

Municipality Vs. Gas Authority of India Limited and ors.

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Court : Madhya Pradesh

Decided On : May-12-2005

Reported in : AIR2006MP17; 2006(1)MPHT276; 2005(3)MPLJ530

Judge : S.S. Jha and ;P.K. Jaiswal, JJ.

Acts : Madhay Pradesh Municipalities Act, 1961 - Sections 319; Madhay Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 - Sections 30(1); Companies Act; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 10, 79, 80, 80(2) and 80(3); Madhay Pradesh Land Revenue Code; [Constitution of India](#) - Articles 12 and 311(2)

Appeal No. : First Appeal Nos. 175/1995 and 1/1996

Appellant : Municipality;municipal Council

Respondent : Gas Authority of India Limited and ors.;national Fertilizers Limited and ors.

Advocate for Def. : H.D. Gupta and ;Vijay Sundaram, Adv. for the Respondent No. 1 in F.A. Nos. 175/1995 and 1/1996 and ;Ami Prabal, Govt. Adv. for the Respondent Nos. 2 to 7 in F.A. Nos. 175/1995 and 1/1996

Advocate for Pet/Ap. : R.D. Jain, Sr. Adv. and ;D.P.S. Bhadoriya, Adv. in F.A. Nos. 175/1995 and 1/1996

Disposition : Appeal allowed

Judgement :

S.S. Jha, J.

1. Since in both these appeals common question of law arise and they are decided by common judgment by the Trial Court, they are heard and decided together.

2. In First Appeal No. 175/95 respondent No. 1 Gas Authority of India Limited (hereinafter, referred to as 'GAIL') filed a civil suit and, in First Appeal No. 1/96 respondent No. 1 National Fertilizers Limited (hereinafter, referred to as 'NFL') filed a civil suit in the Court in District Judge, Guna for declaration and perpetual injunction. Prayer in the suit filed by the GAIL was that the defendants 2 and 3, i.e., Director, Town and Country Planning and Joint Director, Town and Country Planning have no jurisdiction to permit defendant No. 4 Chief Executive Officer, Special Area Development Authority, Raghogarh to recover the external development fees. It is further prayed that the defendant N. 6 Tehsildar, Tehsil Raghogarh, District Guna has no jurisdiction to recover the said fee from the plaintiff which is a Government of India Undertaking. Similarly, in the suit filed by the NFL, it is prayed that the recovery of Rs. 2,53,00,000/- (Rupees Two crore fifty three lac) as external development charge and its recovery as arrears of land revenue under the provisions of M.P. Land Revenue Code be declared as void ab initio and the defendants be restrained by issuing perpetual injunction from recovering the said fee from the plaintiff. In this suit, the plaintiff has impleaded the State of Madhya Pradesh, Special Area Development Authority, Municipal Council, Raghogarh and the Tehsildar K.R. Katroliya by name, whereas in the civil suit filed by the GAIL, Special Area Development Authority has not been impleaded as party but Chief Executive Officer of the Special Area Development Authority is impleaded as a party. Subsequently, Municipal Council, Raghogarh has been impleaded as a party, whereas NFL has impleaded Municipal Council as a party in the suit. With the consent of the parties, no evidence was recorded and the Trial Court after hearing arguments decreed the suit and has declared that the defendants had no right to recover the external development fee from the plaintiff and parties shall bear their own costs.

3. Counsel for the appellant challenged the decree on three grounds :- (i) that the suit has been filed before expiry of period of notice under Section 80, CPC and no suit is maintainable against the appellant Municipal Council without notice under Section 319 of the Municipalities Act; (ii) that since the plaintiff is avoiding recovery worth Rs. 253 lacs, therefore, without payment of ad valorem court fee suit ought to have been dismissed or the Trial Court should have rejected the plaint for insufficient payment of Court fee.

4. Counsel for the appellant contended that plaintiff respondent No. 1 is not a 'State' within the meaning of Article 12 of the [Constitution of India](#). Plaintiffs are companies registered under the Companies Act and they can not claim that they are Government of India Undertakings. Counsel for the appellant submitted that issue regarding want of notice under the M.P. Municipalities Act has not been framed by the Trial Court and the Trial Court has simply mentioned that since no serious objection is raised for dispensing with notice under Section 80(2), CPC, therefore, the suit is permitted to be filed without notice under Section 80, CPC. Finding pertaining to Court fee is improper and contrary to law. As regards notification, Counsel for the appellant submitted that the recovery of the fee is a part of contract between the plaintiff and the Special Area Development Authority and now Municipal Council. Once the plaintiffs were permitted to construct their factories and residential quarters on the condition that plaintiffs shall pay external development fee under the agreement order quashing the recovery is bad in law. Trial Court has not considered the agreement between the parties while decreeing the suit.

