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Court : Rajasthan

Decided On : Jan-03-1979

Reported in : 1979WLN1

Judge : S.K. Mal Lodha, J.

Appeal No. : S.B. Civil Revision No. 46 of 1977

Appellant : Deva Ram

Respondent : State and ors.

Advocate for Pet/Ap. : Mr. M.M. Parekh, Mr. Bhandari

Disposition : Petition dismissed

Judgement :

S.K. Mal Lodha, J.

1. This revisional application by defendant No. 3 Deva Ram is directed against the order of the Additional Civil Judge. Jodhpur dated 24-1-1977 by which he decided issue No. 6 in favour of the plaintiff Jas Raj (non-petitioner No. 3) and against the defendants.

2. Defendant No. 1 State of Rajasthan is non-petitioner No. 1 and defendant No. 2 Mining Engineer, Jodhpur, is non-petitioner No. 2 in this revision.

3. A few facts necessary for the disposal of this revision may briefly be noticed : plaintiff Jasaram instituted a suits in the court of Munsif City, Jodhpur against the defendant on July 28, 1971 for declaration and perpetual injunction.

4. The suit was transferred from the Court of Munsif City to the Court of Additional Civil Judge, Jodhpur.

5. The case of the plaintiff is that he submitted applications for grant of rent-com-royalty lease in respect of allotment of quarry No. 377 situate in Kali Beri Area. Jodhpur in the office of the defendant No. 2 on December 27, 1966, January 21, '67 & some other applications which are still pending, that one Mahaveer Prasad Jain, who was a clerk in the Mining Department us d to look after the work of allotment of quarries situate in Kali Beri Area, Jodhpur from 1966 to 1969, that he in collusion with the other employees & officers of the Mining Department and by defrauding the public was bent upon allotting illegally the quarries to his relatives and known persons, that letter No. 1234, October 3, 1967 continuing wrong facts was issued by the Mining Department stating that quarry No. 377, Kali Beri Area, Jodhpur had already been allotted and that this was done with a view to defraud the plaintiff and other prospective allottees. It was further stated by the plaintiff that the defendant No. 3 is brother of one Kaniram, Contractor, who is very close to the said Mahaveer Prasad and so he got an anti-dated application placed on record for allotment of quarry No. 377, that at the time of the transfer of Shri Gupta, Mining Engineer, Jodhpur because of favourtism without any proposed allotment, rent cum royalty in respect of quarry No. 377 was got deposited illegally and without jurisdiction In paras 3, 4, 5 and 6 of the plaint, allegations against Shri Mahaveer Prasad. Clerk of the Mining Department, Jodhpur have been made in para 11, it has been stated that after the transfer of the Mining Engineer Mr. Gupta, facts for cancellation of the proceeding relating to the allotment of quarry No. 377 were placed before the then Mining Engineer, who held that the allotment has not been rightly made and on January 20, 1969 proposed the name of Defendant No. 3 for allotment of the quarry in question and invited objections in this regard. The plaintiff submitted his objection on February 11, 1969 on the ground that he had already submitted an application for allotment prior to defendant No. 3, and thereafter proceedings taken place in favour of defendant

No. 3 were illegal and, therefore the allotment made in favour of defendant No. 3 should be cancelled and the quarry should be allotted to the plaintiff. Those objections were not heard till the institution of suit. The plaintiff has further stated that he orally and in writing reminded about the disposal of his objections and also on December 1, 1969 had sent a letter by registered post mentioning that his objections may be decided early but the objections were neither heard nor decided nor any information in this regard was sent to him.

