



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.99 OF 2023

Dilip Manik Naik
age 70 years, Occ. Agriculturist,
R/o. Mantha, Tq. Mantha,
District Jalna. ..Applicant..

Versus

1. Sudhir Shrinivas Joshi,
age 52 years, Occ. Agriculture,
R/o. Brahman Galli, Mantha,
Tq. Mantha, Dist. Jalna.
2. The Chief Officer,
Municipal Council,
Mantha, Taluka Mantha,
District Jalna. ..Respondents..

...
Advocate for applicant : Mr. A.N. Sikchi
Advocate for Respondent no.1 : Mr. A. G. Vasmatkar
Advocate for Respondent no.2 : Mr. S.B. Paikrao
...

CORAM : S. G. CHAPALGAONKAR, J.
Reserved on : December 09, 2024
Pronounced on December 19, 2024

FINAL ORDER :-

1. The applicant/defendant no.2 impugns the order dated 14.3.2023, passed below exhibit-41 in R.C.S. No.17 of 2017, pending before Civil Judge Junior Division, Mantha, thereby rejecting the prayer of applicant seeking rejection of

plaint under Order 7 Rule 11 of the Civil Procedure Code. (For the sake of brevity and convenience, hereinafter parties are referred to as per their original status in the suit.)

2. The plaintiff /Respondent No. 1 instituted R.C.S. No.17 of 2017 before Civil Judge J.D. Mantha, claiming relief of perpetual injunction against respondent no.2 Municipal Council from taking any action against completed construction and not to demolish the construction. Plaintiff contends that he owns ancestral property bearing house no.112/4, situated at Brahman Galli, Mantha, admeasuring 20 x 50 feet. He raised construction in the year 2014 in pursuance to permission granted by then village Panchayat, Mantha. According to plaintiff, Municipal council served a notice dated 24.5.2017 purported to be under sections 45, 55 of the Maharashtra Regional Town Planning Act (for short MRTPA Act) read with section 189 (8) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short Act of 1965) thereby directing him to remove alleged illegal construction within a period of two days, else, construction would be removed by Municipal Council. Plaintiff replied said notice. Thereafter, on 9.6.2017, he was

called in the office of the Municipal Council and officers threatened him of demolition of construction. Therefore, cause of action arose to file the suit.

3. Applicant/defendant no.2 filed an application under Order I Rule 10 of the Civil Procedure Code. Accordingly, he has been added as party defendant no.2 in the suit. The applicant thereafter filed an application below exhibit 41 under order VII Rule 11 of the CPC seeking rejection of plaint contending that suit has been instituted by suppressing material facts. Plaintiff was already served with notice dated 1.10.2016 under section 53 (1) of MRTP Act asking him to stop construction. However, he continued the construction. Thereafter, on 24.5.2017 District Collector Parbhani issued reminder to the Municipal Council, Mantha to take action against illegal construction. In deference to collectors reminder, on 24.5.2017 notice under section 53 read with section 155 of the Act has been served upon plaintiff to remove illegal construction within a period of two days. Suppressing all aforesaid proceedings, present suit has been instituted claiming relief of perpetual injunction against the

Municipal Council. The suit is barred in view of section 149 of the M.R.T.P Act.

4. Trial Court upon consideration of rival contentions observed that plaintiff is merely seeking injunction against defendant no.1-Municipal Council to not to demolish suit property or carry out any illegal procedure for demolition of the same. Further, defendant no.2 has filed an application at Exhibit-34 for framing of additional issue as to maintainability of suit. The said application is allowed and additional issue has been framed. Thus application seeking rejection of plaint came to be rejected vide impugned order dated 14.3.2023.

5. Mr. Aditya Sikchi, learned advocate appearing for applicant submits that powers under Order VII Rule 11 can be exercised by the Court at any stage of the proceeding. In present case, suit is cleverly drafted, however, implicitly it challenges notices issued by the Municipal Council/planning authority in exercise of powers conferred under section 53 of the MRTP Act. According to him, bar under section 149 of the MRTP Act would hit the present suit. Therefore, plaint needs to be rejected as barred by law.

6. Mr. Sikchi, in support of his contentions places reliance on law espoused in following judgments.

- i. Dahiben Vs. Arvindbhai Kalyanji Bhanusali (D) through L.Rs. And ors. Reported in MANU/SC/0508/2020.
- ii. R.K. Roja Vs. U.S. Rayadu and others reported in MANU/SC/0751/2016.
- iii. Bales Sardara Paracha Vs. The Municipal Corporation of Greater Bombay and ors reported in MANU/MH/0210/2005.
- iv. Satish Vs. Gopal Ramnarayan Mundhada and others reported in MANU/MH/0680/2016.
- v. Kalyan Dombivali Municipal Corporation Vs. Prakash Mutha reported in MANU/MH/0177/2008.
- vi. Ramisetty Venkatanna and ors. Vs. Nasyam Jamal Saheb and others reported in MANU/SC/0483/2023.
- vii. Rajendra Bajoria and others Vs. Hemant Kumar Jalan and others. MANU/SC/0678/2021.
- Viii. C.S. Ramaswamy Vs. V.K. Senthil and others reported in MANU/SC/1268/2022.
- ix. Babar Sher Khan and others Vs. Municipal Corporation of Brihanmumbai and others. Reported in MANU/MH/1365/2007.

