



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

CIVIL REVISION APPLICATION NO.49 OF 2024

Nutan Digamber Jain Mandir,
 Old Vasti, Murtizapur, Tq. Murtizapur,
 Distt. Akola through its President,
 Sau. Jyoti Chandrashekhar Topare,
 Aged about 57 years, Occ: Service,
 R/o Old Vasti, Murtizapur, Tq. Murtizapur,
 Tq. Murtizapur, Distt. Akola

....APPLICANT

(Deft. No.2 on RA)

...V E R S U S...

1. Jain Tirth Raksh Trust,
 through authorized representative,
 Anis Narendra Shah, Aged about 52 years,
 Occ: Consulting Engineer,
 104, Labdhi Vihar Apartment,
 Kholeshwar, Akola, Tq. & Distt. Akola.

...(Plaintiff)

2. Collector, Akola,
 Collector Office, Akola,
 Tq. & Distt. Akola.

...(Deft. No.2 on RA)

...NON-APPLICANTS

 Mr. R.L. Khapre, Senior Advocate a/b Mr. M.R. Zoharapurkar, for applicant.
 Mr. M.P. Khajanchi, Advocate for non-applicant No.1.
 Mr. C.A. Lokhande, AGP for non-applicant No.2.

CORAM:- M.W. CHANDWANI, J.

ARGUMENTS WERE HEARD ON : 27.03.2024

JUDGMENT PRONOUNCED ON : 25.06.2024

JUDGMENT:

. Heard.

2. This application challenges the order dated 19.08.2023 passed by the learned 7th Joint Civil Judge, Senior Division, Akola below Exhibit-17 in Regular Civil Suit No.327 of 2023, thereby rejecting the application of the applicant for rejection of plaint under Order VII Rule 11(d) of the Code of Civil Procedure (for short, “CPC”).

Bare facts, which give rise to present application, are as under:

3. On 31.03.2023, one Ramesh Ingole while digging the plinth for construction of his house at village Mana, District Akola, found three idols. He informed the said fact to the Police Station as well as Tahsildar. Under the directions of the non-applicant no.2 – Collector, Akola, the said idols were entrusted to the Police Station, Mana. Ramesh Ingole, the owner of the land and finder of the said idols, did not make any claim over the three idols. However, rival claims were filed before the Collector, Akola by the applicant–Trust belonging to Shwetambar Jain sect and non-applicant no.1 a trust belonging to Digambar Jain sect. The Collector directed the Treasurer, Central Museum, Nagpur to submit a report as to which sect the idols belong. Meanwhile,

custody of the idols was kept at Ramkrushna Sansthan and were locked in one room and keys of the said room were given to the Police Station, Mana. The Treasurer, Central Museum, Nagpur submitted its report to the Collector without making it clear as to which Jain sect the idols belonged. However, it was suggested that the idols are ancient and incredible cultural and historical moments of 11/12th Century therefore, these be kept in Central Museum, Nagpur. In the wake of unclear report, the non-applicant no.2-Collector, Akola again directed the Treasurer, Central Museum, Nagpur to specify as to which Jain sect the idols belong. Meanwhile, the non-applicant no.2- Collector handed over the temporary custody of the said idols to the applicant on certain terms and conditions. Right over the idols is not finally decided by the non-applicant no.2.

4. Feeling aggrieved with the order of the Collector, the non-applicant no.1 filed a suit bearing Regular Civil Suit No.327 of 2023 before the learned Civil Judge, Senior Division, Akola for permanent injunction restraining the non-applicant no.2 from handing over the possession of the three idols to the applicant. The applicant appeared in the suit and filed application under Order VII Rule 11(d) of the CPC for rejection of plaint on the

ground that jurisdiction of civil court to take cognizance of the suit is barred under Section 17 of the Indian Treasure-trove Act, 1878 (for short, "Treasure Act"). The trial court rejected the application of the applicant by the impugned order. Feeling aggrieved with the said order, the present revision application came to be filed.

5. Mr. R.L. Khapre, learned Senior Counsel appearing on behalf of applicant would submit that since the idols were found from the earth, which is treasure within the meaning of Treasure Act, therefore, the provisions of Treasure Act will be applicable. The Collector of the concerned district is the authority to carry the functions under the Treasure Act and the Collector may issue notification under Section 5 of the Treasure Act, enquiring all the persons claiming the treasure to appear before the Collector. The Collector may proceed to enquire and simultaneously shall call the treasurer to be produced before him. Upon enquiry under Section 7 of the Treasure Act the Collector may allow to institute a suit in civil court.

