

Supreme Court of India

Shiv Kumar Chadha Etc. Etc vs Municipal Corporation Of Delhi ... on 4 May, 1993

Equivalent citations: 1993 SCR (3) 522, 1993 SCC (3) 161

Author: S N.P.

Bench: Singh N.P. (J)

PETITIONER:

SHIV KUMAR CHADHA ETC. ETC.

Vs.

RESPONDENT:

MUNICIPAL CORPORATION OF DELHI AND ORS.

DATE OF JUDGMENT 04/05/1993

BENCH:

SINGH N.P. (J)

BENCH:

SINGH N.P. (J)

VENKATACHALLIAH, M.N. (CJ)

SAWANT, P.B.

CITATION:

1993 SCR (3) 522 1993 SCC (3) 161

JT 1993 (3) 238 1993 SCALE (2) 772

ACT:

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Code of Civil Procedure, 1908:

Section 9-Civil Court's jurisdiction- Ouster when.

Delhi Municipal Corporation Act, 195:

Sections 343, 347E-Suits in connection with orders passed or proceedings initiated for demolition of constructions- Maintainability of-Directions of Supreme Court.

Code of Civil Procedure, 1908:

Order 39, Rule 3, proviso Temporary injunction-Granting of- When-Court's duty-Reasons for grant of injunction-Mandatory to record-Supreme Court's directions.

HEADNOTE:

In respect of some private dispute between two neighbors a writ application was filed in the High Court. On the material produced in the case it was treated as a Public Interest Litigation and the High Court was to find out a solution in respect (if unauthorised constructions alleged to have been made by different owners/occupiers/builders without sanctioned plans or by making deviations from the sanctioned plans. The High Court wanted to ensure that such unauthorised constructions were not perpetuated on the basis

of interim orders of injunction passed by the Civil Courts-. The High Court disposed of the petition holding that the owners/ occupiers/builders were to be given liberty to file fresh building plans and that the Municipal Corporation was to examine such building plans in accordance with law and that the Corporation was to seal and to demolish those constructions which were beyond the compoundable limits. The High Court also directed that no civil suit would be entertained by any Court in Delhi in respect of any action taken or proposed to be taken by the Corporation with regard to the sealing and/or demolition of any building or any part thereof. The High Court directed further that person aggrieved by an order of sealing or demolition had the right to file an appeal to the Appellate Tribunal under the Delhi Municipal Corporation Act, 1957.

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Against the High Court's order the present appeals were filed by special leave.

On the question, "whether the jurisdiction of the Court has been statutorily barred in respect of suits in connection with the orders passed or proceedings initiated for demolition of constructions, which have been made without sanction or by deviating from the sanctioned plans", allowing the appeals, this Court,

HELD:1.1. With the increase in the number of taxing statutes, welfare legislations and enactments to protect a class of citizens, a trend can be noticed that most of such legislations confer decision making powers on various authorities and they seek to limit or exclude Court's power to review those decisions. The result is that the power of the Court under section 9 of the Code is being denuded and curtailed by such special enactments, in respect of liabilities created or rights conferred. The ouster of the jurisdiction of the Court is upheld on the finding that the rights or liabilities in question had been created by the Act in question and remedy provided therein was adequate. (535-D-F)

1.2. The situation will be different where a statute purports to curb and curtail a pre-existing common law right and purports to oust the jurisdiction of the Court so far remedy against the orders passed under such statute are concerned. In such cases, the courts have to be more vigilant, while examining the question as to whether an adequate redressal machinery has been provided, before which the person aggrieved may agitate his grievance. (535-G)

1.3. In spite of the bar placed on the power of the Court, orders passed under such statutes can be examined on "jurisdictional question". A suit will be-maintainable. (536-F)

Katikara Chiniamani Dora v. Guatreddi Annamaaidu, AIR 1974 SC 1069; Desika Charyuttu v. State of Andhra Pradesh, AIR 1964 SC 807; PYX Granite Co. Ltd. v. Ministry of Housing and

Local and Government, 1960 A.C. 260 and Anisminic Ltd. v. Foreign Compensation Commission, 1969 2 AC 147, relied on. Wolverhampton New Waterworks Co. v. Hawkesford, [1859] 6 524