7. Per contra, Mr. Vasmatkar, learned advocate appearing for the respondent/plaintiff supports the order contending that suit is instituted seeking relief of injunction against proposed illegal action of the Municipal Council. There is no challenge to any order or notice as contemplated under

section 149 of the Act. If the Municipal Council is proceeding ahead on the basis of illegal notices, Civil Court has jurisdiction to try and entertain the suit and grant appropriate relief of injunction against proposed illegal action of the Municipal Council. In support of his contentions, he placed reliance on law espoused in following judgments.

- i. Kishor Vs. The Municipal Commissioner and others reported in MANU/MH/0213/2015.
- ii. Sanjay s/o Shankar Puppall Vs. Solapur Municipal Corporation and others reported in 2022 (6) AIR Bom.R.609.
- iii. Nutan Digambar Jain Mandir Vs. Jain Tirth Raksh Trust and others reported in MANU/MH/3881/2024.

8. Having considered the submissions advanced and on perusal of record, it can be observed that plaintiff is seeking perpetual injunction against Municipal Council from demolishing construction. Pertinently, plaintiff pleaded that he has completed construction in April, 2015 as per permission granted by the then Grampanchayat. He pleads that on 24.5.2017 he was served with notice under section 53 and 152 of MRTP Act read with section 189 (8) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. According to plaintiff, he replied said notice. However, he was threatened by officers of respondent

no.2 that they would be demolishing the construction within two to three days.

9. Admittedly, plaintiff does not possess construction permission from the Municipal Council. Plaintiff has not challenged legality and validity of the notice dated 24.5.2017, but simply seeks injunction against defendant/Municipal Council from demolishing his construction. Plaintiff has merely averred that, notice is illegal since it sans the reason as to how construction of the plaintiff is illegal. It is not the case of plaintiff that respondent/Municipal Council has no authority to issue such notice or the notice violates particular requirement of law. Except vague statement that notice dated 24.5.2017 issued by the Municipal Council is illegal, no further stipulations are employed in plaint by which notice can be considered as invalid. Plaintiff has not sought declaration that such notice is illegal, invalid or sans the particular requirement of law.

10. During course of arguments, Mr. Vasmatkar, learned advocate appearing for respondent no.1 endeavors to contend that, in view of clause (1-a) of Section 53 of the Act, defendant Municipal Council ought to have given at least one

months advance notice to take necessary steps but notice dated 24.5.2017 stipulates only two days period for removal of the construction thus notice is not in conformity with statutory scheme of Section 53 (1-a) of the Act. It is difficult to accede with aforesaid submissions of Advocate Mr. Vasmatkar. Clause 1-a of section 53 applies only when the notice is given for the reasons as enumerated under clause (b) or (d) of Sub-section (1) of section 52 of the MRTP Act i.e. when the construction is made inconsistent with the permission granted or in contravention of any condition of the permission or in contravention of the modified permission.

11. In the present case, admittedly, construction raised by plaintiff is not preceded by permission of Municipal Council. Further, as rightly pointed out by Mr. Sikachi, plaintiff was previously served with notice dated 1.10.2016 under section 53 (1) of the MRTP Act directing him to stop the construction. Plaintiff has conveniently avoided to make reference of such notice in the plaint.

12. The Supreme Court of India in case of **Dahiben Vs. Arvinbhai Kalyanji Bhanusali (D) through L.Rs. And ors.** reported in (2020) 7 Supreme Court Cases 366 observed that it

is a duty of the Court to find out whether plaint discloses real cause of action or illusory cause of action created by clever drafting. The Court must be vigilant against camouflage or suppression and if suit found to be vexatious and an abuse of process of Court, it should exercise its drastic power under Order VII Rule 11 of Civil Procedure Code to reject the plaint. It is further observed that the power under Order VII Rule 11 can be exercised by the Court at any stage of the suit.