6. It has been alleged by the plaintiff that without deciding his objections if the allotment has been made to defendant No. 3 or it has been renewed or rent-cum-royalty has been deposited or any other proceeding has been taken by defendant No. 3, they are all without jurisdiction and are acts of favoritism to him. In paras 14 to 18, the allegations have been made that the plaintiff has submitted application for allotment of quarry No. 377 prior to defendant No. 5 & as defendant No. 3 had applied for allotment subsequently, the plaintiff is entitled to get this quarry allotted. Thus from the allegations made in paras 3, 4, 5, 6 to 13 and 14 to 18, it is clear that the case of the plaintiff is that the acts of the Mining Engineer (defendant No. 2) are ultra vires and he has acted malafide, ilk gaily and in utter disregard of the Rajasthan Minor Mineral Concession Rules, 1959 ('the Rules' hereafter) It was therefore, prayed that allotment, renewal, depositing of rent-cum-royalty and all proceedings in respect of quarry No. 377 situate in Kali Ben Area Jodhpur in favour of defendant No. 3 may be declared illegal, without jurisdiction and acts of favourism, that permanent prohibitory injunction may be issued against defendants Nos. 1 and 2 restraining them not to renew lease and agreement in respect of quarry No. 377 in dispute in favour of defendant No. 3 or his transferee. It was also prayed that defendant No. 3 may also be restrained by means of prohibitory injunction from cat carrying out any mining operations or work on it by himself or any other persons in this quarry.

7. Defendants Nos. 1 and 2 filed a joint written statement on January 28, 1972 contesting the suit It was, inter alia, stated by them that no application for allotment of the quarry was submitted by the plaintiff in the office of the Mining Engineer and that after the receipt to the order of the State Government dated July 28, 1965, all the previous application, were bled and as such even if there were any

applications of the plaintiff, he does not get any right. These two defendants, however, did not dispute that suit is not triable by a civil court, though it was stated that as the plaintiff did not pursue the remedies of appeal and revision under the Rules and defendant No. 3 has started working on the quarry, he is not entitled for declaration and grant of injunction as prayed for by him.

8. Defendant No. 3 filed his written statement on January 21, 1972. In this written statement he resisted the plaintiff's suit. Subsequently he also filed an amended written statement on December 22, 1975 after obtaining the permission from the trial court.

9. On the application of the defendants Nos. 1 and 2 on December 9, 1973, new issue No. 6 was framed and existing issue No. 6 was re numbered as No. 7. Issue No. 6 so framed when translated into English, reads as under:

Whether the suit cannot be heard by this Court (Civil Court) as the plaintiff did not prefer any appeal or revision against the allotment in favour of defendant No. 3 under the Rajasthan Minor Mineral Concession Rules?

Arguments on this issue were heard by the learned Additional Civil Judge on January 12, 1977. The learned Additional Civil Judge, by his order dated January 24, 1977 decided issue No. 6 against the defendants and in favour of the plaintiff, whereby holding that the jurisdiction of the civil court to hear the suit is not barred Being aggrieved by the aforesaid order, defendant No. 3 has come up in revision to this Court.

10. Mr. M.M. Parekh learned Counsel for the petitioner, has argued that the jurisdiction of the civil court to entertain and decide the present suit is barred. He urged that the plaintiff has no right to exploit the mineral in quarry No. 377 as the minerals belong to the Mate, that right has been given by the Rules (statute) and remedies have also been provided therein and as the Rules are complete code by themselves jurisdiction of ordinary civil court cannot be invoked. Learned Counsel further submitted that if the plaintiff was aggrieved by allotment of quarry No. 377 to defendant No. 3, he should have pursued his remedy, provided by way of appeal and revision under Rules 43 and 60 of the Rules respectively and since he

has failed to avail of the remedies, provided under the Riles, he cannot invokes the jurisdiction of the civil court. In support of his arguments he placed reliance on Nevilee's v. London 'Express' Newspaper Limited 1919 Appeals Cases 368, Secretary of State v. Mask & Co. A.I.R. 1940 P.C. 105, V. Peddarangaswami v. The State of Madras : AIR1953 Mad583 , The Premier Automobiles Ltd. v. K.S. Wadhe : (1975)IILLJ445SC and Bata Shoe Co. Ltd. v. Jabalpur Corporation : [1977]3SCR182 .