6. Mr. Khapre, learned Senior Counsel, further submitted that any contingency provided under Section 13 of the Treasure Act where after a declaration is made under Section 9 finding two

or more persons claiming as the owner of the place where such treasure was found and the claim is disputed by the finder of such treasure, the Collector may make an order in the said proceedings with a view that the dispute shall be determined by the civil court. According to the learned Senior Counsel, none of these contingencies arose in the present case therefore the civil suit filed by the non-applicant no.1 is not only impliedly barred under Sections 8 and 13 but also as per Section 17 no suit shall lie against the Collector for the acts done *bonafide*.

7. Mr. Khapre, learned Senior Counsel, vehemently submitted that in the present case the Collector has not even issued notification under Section 5 of the Treasure Act therefore there is no question of filing the suit by the non-applicant no.1. Thus, according to him, the Collector has power to pass the order under Section 4 of the Treasure Act for preserving the treasure and for other purposes. According to him, due to religious sentiments being involved in the issue, in order to maintain law and order, the Collector directed the Police Station Officer, Police Station, Mana to hand over the idols to the applicant. Section 4 empowers the Collector to change the place of custody.

8. The sum and substance of the argument of the learned Senior Counsel is that the Treasure Act is a complete Code in itself to resolve all the questions related to the trove property. On such premise, unless specific direction or observation is given by the Collector under Section 8 or Section 13 of the Treasure Act to approach to the civil court, the civil court does not have any jurisdiction to entertain the suit. To buttress his submission, the Senior Counsel placed reliance on the decision of the High Court of Madhya Pradesh ***Azizuddin Qureshi Vs. State of M.P.***¹, wherein it has been observed in para 10 as under:

“10. Ongoing through the entire provision and the scheme of the aforesaid Act, 1878, it appears to be a complete Code to resolve all the question relating to the treasure trove property and in such premises unless specific direction or observation is given by the Collector under Section 8 of the Act to the party to approach the Civil Court to get decided the title by adjourning the case, the Civil Court did not have any jurisdiction to entertain the civil suit in the matter. On passing the order by the respondent No.2 under earlier part of Section 9 of the Act, if the appellant was aggrieved by such order then could have exhausted the remedy of appeal under the aforesaid provision and subject to order of such appellate court on arising the occasion the appellant could have proceeded further. But contrary to such provision without exhausting the remedy of the appeal under Section 9 of the Act the impugned suit of specific Act or enactment then in such circumstance no Civil Suit could be entertained by the Civil Court by virtue of Section 9 of CPC.

¹ 2010 SCC OnLine MP 931; ILR 2011 MP 978

9. Conversely, Mr. M.P. Khajanchi, learned counsel for the non-applicant no.1, vehemently submitted that the non-applicant no.1 has challenged the action of the Collector handing over the custody of three idols to the applicant before the learned Civil Judge, Senior Division, Akola. The non-applicant no.1 is another sect of Jain religion i.e. Digambar Sect. The suit has been filed for injunction. The ouster of jurisdiction of civil court is not to be readily inferred. The plaintiff is a *dominus litis*. He is the master of his case, and in case of conflict, the choice ought to lie with the plaintiff to choose the best forum.

10. Mr. Khajanchi submits that the order of handing over temporary custody to the applicant is not passed under the Treasure Act as there is no such provision to pass any interim order handing over the custody of the idols. The Treasure Act will not be applicable at all to the present case. The idols were found by the finder of the idols who has deposited the said idols with the Collector and he does not claim any right in the treasure. The Treasure Act is applicable only to resolution of disputes between the finder of the treasure and any other claimant. The Treasure Act nowhere contemplates for the resolution of the dispute between two claimants other than the finder/owner of place therefore, the provisions of Treasure Act will not be applicable to

the case in hand and the dispute can be determined by the civil court.

11. Lastly, Mr. Khajanchi would submit that even the Treasure Act contemplates that if there is any dispute between two claimants other than the finder then it will be the civil court that will decide the ownership of place. Thus, in all cases, it is the civil court that has jurisdiction to decide the dispute arising in the civil suit filed by the non-applicant no.1. He supported the order of the trial Court and sought rejection of the revision application.

12. Before appreciating the submissions advanced by the learned counsel for the respective parties, it will be appropriate to understand the scheme of the Treasure Act.