C.B. (N.S.) 336; Neville v. London "Express" Newspaper Limited. [1919] Appeal Cases 368; Baraclough v. Brown, [1897] Appeal Cases 615; Secretary of State v. Mask & Co, AIR 1940 P.C. 105; Firm Seth Radha Kishan v. Administrator. Municipal committee, Ludhiana, AIR 1963 SC 1547; Finn of Illuri Subbayya Chetty and Sons v. State of Andhra Pradesh, AIR 1964 SC 322; M/s. Kamala Mills Ltd. v. State of Bombay, AIR 1965 SC 1942; Ram Swarup and Ors. v. Shikar Chand, AIR 1966 SC 893; State of Kerala v. M/s. N. Ramaswami Iyer and sons, AIR 1966 SC 1738; Rain Gopal Reddy v. Additional Custodian Evacuee Property, Hyderabad, [1966]3 SCR 214; Custodian of Evacuee Property, Punjab & Ors. v. Jafran Begum, [1967]3 SCR 736; Dhulabhai v. State of Madhya Pradesh, AIR 1969 SC 78; The Premier Automobiles Ltd. v. Kamlaker Shantarm Wadke, AIR 1975 SC 2238=[1976] 1 SCC 496; Bata Shoe Co. Ltd. v. Jabalpur Corporation, AIR 1977 SC 955=[1977] 2 SCC 472; Munshi Ram v. Municipal Committee, Chheharta, AIR 1979 SC 1250=[1979]3 SCC 83; Rain Singh v. Grain Panchayat, Mehal Kalan, AIR 1986 SC 2197=[1986]4 SCC 364; Raja Ram Kumar Bhargava v. Union of India, AIR 1988 SC 752=[1988] SCC 681 and Sushil Kumar Mehta v. Gobind Ram Bohra, [1990] 1 SCC 193, referred to.

1.4. The Delhi Municipal Corporation Act purports to regulate the common law right of the citizens to erect or construct buildings of their choice. This right existed since time immemorial. But with the urbanisation and development of the concept of planned city, regulations, restrictions, on such common law right have been imposed. But as the provisions of the Act intend to regulate and restrict a common law right, and not any right or liability created under the Act itself, it cannot be said that the right and the remedy have been given unoflatu e.g. "in the same breath". (537-E)

1.5. In spite of the bar prescribed under sub-sections (4) and (5) of section 343 and section 347E of the Corporation Act over the power of the Courts, under certain special circumstances, the Court can examine, whether the dispute falls within the ambit of the Act. But once the Court is satisfied that either the provisions of the Act are not applicable to the building in question or the basic procedural requirements which are vital in nature, have not been followed, it shall have jurisdiction, to enquire and investigate while protecting the common law rights of the citizens. (537-C)

1.6. The regulations and bye-laws in respect of buildings, are meant to

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serve the public interest. But at the same time it cannot be held that in all circumstances, the authorities entrusted

with the demolition of unauthorised constructions, have exclusive power, to the absolute exclusion of the power of the Court. In some special cases where "jurisdictional error" on the part of the Corporation is established, a suit shall be maintainable. (538-C)

1.7. The Court should not ordinarily entertain a suit in connection with the proceedings initiated for demolition by the Commissioner, in terms of section 343 (1) (of the Corporation Act. The Court should direct the persons aggrieved to pursue the remedy before the Appellate Tribunal and then before the Administrator in accordance with the provisions of the said Act. (538-D)

1.8. The Court should entertain a suit questioning the validity of an order passed under section 343 of the Act, only if the Court is of prima facie opinion that the order is nullity in the eyes of law because of any "jurisdictional error" in exercise of the power by the Commissioner or that the order is outside the Act. (538-E)

2.1. A party is not entitled to an order of injunction as a matter of right or course. Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. (538-H)

2.2. The purpose of temporary injunction is, to maintain the status quo. The Court grants such relief according to the legal principles- ex debito justitiae. Before any such order is passed the Court must be satisfied that a strong prima facie case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him. (539B)

2.3. 'The Court should be always willing to extend its hand to protect a citizen who is being wronged or is being deprived of a property without any authority in law (or without following the procedure which are fundamental and vital in nature. But at the same time the judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court. (539-1))

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2.4. Power to grant injunction is an extra-ordinary power vested in the Court to be exercised taking into consideration the facts and circumstances of a particular case. The Courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. (539-E)

2.5. In spite of the statutory requirement, in order 39, Rule 3 the Courts have been passing orders of injunction before issuance of notices or hearing the parties against whom such orders are to operate without recording the

reasons for passing such orders. It is said that if the reasons for grant of injunction are mentioned, a grievance can be made by the other side that Court has prejudged the issues involved in the suit. This is a misconception about the nature and the scope of interim orders. Any opinion expressed in connection with an interlocutory application has no bearing and shall not affect any party,, at the stage of the final adjudication. Apart from that now in view of the proviso to Rule 3 of Order 39, there is no scope for any argument. When the statute itself requires reasons to be recorded, the Court cannot ignore that requirement by saying that if reasons are recorded, it may amount to expressing an opinion in favour of the plaintiff before hearing the defendant (539-H, 540-H)

2.6. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all.