13. In view of the aforesaid exposition of law, if contents of the plaint alongwith documents appended thereto are considered, it is apparent that applicant is in fact seeking injunction against the planning authority thereby restraining them to do their lawful duty. Aforesaid prayer of the plaintiff needs to be looked into in view of the specific provision engrafted under section 149 of MRTP Act, which reads thus :-

149. Finality of orders :- Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings.

14. In case of **Bales Sardara Paracha Vs. Municipal Corporation Greater Bombay** reported in 2005 (4) Bom.C.R.

577, this Court observed that when jurisdiction of the civil court stand excluded, no court shall entertain any suit or the application for injunction where an order is made by the Administrator or the competent authority with a caveat that civil court would retain it's jurisdiction to entertain and adjudicate the suit if the order is complained of nullity. It is further observed that when the specific bar is engrafted under the statutory provisions, availability or non-availability of alternate efficacious remedy cannot be the issue for consideration. Plain reading of section 149 of the Act shows that finality is given to the orders or direction or notices issued by the planning authority under provisions of the MRTP Act. Language of section 149 is unambiguous and clear. Although plaintiff has cleverly avoided to seek any relief of declaration against notices served upon him by the planning authority, he seeks relief of perpetual injunction that the Municipal Council shall be restrained from demolishing his construction. Indirectly, plaintiff is seeking injunction against the planning authority from acting upon the order/notice issued in exercise of the powers under section 53 of the MRTP Act.

15. The Supreme Court of India in case of **Sopan Sukhdeo Sable & Ors vs Assistant Charity Commissioner & Ors** reported in **(2004) 3 SCC 137**, observed that the Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, Court should exercise the power under Order VII Rule 11 of the Code. It is further observed that, if clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code.

16. At this stage, Mr. Vasmatkar, relying upon the judgment of this Court in case of **Kishor Vs. The Municipal Corporation and others (supra)** submits that when notice issued under section 53 of the Act was challenged on the ground that period prescribed therein falls short of statutory period and was nullity, jurisdiction of the Civil Court to examine the validity of such notice would not be barred and bar prescribed by section 149 of the Act would not impede the plaintiff from seeking relief. Pertinently, in the aforesaid case, plaintiff sought declaration that defendant nos.1 and 2 are not

entitled to demolish the suit property and further prayer was made to direct defendant nos.1 and 2 to grant sanctioned map. In that case, plaintiff had specifically plead that notice is not in conformity with the provisions of section 53 (1) as it prescribes shorter period than one prescribed under section 53 (1) of the Act. In that background, this Court observed that, that notice itself was invalid. Therefore, jurisdiction of the Civil Court to entertain the suit cannot be excluded under section 149 of the MRTP Act. Similarly, Mr. Vasmatkar, relying upon the judgment of this Court in case of Sanjay s/o Shankar Puppal (supra) submits that when the act of planning authority is ultra vires, jurisdiction of the civil court would not be fated by section 149 of the Act. However, as observed above, plaint nowhere discloses that notice dated 24.5.2017 served by Municipal Council is ultra vires in any manner. In light of aforesaid observations, apparently, suit instituted by plaintiff will have to be treated as barred by section 149 of the MRTP Act and plaint is liable to be rejected under Order VII Rule 11 (a), (b) of the Civil Procedure Code.

17. Trial Court refused to entertain prayer for rejection of the plaint on the ground that plaintiff is merely seeking

injunction against the defendant no.1 for not to demolish the suit property or carry out any illegal procedure for demolition of the same and the issue as regards to bar under section 149 of the MRTP Act has been already framed. However, the reasoning adopted by the Trial Court cannot be approved; since it is a duty of the Court to meaningfully examine the plaint and find out whether the suit is barred by law or whether it sans the cause of action. If meaningful reading of the plaint discloses that the cause of action is camouflage or suit is barred by specific provisions of law, the jurisdiction under Order VII Rule 11 needs to be invoked. In the present case, bare reading of the plaint clearly depict that plaintiff is aggrieved by the notice issued under section 53 of the MRTP Act and without raising challenge to validity of said notice, he filed the suit simplicitor for perpetual injunction. Main purpose behind the suit is to vitiate the action contemplated in pursuance to the notice issued by the planning authority. In that view of the matter bar under section 149 of the MRTP Act would emerge requiring the Court to exercise jurisdiction under Order VII Rule 11 (d) of the Civil Procedure Code. The corollary of aforesaid discussion takes this Court to conclude that impugned order is not sustainable in law and the

application Exhibit 41 filed in RCS No.17 of 2017 needs to be allowed. Consequently, following order is passed.

ORDER

- i. Civil Revision Application is **allowed** in terms of prayer clauses '**A**' and '**B**' which reads thus :-

“A. The Hon’ble High Court may be pleased to issue appropriate writ, order or direction in the nature of writ and thereby quash and set aside the order dated 14.3.2023 passed below Exhibit 41 in Regular Civil Suit No.17 of 2017 by the learned Civil Judge Junior Division, Mantha.

B. The Hon’ble High Court may be pleased to issue appropriate writ, order or direction in the nature of writ and thereby allow the application of the applicant filed below Exhibit-41 in Regular Civil Suit No.17 of 2017 filed before the learned Civil Judge Junior Division, Mantha and thereby reject the plaint.”

- ii. Civil Revision application stands disposed off. No costs.

(S. G. CHAPALGAONKAR)
JUDGE.