5. Counsel for the respondent plaintiff GAIL has vehemently opposed the contention and submitted that the notification under which the said recovery is being made has been quashed by the judgment of this Court by the Indore Bench, therefore, the suit has rightly been decreed. He submitted that it was not necessary to pay ad valorem Court fee. Since the plaintiffs have prayed for declaration that the notification issued is without jurisdiction and the Authority issuing the notification is not competent to issue such notification, fixed Court fee for relief of declaration has been paid.

6. So far as the first question pertaining to notice is concerned, we have perused the record. In Civil Suit No. 37-A/95, suit was filed by GAIL on 6-7-1995 and on 7-7-1995. Orders for notice to file written statement to defendants was passed and notice on the application for grant of temporary injunction was also issued. Court ordered that application under Section 80(2), CPC was considered and the Court has observed that without granting permission under Section 80(2), CPC to file suit, ex parte injunction can not be granted. Reply to the application under Section 80(2), CPC was submitted by the Counsel for the State and objection was raised that the suit is bad for want of notice under Section 80, CPC and there are no grounds for waiving notice under Section 80, CPC. Similarly, in Civil Suit No. 41-A/95 filed by the NFL, the suit was filed on 20-7-1995 and the case was taken up on 21-7-1995. In this suit, permission to file suit by exempting notice under Section 80(2), CPC was granted on the condition that if the defendants objects to application under Section 80(2), CPC, it shall be considered after notice to defendants and Court fixed the case for framing of issues. It may be mentioned that in the suit filed by the NFL, Municipal Council, Raghogarh was impleaded as party, but there is no mention in the suit regarding notice under Section 319 of the M.P. Municipalities Act before institution of suit. It may be mentioned that there is no provision like Section 80(2), CPC in M.P., Municipalities Act for exemption from notice before filing the civil suit against the Municipal Council. Trial Court has simply held that since no objection has been raised as to non- issuance of notice under Section 80, CPC, suit as filed is maintainable. However, the Trial Court has not considered the written statement filed by defendants 2 and 3. Defendants 2 and 3 have specifically mentioned that the provisions of Section 80, CPC have not been complied with and the suit has been filed before expiry of statutory period of notice. Defendant No. 4 has filed written statement and raised objection that notice was sent on 19-7-1995 by registered post and the suit is filed on the very next day. In Civil Suit No. 37-A/95 filed by the GAIL, defendants 1 to 6 in their written statement have specifically raised objection as to maintainability of the suit without notice under Section 80, CPC and objected to permission under Section 80(2), CPC. Plea of limitation is raised in the suit. Specific plea has been raised by defendants 2, 3 and 5 that the GAIL has filed a writ petition challenging the notification for recovery in the High Court and said writ petition is pending in the

High Court. Petition was filed in the year 1995 and the suit was filed on 6-7-1995. Therefore, the suit as filed was not maintainable. As regards notice, it is contended that the plaintiffs are not entitled for exemption from notice under Section 80(2), CPC. Municipal Council has mentioned that for the suit against the Municipal Council, notice under Section 319 of the M.P. Municipalities Act is necessary. Thus, there was specific pleading in the written statement.

7. Question whether there was urgency in filing the suit without notice should have been decided first before proceeding further. When writ petition was filed challenging the notification way back in the year 1992 which is pending. Plaintiff GAIL has suppressed about the pending petition for the same cause of action. Therefore, the suit as filed was not maintainable as the relief of injunction can be sought in the writ petition. Thus, there is no emergency in the facts of the case for dispensing with notice under Section 80, CPC. Writ petition filed by the plaintiff GAIL came up for consideration before Division Bench of this Court in Writ Petition No. 1092/95. Plea of alternative remedy available to the petitioner was raised by the respondents that Special Area Development Authority has not imposed any fee or tax, on the contrary, Joint Director, Town and Country Planning granted permission under Section 30(1)(b) of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973; that said fee can be recovered by the Special Area Development Authority and on the objection of the Advocate General that the petitioner has not exhausted the alternative remedy of appeal, the Court adjourned the petition observing as under :-

We think it necessary that the petitioner should reconsider the whole matter and take appropriate steps.