Taylor v. Taylor, (1875) 1 Ch. D. 426; Nazir Ahmed v. Emperor, AIR 1936 PC 253 and Ramachandra Keshar Adke v. Gavind Joti Chavare, AIR 1975 SC 915, relied on.

2.7. Whenever a Court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side, it must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. But any such ex parte order should be in force up to a particular date before which the plaintiff should be required to serve the notice on the defendant concerned. (541-C)

Supreme Court Practice 1993, Vol. 1, at page 514, referred to.

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2.8. The Court should first direct the plaintiff to serve a copy of the application with a copy of the plaint along with relevant documents on the counsel for the Corporation or any competent authority of the Corporation and the order should be passed only after hearing the parties. (541-F)

2.9. If the circumstances of a case so warrant and where the Court is of the opinion, that the object of granting the injunction would be defeated by delay, the Court should record reasons for its opinion as required by proviso to Rule 3 of Order 39 of the Code, before passing an order for injunction. The Court must direct that such order shall operate only for a period of two weeks, during which notice along with copy of the application, plaint and relevant documents should be served on the competent authority or the counsel for the Corporation. Affidavit of service of notice should be filed as provided by proviso to Rule 3 of Order 39 aforesaid. If the Corporation has entered appearance, any

such ex parte order of injunction should be extended only after hearing the counsel for the Corporation. (541-H, 542-A)

2.10. While passing an ex parte order of injunction the Court shall direct the plaintiff to give an undertaking that he will not make any further construction upon the premises till the application for injunction is finally heard and disposed of. (512-C)

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2531-33 of 1993.

From the Judgment and Order dated 19.2.1991 of the Delhi High Court in C.W.P. No. 3499 of 1989.

R.M. Bagai, V. Shekhar, Ms. Bina Gupta and Ms. Monika Mohil for the Appellants.

Kapil Sibal, Ranjit Kumar and R.P. Sharma for the Respondents.

The Judgment of the Court was delivered by N.P. SINGH. J. Special leave granted.

These appeals have been filed against an order passed by the Delhi High Court directing the Municipal Corporation of Delhi (hereinafter referred to as "the Corporation") to issue appropriate notices to the owners/occupiers/builders of the building where illegal constructions have been made. A liberty has been given to the owners/occupiers/builders to file fresh buildings plans with the Corporation in conformity with the existing bye- laws. The building plans as filed are to be examined in accordance with the law. The Corporation has been directed that if it finds that the constructions are beyond the compoundable limits, then to seal the same and to demolish thereafter.

The appellants have no grievance so far as the aforesaid part of the order is concerned. They have sought interference of this Court with the other part of the order, where it has been said that "no civil suit will be entertained by any court in Delhi in respect of any action taken or proposed to be taken by the Corporation with regard to the sealing and/or demolition of any building or any part thereof. Any person aggrieved by an order of sealing or demolition which is passed shall, however, have the right of filing an appeal to the Appellate Tribunal under the Municipal Act. The Appellate Tribunal is the only forum which has the jurisdiction to grant interim relief." The other part of the order in respect of which objection has been taken is where the Court has directed the Corporation to approach those courts which have already issued injunction "for variation and vacation of the injunction orders in the light of" the said order.

Initially a writ application was filed in respect of some private dispute between two neighbours. In due course on the material produced by one party or the other it was treated as a Public Interest Litigation and by the impugned order the High Court has purported to find out a solution in respect

of unauthorised constructions alleged to have been made by different owners/ occupiers/builders in the different parts of the city without sanctioned plans or by making deviations from the plans which had been sanctioned. The Court has also purported to ensure that such unauthorised constructions are not perpetuated on the basis of interim orders of injunction passed by Civil Courts. It cannot be disputed that by the impugned order the jurisdiction of any Court in Delhi to entertain any suit in connection with demolition of any part of any building which, according to the Corporation, is unauthorised and illegal has been ousted.

