that neither the litigation earlier instituted by the respondents nor filing of application under Order I Rule 10 CPC is any substitute for the considerations to be weighed at the time of decision on application for seeking leave of the court for bringing a suit under Section 91 CPC.

12. Consideration while deciding application under Order I Rule 10 CPC are always different. Pleas such as the plaintiff is a dominus litus etc. are to be evaluated for deciding application under Order I Rule 10 CPC. If contents as also

cause of action of application under Order I Rule 10 CPC is not commensurate with the contents and cause of action of the main suit, in which such application is filed, then there would not be any chance of success of application under Order I Rule 10 CPC. In short, considerations for evaluating merits of application under Section 91 CPC are entirely different than those which are available for deciding application under Order I Rule 10 CPC.”

16. There can be no duality of opinion that the enabling provision contained in Section 91(1) of the Act serves a salutary purpose. With the amendment of 1976, the scope of the said provision stands expanded to subsume in its fold wrongful acts as well. A case of public nuisance does not present much difficulty as ordinarily public nuisance affects public interest as a matter of necessary corollary. It is in the case of wrongful acts, the applicability of the provisions contained in Section 91(1) is required to be tested. From the text of Section 91(1) it becomes abundantly clear that the wrongful act contemplated by the said section ought to have the propensity to affect the public. It is this potentiality of harm to public in contradistinction to injury to a person or group of persons, which furnishes the test for application of the said provision. Focus is not on the wrongful act but the effect such act has on the public. Therefore, in my view, when

the Court is confronted with the question as to whether leave under Section 91(1) of the Code, 1908 deserves to be granted, it has to pose unto itself the question as to whether the alleged wrongful act either affects the public or has the propensity to affect the public. If the answer to the question is in the affirmative, ordinarily leave ought to be granted. As the matter at that stage is in the realm of grant of leave only, liberal consideration shall inform the decision of the Court.

17. Reverting to the facts of the case, it is pertinent to note that, the plaintiffs do not assert that the suit property vests in public. The plaintiffs not only averred that the property cards in respect of the suit properties were illegally effaced but also sought a specific prayer that the persons whose names were originally mutated to the CTS Nos.4957 and 4957/1, be declared to be the owners of the suit property. It would be contextually relevant to note that the plaintiffs essentially assail the correctness of the order dated 1st November 2014 passed by the Superintendent of Land Record ordering the effacing of the property cards in respect of CTS Nos. 4957 & 4957/1 on the premise that the land covered by those CTS numbers had already been subsumed in CTS No. 4958-D and the property cards in respect of CTS Nos. 4957

and 4957/1 were incorrectly opened. As noted above, the plaintiffs claimed to have assailed the legality, propriety and correctness of the said order by approaching the authorities under Code, 1966. In this backdrop, the dispute in question partakes the character of a dispute inter partes rather than a dispute which affects the public at large.

18. The endeavour of the plaintiffs to demonstrate that the Slum Rehabilitation Scheme could not have been sanctioned in respect of the suit property as it never belonged to either Defendant No.7 or Defendant No.8 also does not merit countenance. The effect of the order passed by the Superintendent of Land Record dated 1st November 2014 is that the area covered by CTS No. 4957 and 4957/1 was non-existent as it had already been subsumed under CTS No. 4958/D. Thus, the controversy really boils down to the legality and correctness of the order of the Superintendent of Land Record dated 1st November 2014. The fact that the Defendant No.8, or for that matter Defendant No.7, had not claimed ownership over the land bearing CTS No. 4957 and 4957/1 thus pales in significance.

19. The upshot of aforesaid consideration is that even if the case of the plaintiffs that, the order dated 1st November

2014 effacing the property cards in respect of CTS Nos.4957 and 4957/1 and declaring that the land covered by those property cards already stood merged with the land covered by CTS No. 4958/D was wrongfully passed, is taken at par, yet, the issue would fall within the realm of a private dispute. Indisputably, the persons whose names were mutated to the property card of CTS Nos. 4957 and 4957/1 can legitimately agitate the grievances in respect of the said order. However, it would be rather difficult to conceive that, the alleged wrongful act would affect the public at large.

20. It is true that the rule of *locus standi* stands expanded by Section 91(1) and normally the Court should liberally consider a prayer for grant of leave. At the same time, the Court needs to be on guard against the parties resorting to Section 91(1) to settle personal scores over disputes that bear no semblance of public interest. In a case where the alleged wrongful act does not affect public at large, even remotely, permitting a busybody to institute the proceedings would defeat the laudable object with which the rule of *locus standi* is expanded.

21. Cases of environmental pollution or illegal and unauthorized construction in breach of the Development

Control Rules are the examples of matters in which the provisions contained in section 91(1)(b) of the Act can have practical application. Undoubtedly, these are illustrative cases. However, where the core question in controversy revolve around proprietary title to a particular piece of land, unless it is alleged that title vests in State or an instrumentality of the State, the wrongful act even where it is alleged to be that of an authority of the State, may not fall within the ambit of Section 91(1) of the Act. Where the dispute revolves around proprietary title to the property in which the State has, *prima facie*, no right, title and interest, it is the person aggrieved who has to seek the redressal, lest there would neither accountability for, nor finality to, the litigation.

22. Mr.Surve next urged that since the original holders whose names were mutated to the property card of CTS Nos. 4957 and 4957/1 are not traceable as their whereabouts are not known, eventually, the public would suffer as ultimately the property would have vested in the State by escheat. The submission is required to be noted to be repelled as it is presumptive and far fetched. Such consideration cannot form a foundation for grant of leave

under Section 91(1) of the Act.

23. Though Mr. Kanade forcefully canvassed the aspect of bar of jurisdiction in the context of the prayers in the plaint yet, at this juncture, I am not inclined to delve into the said aspect of the matter as the challenge is to the exercise of discretion in declining to grant leave to institute the suit. Having tested the impugned order on the parameters of the alleged wrongful act affecting the public, I do not find any justifiable reason to interfere with the impugned order.

24. Before parting, it must be clarified that the consideration is confined to testing the legality, propriety and correctness of impugned order and this Court may not be understood to have examined the legality and correctness of the actions of the State authorities and defendant Nos.7 and 8, which the plaintiffs professed to assail in the suit. If any challenge thereto is raised by the competent persons in appropriate proceedings before the appropriate forums, the same be decided on its own merits and in accordance with law. By way of abundant caution it is reiterated that this judgment shall not be construed as approving or upholding those actions, in any manner.

25. Subject to aforesaid clarification, the appeal deserves to be dismissed. Hence, the following order.

ORDER

- (i) The Appeal stands dismissed.
- (ii) In view of the dismissal of the Appeal, Interim Application also stands dismissed.
- (iii) No costs.

(N. J. JAMADAR, J.)