If anything hidden in the soil i.e. Treasure is found, Section 4 of the Act provides, *inter alia*, for the issuance of notice by the finder of treasure to the Collector containing the details of the treasure. The treasure may be deposited in the nearest Government Treasury or the finder may give the Collector such security as the Collector thinks fit to produce the treasure at such time and place, as he may, from time to time, require. Under Section 5, the Collector shall, after making such enquiry, if any, as

he thinks fit, issue a notification requiring the claimants to the treasure to appear before him on a day and at a place mentioned in the notification, such day not being earlier than four days or later than six months, after the date of the publication of such notification. Section 6 provides that any person having claimed any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under Section 5, shall forfeit such right. Sections 7, 8, 9, 13 and 14 which are relevant for our purpose are extracted below:

"Section 7. Matters to be enquired into and determined by the Collector.— On the day notified under section 5, the Collector shall cause the treasure to be produced before him, and shall enquire as to and determine

*(a) the person by whom, the place in which, and the circumstances under which, such treasure was found; and
(b) as far as is possible, the person by whom, and the circumstances under which, such treasure was hidden.*

Section 8. Time to be allowed for suit by person claiming the treasure.—If, upon an enquiry made under section 7, the Collector sees reason to believe that the treasure was hidden within one hundred years before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Collector shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow of a suit being instituted in the Civil Court by the claimant, to establish his right.

Section 9. When treasure may be declared ownerless.—If upon such enquiry the Collector sees no reason to believe that the treasure was so hidden; or if, where a period is fixed under section 8, no suit is instituted as aforesaid within such period to the knowledge of the Collector; or if such suit is instituted within such period, and the plaintiff's claim is finally rejected; the Collector may declare the treasure to be ownerless. Appeal against such declaration.— Any person aggrieved by a declaration made under this section may appeal against the same within two months from the date thereof to the Chief Controlling Revenue authority. Subject to such appeal, every such declaration shall be final and conclusive.

Section 13. In case of dispute as to ownership of place, proceedings to be stayed.— When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of any person who has so appeared and claimed is disputed by the finder of such treasure, the Collector shall retain such treasure and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a Civil Court.

Section 14. Settlement of such dispute.—Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the Civil Court to obtain a decree declaring his right and in every such suit the finder of the treasure and all persons disputing such claim before the Collector shall be made defendants.”

- 13.** Under the scheme of the Act, two kinds of suits can be filed at two stages, firstly, under Section 8 of the Act, when the Collector has reason to believe that the treasure was hidden by

any person appearing before the Collector within one hundred years or by some other person under whom such person claims, the Collector shall adjourn the hearing to allow the claimant to institute a suit to establish his right to the treasure. Secondly, when a declaration is made under Section 9 by the Collector declaring the treasure to be owner-less and two or more persons claim to be the owner of the place where such treasure was found or the right of any person who has so appeared and his claim is disputed by the finder of such treasure. In that situation, the Collector shall retain such treasure and shall make an order under Section 13 staying the proceedings with a view to the matter being enquired into and determined by the civil court. In that scenario under Section 14 the person so appeared may filed suit within one month from the date of the order of the Collector.

14. Reference can be made to the decision of the Supreme Court in the case of *Mahendra Kumar and another Vs. State of Madhya Pradesh and others*¹, relied upon by the learned Senior Counsel. It has been observed by the Supreme Court that under the Treasure Act, two types of suits can be filed at two stages namely one; under Section 8 if the Collector has reason to believe

¹ (1987) 3 SCC 265

that the treasure was hidden by any person appearing before the Collector within 100 years or some other person under whom such person claims the Collector shall allow the claimant to institute a suit to establish his right to the treasure and on another hand; under Section 14 of the Treasure Act when the Collector makes a declaration under Section 9 that a treasure is owner-less.

15. The trial court rejected the application of the applicant on the ground that no final order has been passed by the Collector and there is no provision under the Treasure Act to grant interim custody of the treasure. One of the reason for rejection of the application of the applicant by the trial court is that some of the provisions of Treasure Act provide that the matter shall be enquired into and determined by the civil court. The trial court has referred to Section 13 and held that remedy in case of dispute as to ownership is under Section 13 of the Treasure Act.

16. I find substance in the argument of the learned Senior Counsel for the applicant that none of the parties is claiming as the owner of the place where such treasure is found, nor the Collector has passed any order staying the proceedings expressing his view that matter be enquired into and determined by the civil

court. Thus, none of the contingencies arose. Therefore, the suit filed by the non-applicant no.1 cannot be said to be filed under Section 13 of the Treasure Act.