Thereby plaintiff was permitted to reconsider the matter and take appropriate steps pertaining to appeal. This order was passed on 26th June, 1995 and civil suit is filed on 6-7-1995. It may be mentioned that in the writ petition, dispute has not been decided by the Division Bench of this Court and on the preliminary objection raised that statutory appeal lies against the order of recovery, plaintiff was directed to re-examine the matter.

8. It is very interesting to note that Writ Petition Bearing No. 1092/95 filed by GAIL before the High Court at Jabalpur when came up for hearing, objection was raised by the respondents that the petitioner has not exhausted alternative remedy of appeal under M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 and Counsel for the petitioner was directed to reconsider the matter and take appropriate steps. Writ petition is still pending. It is interesting that when the petition was pending without availing the alternative remedy, suit has been filed along with an application under Section 80(2), CPC which shows that there was no urgency. Order challenged in the suit was passed on 3-7-1995 whereas Civil Suit No. 37-A/95 has been filed on 6-7-1995. Thus, when the plaintiff has filed the petition for the same cause of action and later filed the suit, therefore, it can not be said that there was any urgency, in favour of the plaintiff to file the suit and the Trial Court has committed an error in granting permission under Section 80(2), CPC. It shows that there was no application of mind in granting permission. District Judge has not considered the application in its right perspective and has disposed of the application in a mechanical manner. As regards the reasons given by the District Judge that there is no serious opposition to the notice therefore, the defendants had waived their right to challenge the notice, it may be mentioned that when statutory right is created in favour of a party, it can not be waived. Thus, the Trial Court committed an error in entertaining the suit and the suit as filed itself was premature.

9. While considering the application under Section 80(2), CPC, plaintiff must plead and prove that the suit is filed to obtain urgent or immediate relief against the Government or any public officer in respect of any act purporting to be done by such public officer in his official capacity, suit can be instituted with the leave of the Court. Thus, it is necessary to consider urgency and immediate relief against the Government or public officer. Basic requirement is that if such urgent and immediate relief is not granted then the plaintiff is likely to suffer irreparable injury or loss which can not be compensated. In the matter of recovery, if some amount is paid, that is liable to be refunded. As such, there was no urgency in the matter. Until and unless urgency or immediate relief is shown to the Court, the Court can not grant permission mechanically. Court is required to pass a reasoned order while granting such permission specifying the nature of urgency or immediate

relief to the plaintiff and loss being caused to the plaintiff if such relief is not granted immediately. In the absence of averments made in the application and the fact that same relief could be claimed by the petitioner in the writ petition before High Court, there was no urgency. Even otherwise, if some recovery was made from the plaintiff then the loss could be compensated by ordering refund in future after the judgment in the suit. As such, there was no urgency to grant relief under Sub-section (2) of Section 80, CPC.

10. In both the appeals, plaintiffs have filed suits to avoid their liability of more than two crore. But ad valorem Court fee has not been paid. It is a settled principle that when a party prays for injunction to avoid payment of some money, then ad valorem Court fee on the money due is payable for the relief of injunction as held by Full Bench judgment of this Court in the case of Subhash Chand Jain v. M.P.E.B. 2000(4) M.P.H.T. 318(FB) : 2000(3) MPLJ 522. Since the suit was essentially for avoiding liability of more than two crore and injunction was sought, as such, plaintiff was bound to pay the ad valorem Court fee on the valuation of the suit, i.e., Rs. two crore in the suit filed by GAIL and two crore fifty-three lac in the suit filed by NFL as such in both the suits ad valorem Court fee was payable for the relief of injunction as held in the case of Subhash Chand Jain (supra). Therefore, the Trial Court has committed grave error in holding that the suit is valued properly. Since proper Court fee has not been paid, time is granted to the plaintiffs to affix proper Court fee in the suit within a period of one month and after affixation of the Court fee suits shall proceed further otherwise the plaint is liable to be rejected for non-payment of Court fee.