11. Mr. Bhandari, learned Counsel for the plaintiff-non-petitioner supported the order under revision. He also contended that issue No. 6 was treated by the trial court as a preliminary issue despite requests by the plaintiff that it should be decided along with the other issues. He urged that for the correct decision of the suit, a finding whether the plaintiff had submitted an application for allotment of quarry No. 377 on January 28, 1967 or not, is necessary because the basic averment of the plaintiff is that his application has not been considered, and according to defendant No. 2 no such application was received. He further submitted that without passing any order for grant of rent-cum-royalty lease to defendant No. 3 the quarry has been given to him, and in this respect allegations of milafide, undue favourtism, breach of principles of natural justice and violation of the Rules have been made. Learned Counsel went on to argue that Rule 43 has no application in as much as it provides for appeal against refusal of grant and it does not apply to order refusing to grant and no order of refusal has been placed on record and so Rule 43 could not be availed of. He also urged that there can not be any refusal because according to the Mining Engineer, no application of the plaintiff dated January 28, 1967 was received prior to defendant No. 3's application. He submitted that the order dated April 17, 1968 was not produced before the trial court until the decision of issue No. 6. The order was produced as late as on April 27, 1977, though the suit was instituted on July 28, 1971. He made reference to Rule 44 which reads as under:

Form of appeal and fees. - (1) An appeal under Rule 43 shall be in the form of memorandum of appeal in duplicate with numbered paragraph stating concisely and precisely the ground of objection.

(2) The memorandum of appeal shall be accompanied by a court-fee of Rs. 25 in case of mining lease or royalty collection contract and Rs. 10 in case of rent-cum-royalty leases.

Mr. Bhandari placed reliance on Wazira and Anr. v. Shunulal and Ors. A.I.R. 1960 Raj. 283. Rangasingh v. Gurbuxsingh A.I.R. 1961 Punj. 156, Firm of I.S. Chetty & Sons os. State of Andhra Pradesh AIR 1964 SC 332, Provincial Govt. Madras v. J.S. Basuppa : [1964]5SCR517 , Desika Charyvlu v. State of A.P. : AIR 1964 SC807 , Ram Swarup v. Shikarchand AIR 1956 SC 893, Musamia Imam v. Rabari Govinda Bhai AIR 1969 SC 419, and K.G. Dora v. G. Annamanaidu AIR 1974 SC 108. He further contended that jurisdiction of a civil court can only be barred by an Act of the Legislature and the Rules cannot take away its jurisdiction. In support of his contention he invited my attention to Firm Adrash Industrial Corporation v. Market Committee Kairal .

12. I have given my most anxious and thoughtful consideration to the arguments advanced by the learned Counsel for the parties and have also considered the cases cited by them.

13. A foremost and perhaps only point, which is undoubtedly vexed one, which falls for my determination is whether on the facts & circumstances of the case, the civil court had/has jurisdiction to entertain the suit for declaration and permanent injunction filed by the plaintiff-non-petitioner against the defendants. In other words, whether in view of the Rules, the jurisdiction of the civil court to take cognizance of the suit is barred under Section 9 CPC.

14. Section 9 of Civil Procedure Code, reads as under:

9. Courts to try all civil suits unless barred: The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I. A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II, For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

It may be stated that original Explanation has been numbered as No. I and Explanation No. II was added by the Code of Civil Procedure (Amendment) Act, 1976.

15. In order that courts may have jurisdiction to try the suit, two prerequisite conditions are:

1. The suit must be one of civil nature.

2. Its cognizance should not have been expressly or impliedly barred.

In the case before me, I am concerned with jurisdiction with reference to the subject matter of the suit and not with respect to legal, personal and pecuniary jurisdiction. It is well settled that the jurisdiction with reference to the subject matter of a claim depends upon the allegations made in the plaint and, the question of maintainability of suit must be governed by the same principles and must also be dealt with on the footing of the allegations in the plaint, being correct. It is immaterial whether such allegations may after trial be field to be unfounded and in that case this suit may have to be dismissed, but, that will not be a ground for holding that the court has no jurisdiction.