17. No doubt neither the applicant nor the non-applicant no.1 claim to be hidere of the idols/owners of the place where from the idols were found. But fact remains that the idols have been found in soil. The Collector has been informed. Notification under Section 5 is yet to be issued till date. Unless notification is issued by the Collector, it is uncertain whether the hider of the idols or any other person claiming to be the owner of the place would come forward or not. The Collector has to proceed under the Treasure Act. Therefore, at this stage, it cannot be said that the Treasure Act will not be applicable to the idols. I do not find substance in the submission of Mr. Khajanchi that that since the dispute is not amongst finder, hider or owner of the place, Treasure Act will not be applicable.

18. This takes me to Section 17 of the Treasure Act, which read as under:

“Section 17. Decision of Collector final, and no suit to lie against him for acts done bona fide.—No decision passed or act done by the Collector under this Act shall be called in

question by any Civil Court, and no suit or other proceeding shall lie against him for anything done in good faith in exercise of the powers hereby conferred.”

19. Thus, Section 17 of the Treasure Act gives finality to the order of the Collector on which it confers the jurisdiction. It is settled position that where statute gives finality to the order of any authority on which it confers the jurisdiction and provides for adequate remedy to do what the court would normally do in such proceedings before it, the jurisdiction of civil court is excluded.

20. In view of above said discussion, the position emerges that on one hand if the hider of treasure comes forward, he has to establish his right to the treasure before civil court under Section 8 of the Treasure Act or if there is dispute to the claim of the person as owner of the place wherefrom the treasure is found, the Collector shall order under Section 13 of the Treasure Act that the dispute be adjudicated by the civil court. On the other hand, Section 17 of the Treasure Act gives finality to the decision of the Collector.

21. Law about exclusion of jurisdiction of civil court came up for consideration from time to time before the Supreme Court. Way back in the year 1969, the Supreme Court enunciated the law

with regard to exclusion of jurisdiction of civil court in the case of ***Dhulabhai Vs. State of Madhya Pradesh and another***¹ which is followed in various judgments of the Supreme Court and various High Courts and still holds the field. In para 32 of the judgment, the Supreme Court held as under:

“32. Neither of the two cases of Firm of Illuri Subayya, 1964-1 SCR 752 = (AIR 1964 SC 322) or Kamla Mills, 1966 1 SCR 64 = (AIR 1965 SC 1942) can be said to run counter to the series of cases earlier noticed. The result of this inquiry into the diverse views expressed in this Court may be stated as follows:

(1) Where the statute gives a finality to the orders of the special tribunals the civil court’s jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

¹ AIR 1969 SC 78

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.”

22. In the case of **Gurbax Singh S/o Chanda Singh Vs. Financial Commissioner and another**¹, the Supreme Court in para 19 held as under:

“19. Section 14 of the Act provides for constitution of the compensation pool. Section 15 of the Act exempts the property in compensation pool from processes of courts. Section 20 of the Act empowers the Managing Officer or managing corporation to transfer any property within the compensation pool--(a) by sale of such property to a displaced person or any association of displaced person

¹ 1991 Supp (1) SCC 167

*whether incorporated or not, or to any other person, whether the property sold by public auction or otherwise. Under sub-section (2) of that section every Managing Officer or managing corporation selling any immovable property by public auction under sub-section (1) shall be deemed to be a Revenue Officer within the meaning of sub-section (4) of section 89 of the Indian Registration Act, 1908. Under section 27 of the Act save as otherwise expressly provided in the Act every order made by any officer or authority under the Act, including a managing corporation, shall be final and shall not be called in question in any court by way of appeal or revision or in any original suit, application or execution proceeding. The jurisdiction of the Civil Court was therefore barred in the matter of the sale. It is true that where the special tribunal or authority acts ultra vires or illegally, the Civil Court has by virtue of Section 9 of the Civil Procedure Code power to interfere and set matters right. As was laid down by the Judicial Committee of the Privy Council in *Secretary of State v. Mask and Co.*, AIR 1940 PC 105, if the provisions of the Statute have not been complied with or the Statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure, the Civil Courts have jurisdiction to examine those cases. This rule was reiterated by the Supreme Court in *State of Kerala V. M/s. N. Ramaswami Iyer and Sons*, AIR 1966 SC 1738. In the instant case the second respondent's civil suit against Budha Singh for declaration of possession was not against any order passed by any officer under the Act. That decree, even if it was not declared collusive could not have collaterally effected the auction sale order."*