11. It may also be mentioned that while deciding the suit, Trial Court has not exhibited the admitted documents and without exhibiting the documents suit has been decided. Documents on which both the parties had placed reliance were required to be exhibited.

12. It may further be mentioned that in the suit filed by the GAIL copy of notice so filed has not been sent to the State of Madhya Pradesh. In the eyes of law, there is no notice under Section 80, CPC. Said notice has been issued to the Secretary, Housing and Environment, State of M.P., Bhopal. If we go through the notice, it is

clear that said notice can not be termed as notice under Section 80, CPC. Section 80, CPC provides that no suit shall be 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, until the expiration of two months next after notice in writing has been delivered to, or left at the office of the Secretary to the Government or the Collector of the District. Sub-section (3) of Section 80 provides that no suit instituted against the Government or against 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 relief claimed by the plaintiff had been substantially indicated.

Thus, it is necessary to mention the name, description and the residence of the plaintiff and cause of action and, the relief claimed by the plaintiff must be specifically indicated in the notice.

13. Division Bench of this Court in the case of State of M.P. v. Bhagwant Rao 1972 J LJ SN 95 has considered the requirement of valid notice and held that the notice under Section 80, CPC must fulfil the three-fold requirements of the section. It is held as under :-

Strictly speaking a notice under Section 80 of the Code of Civil Procedure must fulfil the three-fold requirement of the section; it must state (1) the name, description and place of residence of the plaintiff, (2) the cause of action for the suit and (3) the relief which he claims. The section is explicit and mandatory and admits of no implications or exceptions. Though the terms of the section have to be strictly complied with it does not mean that the notice should be scrutinised in a pedantic manner divorced from common sense. Keeping in mind this principles,

this Court is of the view that the notice in question substantially meets the requirements of Section 80 of the Code of Civil Procedure. It sets out the facts leading to the order of removal, complaints that reasonable opportunity to show cause as envisaged in Article 311(2) of the Constitution was not afforded. The relief of declaration was clearly implicit and there can also be no doubt that he was claiming the relief for payment of arrears of salary on reinstatement. Thus, this Court is of the view that the suit so far as it relates to arrears of salary can not fail for want of the valid notice as contended.

14. In the suit filed by the GAIL, notice sent to the State of Madhya Pradesh, Bhopal through District Collector, Guna dated 6th July, 1995 is reproduced below:-

State of Madhya Pradesh

Bhopal.

Thro Dist. Collector, Guna.

Dear Sirs,

You are hereby served with a Notice under Section 80, CPC as under:-

Gas Authority of India Limited is a Government of India organisation and hundred per cent shares are being possessed by Central Government. As a Government of India Organisation, you as well as SADA have no right to raise any extra development charges from us.

We would further record that from none of the public institutions belonging to State Govt. or Central Govt. Agencies, you have charged this development charges in any manner. As such, you can not make discrimination so far as GAIL is concerned.

It is unfortunate that Joint Director (Town and Country Planning) illegally and unauthorisedly exceeded his power by directing SADA to recover Rs. 5/- per sq. mts. as extra development charges from us. Neither such delegation nor such charging is providing in any Statute, Rule or Byelaws.

The entire area has been developed by GAIL and neither the State Govt. nor SADA has any authority to charge any extra development charges as no amount has been spent either by the State Govt. or the SADA. As per principles of quid pro quo, as you have not incurred any expenditure to develop this area, you are stopped from charging any development charges from us. You are hence directed through this Notice to desist from realising any extra development charges from us and in case you compel us or take any action, we shall be compelled to approach to District Judge, Guna for adequate relief including relief of injunction.

(PM Fpanse)

Senior Manager (Electricals)