The Delhi Municipal Corporation Act, 1957 (hereinafter referred to as "the Corporation Act") has made provisions for the constitution of the Corporation and has prescribed the procedure for election of the councillors, levy of taxes, sanitation and public health. Chapter XVI contains provisions regarding erection of buildings within the Corporation area. Section 331 defines the expression "to erect a building". Section 332 says that "no person shall erect or commence to erect any building or execute any of the works specified in section 334 except with the previous sanction of the Commissioner". The relevant part of section 343 is as follows:-

"343. Order of demolition and stoppage of buildings and works in certain cases and appeal (2) Any person aggrieved by an order of the Commissioner made under sub-section (1) may prefer an appeal against the order to the Appellate Tribunal within the period specified in the order for the demolition of the erection or work to which it relates.

(3) Where an appeal is preferred under sub-section (2) against an order of demolition, the Appellate Tribunal may, subject to the provisions of sub-section (3) of section 347 C, stay the enforcement of that order on such terms, if any, and for such period, as it may think fit:

Provided that where the erection of any building or execution of any work has not been completed at the time of the making of the order of demolition, no order staying the enforcement of the order of demolition shall be made by the Appellate Tribunal unless security, sufficient in the opinion of the said Tribunal has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal.

(4) No Court shall entertain any suit, application or order proceeding for injunction or other relief against the Commissioner to restrain him from taking any action or making any order in pursuance of the provisions of this section.

(5) Subject to an order made by the Administrator on appeal under section 347 D, every order made by the Appellate Tribunal on appeal under this section, and subject to the orders of the Administrator and the Appellate Tribunal on appeal, the order of demolition made by the Commissioner shall be final and conclusive".

Section 344 vests power in the Commissioner to stop the construction of the building where the erection of such building or execution of any work has been commenced or is being carried on either without sanction or contrary to sanction so granted or in contravention of any condition subject to which sanction has been accorded. Under section 345A, the Commissioner at any time, before or

after making an order of demolition under section 343 or of the stoppage of the erection of any building or execution of any work under section 343, can make an order directing the sealing of such erection or work or of the premises in which such erection or work is being carried or has been completed. A further appeal has been provided under section 347D to the Administrator against the order of the Appellate Tribunal. Section 347E says:- "347E. Bar of jurisdiction of courts.

(1) After the commencement of section 7 of the Delhi Municipal Corporation (Amendment) Act, 1984, no court shall entertain any suit, application or other proceedings in respect of any order or notice appealable under section 343 or section 347B and no such order or notice shall be called in question otherwise than by preferring an appeal under these sections.

(2) Notwithstanding anything contained in sub-section (1), every suit, application or other proceeding pending in any court immediately before the commencement of section (7) of the Delhi Municipal Corporation (Amendment) Act, 1984, in respect of any order or notice appealable under section 343 or section 347B, shall continue to be dealt with and disposed of by that court as if the said section had not been brought into force."

Because of sub-sections (4) and (5) of section 343 and section 347E aforesaid the stand of the Corporation is that the Courts have been debarred from entertaining suits, applications or proceedings for injunction, against any order or notice for demolition and the order of demolition passed by the Commissioner, subject to appeals before the Appellate Tribunal and Administrator shall be deemed to be final and conclusive.

In spite of several pronouncements of this Court during the last four decades, the question as to whether the jurisdiction of the Court has been statutorily barred in respect of suits in connection with the orders passed or proceedings initiated for demolition of constructions, which have been made without sanction or by deviating from the sanctioned plans, has to be answered.

Section 9 of the Code of Civil Procedure, (hereinafter referred to as "the Code") says that Courts shall have jurisdiction to try all suits of civil nature "except suits of which their cognizance is either express or impliedly barred". According to the Corporation once the jurisdiction of the Court to try a suit in which the validity of any order passed under the provisions of the Corporation Act or the notice issued thereunder has been specifically barred and an internal remedy has been provided for redressal of the grievances of the persons concerned, there is no scope for Court to entertain a suit.

In the olden days the source of most of the rights and liabilities could be traced to the common law. Then statutory enactments were few. Even such enactments only created rights or liabilities but seldom provided forums for remedies. The result was that any person having a grievance that he had been wronged or his right was being affected, could approach the ordinary Civil Court on the principle of law that where there is a right there is a remedy-ubi jus ibi remedium. As no internal remedy had been provided in the different statutes creating rights or liabilities, the ordinary Civil Courts had to examine the grievances in the light of different statutes. With the concept of the Welfare State, it was realised that enactments creating liabilities in respect of payment of taxes obligations after vesting of estates and conferring rights on a class of citizens, should be complete

codes by themselves. With that object in view, forums were created under the Acts themselves where grievances could be entertained on behalf of the persons aggrieved. Provisions were also made for appeals and revision to higher authorities. Then a question arose as to where a particular Act had created a right or liability and had also provided a forum for enforcement of such right or for protection from enforcement of a liability without any authority in law, whether a citizen could approach a Court. It may be pointed out that many statutes have created certain rights or liabilities and have also provided the remedial measures in respect thereof. But such statutes have not touched the common law rights of the citizen. But there are some statutes, which in public interest affect even the common law rights or liabilities of the citizen, which were in the nature of existing rights. The distinction between the two types of rights or liabilities is subtle in nature but at the same time very vital.