16. Whether a court has jurisdiction or not, is to be decided with reference to the initial assumption of jurisdiction by that court. It was laid down Secretary of State's case AIR 1940 P.C. 105:

It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(emphasis supplied).

17. While considering the provisions of Section 9 C.P.C. in Chetty's case : [1963]50ITR93(SC) , Gajendragadkar, J., as he then was, speaking for the court, summed up the law as follow:

In dealing with the question whether the Civil Courts jurisdiction to entertain a suit is barred or not, it is a general presumption that there must be a remedy in the ordinary civil courts to a citizen claiming that an amount has been recovered from him illegally and that such a remedy can be held to be barred only on very clear and unmistakable indications to the contrary. The exclusion of the jurisdiction of Civil Courts to entertain civil causes will not be assumed unless the relevant statute contains an express provision to that effect, or reads to a necessary and inevitable implication of that nature. The mere fact that a special statute provides for certain remedies nay not by itself necessarily exclude the jurisdiction of the civil courts to deal with a case brought before it in respect of some of the matters covered by the said statute.

After considering the decision of Secretary of State's case AIR 1940 P.C. 105, the principles laid down in that case, were summed up as under in Provincial Govt. of Madras's case : [1964]5SCR517 :

It was thus held that the civil court's jurisdiction may not be taken away by making the decision of a tribunal final, because the civil court's jurisdiction to examine the order, with reference to fundamental provisions of the statutes, non-compliance with which would make the proceedings illegal and without jurisdiction, still remains, unless the statute goes further and states either expressly or by necessary implication that the civil court's jurisdiction is completely taken away.

Two important tests relevant in dealing with the question about the exclusion of the civil court's jurisdiction, have been laid down in Ram Swarup's case AIR 1956 SC 893:

1. Whether the special statute which, excludes such jurisdiction, has used clear and unambiguous words indicating that intention.

2. Does the statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions?

In connection with the provisions of Section 3(4) of the U.P. (Temporary) Control of Rent and Eviction Act, 1947, their Lordships of the Supreme Court observed:

But where a plea seeks to provide that the impugned order is a nullity in the true legal sense, that is a plea which does not come within the mischief of the bar created by Sections 3 and 16 of the Act.

In Musamia Imam's case AIR 1969 SC 419, their Lordships considered the provisions of Sections 70 and 85 of the Bombay Tenancy and Agricultural Lands Act (No. LXVII of 1948) and in that connection observed as under:

In our opinion, there is nothing in the language or context of Section 70 or Section 85 of the Act to suggest that the jurisdiction of the Civil Court is expressly or by necessary implication barred with regard to the question whether the defendants had become statutory owners of the land and to decide in that connection whether the defendants had been in the past tenants in relation to the land on particular past dates.

The principles laid down in Desika Charyulu's case : AIR 1964 SC807 were adopted in K.C. Dora's case AIR 1974 SC 108 and they are:

1. First, the civil courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

2. Second, as regards the exact extent to which the powers of statutory tribunals are exclusive. The question as to whether any particular case falls under the first or the second of the above categories would depend on the purpose of the statute and its general scheme, taken conjunction with the scope of the enquiry entrusted to the tribunal set up and other relevant factors.

In the light of the above principles, I deal with the questisn of jurisdiction of the civil court.

18. From the summary of the averments of the plaint given here in above, it is clear that the plaintiff has submitted in application for the allotment of quarry No. 377 and under Rule 29, his application was prior to time He submitted that he was entitled to be considered for the allotment, as provided in Rule 29 of the Rules & that defendant No. 3 was allowed to exploit quarry No. 377 without grant of rent-cum-royalty lease, at provided in Rule 27. Thus it is clear that allotment to defendant No. 3 is an act of ultra vires of defendant No. 2 and that he has acted malafide and with favourtism to defendant No. 3. It is also clear that the provisions of the Rules have not been complied with and defendant No. 2 has not acted in conformity with them. Thus according to the plaintiff the Mining Engineer has abused his power, and has not acted under the Rules but in violation of them In these circumstances, the civil court has jurisdiction to examine whether the provisions of the Rules have been complied with and whether the non compliance has made the proceedings illegal. I am unable to accept the contention of the learned Counsel for the petitioner that when defendant No. 3 was allowed to exploit the quarry, there was an implied rejection of all the applications of the prospective allottees. The plaintiff has merely stated in para 7 of the plaint that:

fcuk dksbZ ,ykVes.V izLrkfor fd;s gh Jh nsokjke izfroknh ds uke ls [kku ua- 377 dh js.V de jk;YVk tek dj yh tks vfu;fer] i{kikriw.kZ o voS/k o vf/kdkj {ks= ls jfgr FkhA^^

^^vxj dksbZ ,ykUVesaV vkMZj tkjh fd;k x;k gS rks og ,ykVes UV vkMZj vukf/kdkj iw.kZ o voS/k gS o oknh ds gd ds f[kykQ csdkj g SA

In para 10 it was mentioned:

o oknh dk vkosnu izkFkfedrk izkIr gksus ls oknh bu [kkuks ds ,ykVes UV dk vf/kdkjh gS A

As there was no refusal of the application for allotment of quarry No. 377, submitted by the plaintiff on January 28, 1967 prior in lime to that of defendant No. 3, Rule 43 cannot be invoked, for amongst others it provides that any person aggrieved by an order of Mining Engineer or Assistant Mining Engineer of the Department may prefer appeal on the matters specified therein to the Director or to any other officer appointed by the Government in this behalf.

19. No. averment has been made that any order of allotment was passed and if it has been passed, it is invalid.

20. In these circumstances, I am unable to hold that the present suit is implidely barred and further hold that decision of issue No. 6 by the Additional Civil Judge against the defendants, calls for no interference by this Court as the suit instituted can be entertained by the civil court.

21. In Bata Shoe Co.'s case : [1977]3SCR182 , Section 84(3), the C.P. and Berar Municipalities Act (No. II of 1922) came up for consideration. In that case the question raised was whether a suit challenging any valuation assessment or levy of Octroi duty could be filed in civil court or not. It was held that Section 84(3) of the C.P. and Berar Municipalities Act (No. II of 1922) expressly prohibits a challenge to a valuation, assessment or levy 'in any other manner...than is provided in this Act' and since the Act has devised its own special machinery for inquiring into and adjudicating upon such challenges the common remedy of a suit stands necessarily excluded and cannot be availed of by a person aggrieved by an order of assessment to octroi duty. It was further held that similarly, Section 84(3) excludes expressly the power of 'any other authority than is provided in this Act' to entertain an objection to any valuation, assessment or levy of octroi In that connection reliance was placed on Nevilee's case 1919 Appeals Cases 368 and Secretary of State's case AIR 1940 P.C. 105.

22. In Bata Shoes case : [1977]3SCR182 , their Lordships of t he Supreme Court observed as under:

By reason of the existence and availability of those special remedies, the ordinary remedy by way of a suit would be excluded on a true interpretation of Section 84(3) of the Act.

This decision is. therefore, not applicable to the facts and circumstances of this case.

23. There is a distinction between the maintainability of a suit and that the court has no jurisdiction to decide. The case of Peddarangaswami : AIR1953 Mad583 ,