15. From perusal of the notice, it is clear that neither cause of action nor the relief claimed is mentioned in the notice. On the contrary, State Government has been directed through notice to desist from realising any extra development charges and in case plaintiff GAIL is compelled, then they shall be compelled to approach to the District Judge, Guna for adequate relief including relief of injunction. Said notice is said to be signed by PM Fpanse, Senior Manager (Electrical). Said letter though styled as notice under Section 80, CPC issued on the letter pad of Gas Authority of India Limited. GAIL is a company, but the person who has signed the notice is duly authorised by the company to issue notice on behalf of the company to the State Government is not mentioned in the said notice. Neither full address of the Gas Authority of India Limited nor the date on which cause of action has accrued to the plaintiff is mentioned in the notice. Document pertaining to sending notice Under Certificate of posting has been filed, but this document is not a proof of sending notice unless it is proved by the person who has posted the letter and it will not be a proof of service of notice to the defendants. Similarly in the suit filed by the NFL, copy of the letter addressed to the Secretary, Department of Housing and Environment, State of M.P. issued by Shri S.K. Bhatia, Manager (P & A), NFL is on record. In this letter it is mentioned that since they have filed objection and decision on the applicability of external development fee on NFL has not been arrived at, till the decision SADA may please be directed not to proceed with the recovery. Before taking any decision, points raised by them in their objection may

kindly be considered and opportunity of personal hearing be given to the representatives of the NFL. Thus, this is only a letter and is not a notice under Section 80, CPC.

16. In the suit filed by the plaintiff NFL it is pleaded in Para 14 of the plaint that before filing of the suit, notice has been sent by registered post to defendants, but no postal receipt has been filed on record to prove sending of notice by registered post. Exemption has been sought that on account of emergency, suit be entertained before expiry of period of two months. In the suit filed by GAIL, it is mentioned that the plaintiff has served notice upon the defendants under Section 80, CPC on 6-7-1995 and said notice has been served upon the defendants, whereas there is no pleading nor receipt of notice. When the said notice was received or delivered to the defendants is not mentioned in the plaint.

17. Thus, from the tenor of the notices in both the suits, it is apparent that there is no notice under Section 80, CPC. In the suit filed by the NFL, NFL has not issued notice to the State of M.P. through Secretary of the respective Department as provided under Sections 79 and 80, CPC. In the absence of notice under Section 80, CPC, question of exemption does not arise.

18. In the case of Amar Kumar Chourasia v. State Transport Authority 2003(1) MPJR 541 Division Bench of this Court has held that in the absence of any averment in the plaint regarding service and nature of notice, there can be no waiver of notice under Section 80, CPC. There is a vague allegation with regard to service of notice and it is not specific, hence, it can not be said that there was requisite and necessary averment in that regard. State Government was not served with notice. Since the plaint was silent with regard to nature of notice and further there was no stand that notice was issued to the State Government, which was necessary party to the litigation, if there had been no notice as it perceptible from the averments made in the plaint, doctrine of waiver would not be applicable.

19. It appears that the Trial Court in a haste to decide the suit has not considered the material objections. When specific plea as to valuation was raised, it was the duty of the Trial Court to examine the question of valuation from bare reading of the plaint. Trial Court committed error in holding that the court fee paid is proper.

Plaintiffs themselves have valued their suits and they have sought injunction to avoid their monetary liability of Rs. two crore and above. Loss which was going to cause to the plaintiffs was of two crore and two crore fifty three lac in two suits respectively. Therefore, the Trial Court ought to have directed the plaintiffs to pay ad valorem Court fee. In the absence of any such direction, suit as filed itself was not maintainable. There is no notice under Section 80, CPC according to law. Plaintiffs have neither mentioned the date on which cause of action has accrued and the reliefs intended to be claimed by the plaintiffs in the notice. There is nothing in the pleadings that the said notice has been delivered at the office or place of residence of the concerned officer and to whom notice has been served. Therefore, in view of such technical flaws suit as filed itself was not maintainable. Even otherwise, suit against the Municipal Council without serving statutory notice under Section 319 of the M.P. Municipalities Act is not maintainable. The benefit of Section 80(2), CPC can not be extended to suits against Municipal Council and the suit without serving statutory notice under the Municipalities Act is not maintainable.

20. As discussed above, appeals are allowed. Judgment and decree passed by the Trial Court is set aside and we hold that both the suits have not been properly valued and notice issued is not one under Section 80, CPC and suits as filed are not maintainable. In the absence of notice under Section 319 of the M.P. Municipalities. Act, suit against Municipal Council is not maintainable. Therefore the plaints are liable to be returned to the plaintiffs with liberty to file fresh suit after serving statutory notice and affixing ad valorem Court fee. However, if such suit is presented the Court will also examine the question that when writ petition challenging the notification under which said recovery is being made is pending, whether suit is required to be stayed under Section 10, CPC.

21. Appeals succeeds and are allowed with costs. Counsel's fee as per schedule.