In one of the earliest case of *Volverhampton New Waterworks Co. v.*

Hawkesford, (1859) 6 C.B. (N.S.) 336, Willes, J, said:- "There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the statute contains words which expressly or by necessary implication exclude the common-law remedy, and the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The present case falls within this latter class, if any liability at all exists. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class." The same view was reiterated by the House of Lords in *Neville v. London "Express" Newspaper Limited*, (1919) Appeal Cases 368. In *Barraclough v. Brown*, (1897) AC 615, it was said:-

"I do not think the appellant can claim to recover by virtue of the statute, and at the same time insist upon doing so by means other than those prescribed by the statute which alone confers the right."

It was further pointed out "The right and the remedy are given *uno flatu*, and the one cannot be dissociated from the other."

In the well-known case of *Secretary of State v. Mask & Co.*, AIR 1940 Privy Council 105, this question was considered in connection with Sea Customs Act (1878). It was said:- "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 principle of judicial procedure."

But having enunciated the general principle in respect of ouster of the jurisdiction of the Civil Court it was said:- "But, in their Lordships' opinion, neither Sec, 32 nor the principle involved in the decision in 401 A 48, affect the validity of an Act of the Indian Legislature which creates an obligation and provides an exclusive Code for its determination such an obligation is not covered by sub s. (2) of Section 32."

In connection with the imposition of Terminal Tax on salt under the Punjab Municipal Act. In *Firm Seth Radha Kishan v. Administrator, Municipal committee. Ludhiana*, AIR 1963 SC 1547, it was said that where a statute created a liability and provided a remedy, party aggrieved should pursue the remedy provided under the Act. A Constitution Bench of this Court in *Firm of Illuri Subbaya Chetty and Sons v. State of Andhra Pradesh*, AIR 1964 SC 322, considered the provisions of Madras General Sales Tax Act and the exclusion of the jurisdiction of the Civil Court. It was pointed out that there was an express and unambiguous prohibition and no suit could be entertained by a Civil Court. In connection with the Bombay Sales Tax Act the same view was reiterated by a Constitution Bench of this Court in *M/s. Kamala Mills Ltd. v. State of Bombay* AIR 1965 SC 1942. In *Ram Swarup and ors. v. Shikar chand*, AIR 1966 SC 893, a Constitution Bench examined the bar on the jurisdiction of the Civil Court in connection with the House and Tenants U.P. (Temporary) control of Rent and Eviction Act, and came to the conclusion that a special statute had excluded the jurisdiction in clear and unambiguous words and it had provided an adequate and satisfactory alternative remedy to a party. That may be aggrieved by the relevant order and as such the jurisdiction of the Civil Court had been ousted. This very question was examined in *State of Kerala v. MI s N. Ramaswami Iyer and sons*, AIR 1966 SC 1738, in connection with the Travancore-Cochin General Sales Tax Act and it was held that the jurisdiction of the Civil Court would be deemed to have been excluded because the legislature had set up a special tribunal to determine the question relating to rights or liabilities. which had been created by the statute. Again in connection with the provisions of the Evacuee Property Act, in *Ram Gopal Redd), v. Additional Custodian Evacuee Property Hyderabad*, [1966] 3 SCR 214 and *Custodian of Evacuee Property Punjab & Ors. v. Jafran Begum*, [1967] 3 SCR 736, it was held that complete machinery for adjudication of all claims had been provided under the Act and there being a bar on the jurisdiction of any court, the Act over-rides other laws, including Section 9 of the Code of Civil Procedure and there was no scope for the Civil Court to entertain any suit.

The Constitution Bench in *Dhuilabhai v. State of Madya Pradesh*, AIR 1969 SC 78, said:-

"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."

In connection with the Industrial Disputes Act, in *The Premier Automobiles Ltd. v. Kamlakar Shantaram Wadke*, AIR 1975 SC 2238 = [1976] 1 SCC 496, it was pointed out that "the Civil Court will have no jurisdiction to try and adjudicate upon an industrial dispute, if it concerned enforcement of certain right or liability created only under the Act." The jurisdiction of the Civil Court in connection with the levy of octroi duty under the C.P. and Barar Municipalities Act, 1922 was examined by this Court in *Bata Shoe Co. Ltd. v. Jabalpur Corporation*, AIR 1977 SC 955 1 9771 2 SCC 472, and held it was barred.