23. In the case of ***Union of India Vs. Tarachand Gupta and Bros***¹ the Supreme Court has held in para 22 as under:

"22. The principle thus is that exclusion of the jurisdiction of the civil courts is not to be readily inferred. Such

¹ 1971 (1) SCC 486

exclusion, however, is inferred where the statute gives finality to the order of the tribunal on which it confers jurisdiction and provides for adequate remedy to do what the courts would normally do in such a proceeding before it. Even where a statute gives finality, such a provision does not exclude cases where the provisions of the particular statute have not been complied with or the tribunal has not acted in conformity with the fundamental principles of judicial procedure. The word "jurisdiction" has both a narrow and a wider meaning. In the sense of the former, it means the authority to embark upon an enquiry; in the sense of the latter it is used in several aspects, one of such aspects being that the decision of the tribunal is in non-compliance with the provisions of the Act. Accordingly, a determination by a tribunal of a question other than the one which the statute directs it to decide would be a decision not under the provisions of the Act, and therefore, in excess of its jurisdiction."

24. What is deduced from the above said authorities is that when the statute give finality to the order of tribunal/Authority on which it confers the jurisdiction, jurisdiction of civil court is barred if there is adequate remedy to do what the civil courts would normally do in such proceeding before the authority. It is equally settled principle of law that where a statue gives finality, such provision does not exclude cases where provision of the particular statute have not been complied with or the tribunal has not acted in conformity with the fundamental principles of judicial procedure. Thus, even in a case where jurisdiction of civil court is said to be barred under a statute, civil court can exercise its

jurisdiction in respect of some matters particularly when the statutory authority acted without jurisdiction. If the provisions of the statute have not been complied with or statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, the civil court shall have jurisdiction to examine such matter. Thus, jurisdiction of civil court cannot be completely taken away despite either an express or implied bar. The civil court shall have jurisdiction to examine the matter in which there is an allegation of non-compliance of provision of the statute or any of the fundamental principles of judicial procedure.

25. According to Mr. Khajanchi, the Collector has not acted in conformity with the scheme of the Treasure Act. It was mandatory for the Collector to issue notification under Section 5, instead the Collector passed order giving interim custody of the idols to the applicant. The non-applicant no.1 has filed the suit on the premise that the order of the Collector handing interim custody is without any provision under the Treasure Act as well as by exercise of power in all arbitrary and illegal manner.

26. Thus, essentially the claim of the non-applicant no.1 in the suit is that the Collector has passed such interim order without

any provision and by following illegal procedure. According to the non-applicant, the Collector has not followed the judicial procedure. The relevant para of the plaint is reproduced as under:

“7. It is submitted that defendant no.1 without deciding the claim of Idol directed to handover the Idols to Digamber Jain Sect. arbitrarily without any provision. It is submitted that as per section 13 of the Act in case of dispute as to ownership, it is duty of defendant no.1 to retain such treasure and shall make an order staying his proceedings, as per section 8 of the Act time to institute suit in civil court to establish right to party may be given. Thus, the order of defendant No.1 against the plaintiff is totally illegal and is in colorable exercise of powers by arbitrary and illegal procedure. Under the circumstances, the plaintiff has no other alternative but to approach this Hon’ble Court for a permanent injunction as prayed.”

27. Mr. Khapre, learned Senior Counsel, vehemently submits that the Collector has power under Section 4 of the Treasure Act to give security to produce the treasure at such time and place as he may from time to time require. Thus, according to him, the Collector has power to give custody of such treasure to anybody. He further went on to submit that if the Collector can after enquiry give the custody of the idols to the claimant, then the Collector has also power to give interim custody of the idols to the applicant. According to him, though there is no provision in the Treasure Act for handing over the interim custody but since

the Collector has power to give treasure to the claimant there is implied power with him to pass interim order regarding custody.

28. To buttress his submission, he seeks to rely on the decisions of the supreme court in cases of *Bidi, Bidi Leaves and Tobacco Merchants' Association, Gondia and others Vs. State of Bombay*¹; *M/s. Kamala Mills Ltd. Vs. State of Bombay*²; *Assistant Collector of Central Excise, Culcutta Division Vs. National Tobacco Co. of India Ltd.*³ The Supreme Court in the above decisions discussed the doctrine contained in *the legal maxim 'Quando lex aliquid concedit concedere videtur et illud sine quo res ipsa esse non potest'*. This maxim has been thus translated by Broom thus: "whoever grants a thing is deemed also to grant that without which the grant itself would be of no effect. "One of the first principles of law with regard to the effect of an enabling act", observes Craies, "is that if a Legislature enables something to be done, it gives power at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view."