on which the reliance was placed by the learned Counsel for the petitioner, is also distinguishable and is not of much assistance to the petitioner. In that case, the plaintiff-appellant was granted prospective licence which conferred on him the sole right, subject to the conditions contained in the licence, to mine, bore, dig and search for iron and work and carry away red oxide of iron within an area of 75 acres being a portion of S. No. 326 of Janikunta village in Bellar) district. The licence was for a term of one year commencing from May 28, 1941. The contesting respondent in the appeals, one Vishnu Nimbkar, obtained a similar prospecting licence for red oxide on June 11, 1941 in respect of S. No. 3 in the village of Thumti in the same district measuring 288 acres. This survey number was adjacent to the area in respect of which the appellant had been granted a licence. Nimbkar also obtained a regular mining lease for a term of ten years commencing from January 5, 1942 of two other portions of S. No. 326 comprising about 304 acres. Because of some disputes, the plaintiff filed a suit against the said Nimbbar for the recovery of 65 tons of red oxide alleged to have been removed by him from the area covered by the prospecting licence in favour of the appellant or their value. Rs. 585 and for the issue of an injunction restraining Nimbkar from entering on the said area or removing and minerals therefrom The suit was dismissed by the District Munsif on February 5, 1943 on the ground that it was not maintainable because there was no valid prospecting licence in the plaintiff's favour, the renewal of the licence not having been registered. Certain other points were also based which are not necessary for the present purpose. However, an objection was taken relating to the maintainability of the suit. In that connection I was observed:

The grant of prospecting licenses and mining leases is regulated by rules made by the Government of India. These rules are really in the nature of administrative instructions for the guidance of revenue authorities who are entrusted with the grant of the licenses and leases. These rules do not confer rights enforceable in a court of law, nor can the infringement of any of the rules give rise to a cause of action on which an action can be founded It is true that once a grant has been made either of a licence or of a lease validly and in accordance with the Rules by the competent authority, i.e., either by the Government or by such authority to whom the Government may delegate their powers, then such a grant may be

binding on the Government and confer rights on the grantee. But no one has an absolute right to obtain a licence or a lease which can be enforced against the Government in a Civil Court.

It is, therefore, clear that, in that case, the claim under the licence was sought to be enforced.

24. I may here also refer to Balkrishna Mehta v. Corporation of Madras : AIR1962 Mad7 to which my attention was drawn by the learned Counsel for the petitioner. The principal question which was raised before the Madras High Court was whether the civil court has no jurisdiction to go into the question of the increase in value or the likelihood of increase in value of any properties involved in a town planning scheme under the Madras Town Planning Act. Sections 23, 24 and 27 of the Madras Town Planting Act (No XVII of 1920) came up for consideration before the learned Judges of the Madras High Court. It was observed:

It is perhaps a trite maxim to say that an ouster of the jurisdiction of the civil court cannot be lightly inferred. Unless the legislature gives a clear expression of its intention to do so, the general presumption that established courts of law have jurisdiction will prevail but there exists a class of cases where an inference of this kind can and must be made.

On the basis of these principles, it was held:

With regard to the subsequent valuation, there is in effect a statutory declaration that any increase in value is, in the eyes of the stature, in question, the result of the making of the scheme. In the fee of such a provision, it is not open to a party to claim that such an increase in value is due to circumstances other than the making of a scheme. In so far as the subsequent valuations are concerned, they have been brought into line with the assessment of property tax and the special forms created in the relevant statute for the determination of questions and adjudication of disputes arising there from has also the effect of ousting the jurisdiction of the civil court in that connection.

The Full Bench decision of the Madras High Court in Balkrishna case is, therefore, of no avail to the petitioner.

25. In Premier Automobiles Ltd's case : (1975)IILLJ445SC , in para 23, the principles applicable to the jurisdiction of the civil court in relation to an industrial dispute have merely been stated. None of the principles stated by their Lordships of the Supreme Court regarding the jurisdiction of the Civil Court in relation to an industrial dispute is applicable to the facts and circumstances of the case in hand.

26. It is not necessary to refer to the remaining authorities, cited by the learned Counsel for the parties, as I have endeavoured to answer the question which has arisen in this revision on appreciation of some of the authorities referred hereinabove.

27. The upshot of the above discussion is that on the facts and in the circumstances of this case, the civil court has jurisdiction to entertain the suit, filed by the plaintiff-non-petitioner and issue No. 6 has rightly been decided by the learned Additional Civil Judge.

28. No other point was raised before me.

29. In the premises aforesaid, I find no merit in this revision and it is accordingly dismissed without any order as to costs.

30. Nothing said hereinabove will prejudice any of the parties so far as the determination of the points in controversy between the parties relating to their merits are concerned.