Whether the Court can hear and determine suits relating to levy of professional tax under the Punjab Municipal Act, 1971 was examined in the case of *Munshi Ram v. Municipal Committee. Chheharta*, AIR 1979 SC 1250 = [1979] 3 SCC 83, and it was held:-

Where a Revenue Statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all other forums and modes of seeking it are excluded." It was pointed out in *Ram Singh v. Gram Panchayat, MehalKalan*, AIR 1986 SC 2197 = [1986] 4 SCC 364, that when by a special statute rights have been created and jurisdiction of the Court has been barred then the jurisdiction of the Court to try such suits has been taken away. In the case of *Raja Ram Kumar Bhargava v. Union of India*, AIR 1988 SC 752 = [1988] 1 SCC 68 1, it was said:-

"... Wherever a right, not preexisting in common-law is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created *uno flatu* and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary provision the civil courts'jurisdiction is impliedly barred." The jurisdiction of Civil Court to entertain a suit for ejectment was examined in *Sushil Kumar Mehta v. GobindRam Bohra*, [1990] 1 SCC 193, and it was held that the Rent Control Act was a complete Code and the jurisdiction to try a case for ejectment was exclusive under that Act. With the increase in the number of taxing statutes, welfare legislations and enactments to protect a class of citizens, a trend can be noticed that most of such legislations confer decision making powers on various authorities and they seeks to limit or exclude Court's power to review those decisions. The result is that the power of the Court under section 9 of the Code is being denuded and curtailed by such special enactments, in respect of liabilities created or rights conferred. This Court in the judgments referred to above has upheld the ouster of the jurisdiction of the Court on examination of two questions (1) Whether the right or liability in respect whereof grievance has been made, had been created under an enactment and it did not relate to a pre-existing common law right? (2) Whether the machinery provided for redressal of the grievance in respect of infringement of such right or imposition of a liability under such enactment, was adequate and complete? The ouster of the jurisdiction of the Court was upheld on the finding that the rights or liabilities in question had been created by the Act in question and remedy provided therein was adequate.

But the situation will be different where a statute purports to curb and curtail a pre-existing common law right and purports to oust the jurisdiction of the Court so far remedy against the orders passed under such statute are concerned. In such cases, the courts have to be more vigilant, while examining the question as to whether an adequate redressal machinery has been provided, before

which the, person aggrieved may agitate his grievance. In the case of *katikara Chintamani Dora v. Guatreddi Annamanaidu*, AIR 1974 SC 1069, this Court after referring to the case of *Desika Charyulu v. State of Andhra Pradesh*, AIR 1964 SC 807, observed:-

"It was pertinently added that this exclusion of the jurisdiction of the Civil Court would be subject to two limitations. 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. The second is 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 in conjunction with the scope of the enquiry entrusted to the tribunal set up and other relevant factors." It was held that a suit for declaration that "the decision of the Settlement Officer/Tribunal holding certain properties to be an 'estate' under section 3(2) (d) of the 1908 Act was void, was maintainable on the ground that the suit property was not an 'inam village'. In *Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government*, [1960] A.C. 260, the appellants sought a declaration of their common law right to quarry their land without the need to obtain planning permission under the Town and Country Planning Act, 1947. In that connection it was said:-

"The appellant company are given no new right of quarrying by the Act of 1947. Their right is a common law right and the only question is how far it has been taken away. They do not *uno flatu* claim under the Act and seek a remedy elsewhere. On the contrary, they deny that they come within its purview and seek a declaration to that effect."

In spite of the bar placed on the power of the Court. orders passed under such statutes can be examined on "jurisdictional question". To illustrate-, a special machinery has been provided for removal of the encroachments from public land' under different enactments in different states and the jurisdiction of the Court has been barred in respect of the orders passed by such special tribunals or authorities constituted under such Acts. Still a suit will be maintainable before a Court on a plea that the land in question shall not be deemed to be public land within the meaning of the definition of public land given in the Act in question, and as such provisions thereof shall not be applicable.