The ratio laid down in the above decisions of the Apex

1 AIR 1962 SC 486

2 AIR 1965 SC 1942

3 (1972) 2 SCC 560

Court can be summarized as under:

“The doctrine of the implied power can be legitimately invoked when it is found that a duty is has been imposed or a power conferred on an authority by a statue and it is further found that the duty cannot be discharged or the power cannot be exercised on an authority by a statue and it is further found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist.”

29. The decision of Jharkhand High Court in case of ***Bharat Varshiya Digambhar Jain Tirth Kshetriya Committee Vs. State of Jarkhand and others***¹ is also relied by the applicant, wherein the Collector directed to the circle officer to keep the statuettes in sealed box and to deposit the box in safe custody, pending adjudication of the dispute. Under the Treasure Act, it was responsibility to the finder of the treasure to deposit the treasure in Government treasury, which was not done therefore the collector rightly passed the order.

30. Be that as it may, it is to be mentioned here that the jurisdiction of the court is to be decided on the averments made in the plaint, by taking the averments made in the plaint at its face value. Whether the averment made in the plaint are correct or not cannot be decided at this stage. Whether the Collector by handing

¹ 2004 SCC OnLine Jhar 700 : (2004) 23 AIC 271

over the temporary custody of the ideal acted *ultra vires* or illegally or whether the Collector has implied power to hand over the custody can be decided by the trial court during the trial. Here, the limited question before me is whether averments made in the plaint taken at its face value can be said to be barred under the provisions of the Treasure Act as contemplated under Order VII Rule 11(d) of CPC. Since, there are allegations of non-compliance of the statute by the Collector, and the suit has been filed on the very said premise, therefore, it is for the trial court to decide whether the plaintiff/non-applicant no.1 is able to prove the fact which has been alleged in the plaint. As of now, there are allegations in the plaint of non-compliance of the provisions of the Treasure Act. Except under Section 9 i.e. against the order of the Collector declaring the treasure to be ownerless, the Treasure Act does not provide any appeal against the so-called interim order of the Collector. Therefore, the civil court has jurisdiction to examine whether the authority has acted *ultra vires* or illegally. Therefore, the decision in case of ***Azizuddin Qureshi*** (supra) will not be helpful to the applicant.

31. The case in hand is covered by the principle enunciated in the decision of ***Dhulabhai*** (supra) that the provision

excluding jurisdiction of civil court does not exclude those cases where the provisions of the particular Act have not been complied with or statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure. Therefore, I do not find force in the argument of the learned Senior Counsel for the applicant that the plaint is required to be rejected in the wake of Section 17 of the Treasure Act.

32. In the case of *South Delhi Municipal Corporation and another Vs. M/s. Today Homes and Infrastructure Pvt. Ltd.*¹ the Supreme Court in para 16 held as under:

“16. It is settled law that jurisdiction of the civil courts cannot be completely taken away in spite of either an express or implied bar. The civil courts shall have jurisdiction to examine a matter in which there is an allegation of non-compliance of the provisions of the statute or any of the fundamental principles of judicial procedure. A plain reading of the plaint would suggest that the order impugned in the suit is at the most an erroneous order. No jurisdictional error is pleaded in the plaint. Therefore, the question of maintainability of the suit does not arise. In the absence of any pleadings in the plaint, the High Court ought not to have remanded the matter back to the learned Single Judge.”

33. In view of the above, I do not find force in the arguments of learned Senior Counsel for the applicant that the plaint is required to be rejected under Order VII Rule 11(d) of the CPC for want of jurisdiction of civil court.

¹ (2020) 12 SCC 680 : [2019] 10 SCR 707

34. Though the learned trial Court though one of reason for rejecting the application that the suit filed by the non-applicant no.1 is maintainable under Section 13 of the Treasure Act is not correct, but ultimate decision of the learned trial Court holding that plaint cannot be rejected under Order VII Rule 11(d) of the CPC for want of jurisdiction of civil court is correct. The application is sans merit. Hence, application stands rejected.

JUDGE

Wagh