In the case of *Anisminic Lid. v. Foreign Compensation Commission*, (1969) 2 AC 147, a wide interpretation has been given to the word 'jurisdiction' by the House of Lords. It was pointed out that in many cases where although the Tribunal has jurisdiction to enter upon an enquiry, it has done or failed to do something in the course of such enquiry which is of such a nature that its decision becomes a nullity. By mere reference to different provisions of the Corporation Act it shall appear that the Act does not create any right or liability. Chapter XVI of the Act only purports to regulate the erection of the buildings within the Corporation area, so that erections of the buildings within the Corporation area are systematic, planned and do not adopt the character of mushroom growth. In view of the Provisions of the Act, whenever it is discovered that erection of any building or execution of any work has been commenced or is being carried or has been completed, either without sanction or contrary to the sanction or in contravention of any condition subject to which

such sanction had been accorded, the Commissioner can make an order directing that such erection or work shall be demolished. Any person aggrieved by an order has been given a right to prefer an appeal before the Appellate Tribunal and thereafter to the Administrator. Subject to any order passed by the Appellate Tribunal and the Administrator, the order for demolition shall be deemed to be final and conclusive.

According to us, it cannot be urged that the provisions of the Act have created any right or liability and for enforcement thereof remedy has been provided under the Act itself. The Act purports to regulate the common law right of the citizens to erect or construct buildings of their choice. This right existed since time immorial. But with the urbanisation and development of the concept of planned city, regulations, restrictions, on such common law right have been imposed. But as the provisions of the Act intend to regulate and restrict a common law right, and not any right liability created under the Act itself, it cannot be said that the right and the remedy have become given *uno flatu* e.g. "in the same breath". Most of the cases of this Court referred to above related to statutes creating rights or liabilities and providing remedies at the same time. As such the principles enunciated therein, shall not be fully applicable in the present case. In spite of the bar prescribed under sub-sections (4) and (5) of section 343 and section 347E of the Corporation Act over the power of the Courts, under certain special circumstances, the Court can examine, whether the dispute falls within the ambit of the Act. But once the Court is satisfied that either the provisions of the Act are not applicable to the building in question or the basic procedural requirements which are vital in nature, have not been followed, it shall have jurisdiction, to enquire and investigate while protecting the common law rights of the citizens. Can a Court hold a suit to be not maintainable, although along with the plaint materials are produced to show that the building in question is not within the Corporation limits, or that the constructions were made prior to coming into force of the relevant provisions of the Act? We are conscious of the fact that persons who make unauthorised constructions by contravening and violating the building bye-laws or regulations often run to Courts, with pleas mentioned above, specially that no notice was issued or served on them, before the Corporation has ordered the demolition of the construction.

It is well-known that in most of the cities building regulations and bye-laws have been framed, still it has been discovered that constructions have been made without any sanction or in contravention of the sanctioned plan, and such constructions have continued without any intervention. There cannot be two opinions that the regulations and bye- laws in respect of buildings, are meant to serve the public interest. But at the same time it cannot be held that in all circumstances, the authorities entrusted with the demolition of unauthorised constructions, have exclusive power, to the absolute exclusion of the power of the Court. In some special cases where "jurisdictional error" on the part of the Corporation is established, a suit shall be maintainable. According to us, (1)The Court should not ordinarily entertain a suit in connection with the proceedings initiated for demolition, by the Commissioner, in terms of section 343 (1) of the Corporation Act. The Court should direct the persons aggrieved to pursue the remedy before the Appellate Tribunal and then before the Administrator in accordance with the provisions of the said Act.

(2)The Court should entertain a suit questioning the validity of an order passed under section 343 of the Act. only if the Court is of *Prima facie* opinion that the order is nullity in the eyes of law because

of any "jurisdictional error" in exercise of the power by the commissioner or that the order is outside the Act.

TEMPORARY INJUNCTION It need not be said that primary object of filing a suit challenging the validity of the order of demolition is to restrain such demolition with the intervention of the Court. In such a suit the plaintiff is more interested in getting an order of interim injunction. It has been pointed out repeatedly that a party is not entitled to an order of injunction as a matter of right or course., Grant of injunction is within the discretion of the Court and such discretion is to be exercised in favour of the plaintiff only if it is proved to the satisfaction of the Court that unless the defendant is restrained by an order of injunction, an irreparable loss or damage will be caused to the plaintiff during the pendency of the suit. The purpose of temporary injunction is, thus, to maintain the status quo. The Court grants such relief according to the legal principles--*ex debite justitiae*. Before any such order is passed the Court must be satisfied that a strong *prima facie* case has been made out by the plaintiff including on the question of maintainability of the suit and the balance of convenience is in his favour and refusal of injunction would cause irreparable injury to him. Under the changed circumstance with so many cases pending in Courts, once an interim order of injunction is passed, in many cases, such interim orders continue for months; if not for years. At final hearing while vacating such interim orders of injunction in many cases, it has been discovered that while protecting the plaintiffs from suffering the alleged injury, more serious injury has been caused to the defendants due to continuance of interim orders of injunction without final hearing. It is a matter of common knowledge that on many occasions even public interest also suffers in view of such interim orders of injunction, because persons in whose favour such orders are passed are interested in perpetuating the contraventions made by them by delaying the final disposal of such applications. The court should be always willing to extent its hand to protect a citizen who is being wronged or is being deprived of a property without any authority in law or without following the procedure which are fundamental and vital in nature. But at the same time the judicial proceedings cannot-be. used to protect or to perpetuate a wrong committed by a person who approaches the Court.

Power to grant injunction is an extraordinary power vested in the Court to be exercised taking into consideration the facts and circumstances of a particular case. The Courts have to be more cautious when the said power is being exercised without notice or hearing the party who is to be affected by the order so passed. That is why Rule 3 of Order 39 of the Code requires that in ail cases the Court shall, before grant of an injunction, direct notice of the application to be given to the opposite party, except where it appears that object of granting injunction itself would be defeated by delay. By the Civil Procedure Code (Amendment) Act, 1976, a proviso has been added to the said rule saying that "where it is proposed to grant an injunction without giving notice of the application to the opposite party, the Court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay.....

It has come to our notice that in spite of the aforesaid statutory requirement, the Courts have been passing orders of injunction before issuance of notices or hearing the parties against whom such orders are to operate without recording the reasons for passing such orders. It is said that if the reasons for grant of injunction are mentioned, a grievance can be made by the other side that Court

has prejudged the issues involved in the suit. According to us, this is a misconception about the nature and the scope of interim orders. It need not be pointed out that any opinion expressed in connection with an interlocutory application has no bearing and shall not affect any party, at the stage of the final adjudication. Apart from that now in view of the proviso to Rule 3 aforesaid, there is no scope for any argument. When the statute itself requires reasons to be recorded, the Court cannot ignore that requirement by saying that if reasons are recorded, it may amount to expressing an opinion in favour of the plaintiff before hearing the defendant. The imperative nature of the proviso has to be judged in the context of Rule 3 of Order 39 of the Code. Before the Proviso aforesaid was introduced, Rule 3 said "the Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party". The proviso was introduced to provide a condition, where Court proposes to grant an injunction without giving notice of the application to the opposite party, being of the opinion that the object of granting injunction itself shall be defeated by delay. The condition so introduced is that the Court "shall record the reasons" why an ex parte order of injunction was being passed in the facts and circumstances of a particular case. In this background, the requirement for recording the reasons for grant of ex parte injunction, cannot be held to be a mere formality. This requirement is consistent with the principle, that a party to a suit, who is being restrained from exercising a right which such party claims to exercise either under a statute or under the common law, must be informed why instead of following the requirement of Rule 3, the procedure prescribed under the proviso has been followed. The party who invokes the jurisdiction of the Court for grant of an order of restraint against a party, without affording an opportunity to him of being heard, must satisfy the Court about the gravity of the situation and Court has to consider briefly these factors in the ex parte order. We are quite conscious of the fact that there are other statutes which contain similar provisions requiring the Court or the authority concerned to record reasons before exercising power vested in them. In respect of some of such provisions it has been held that they are required to be complied with but non-compliance there of will not vitiate the order so passed. But same cannot be said in respect of the proviso to Rule 3 of Order 39. The Parliament has prescribed a particular procedure for passing of an order of injunction without notice to the other side, under exceptional circumstances. Such ex parte orders have far reaching effect, as such a conditions has been imposed that Court must record reasons before passing such order. If it is held that the compliance of the proviso aforesaid is optional and not obligatory, then the introduction of the proviso by the Parliament shall be a futile exercise and that part of Rule 3 will be a surplusage for all practical purpose. Proviso to Rule 3 of Order 39 of the Code, attracts the principle, that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. This principle was approved and accepted in well-known cases of *Taylor v. Taylor*. (1875) 1 Ch. D. 426, *Nazir Ahmed v. Emperor*, AIR 1936 PC 253. This Court has also expressed the same view in respect of procedural requirement of the Bombay Tenancy and Agricultural Lands Act in the case of *Ramachandra Keshav Adke v. Govind Joti Chavare*, AIR 1975 SC 915. As such whenever a Court considers it necessary in the facts and circumstances of a particular case to pass an order of injunction without notice to other side. It must record the reasons for doing so and should take into consideration, while passing an order of injunction, all relevant factors, including as to how the object of granting injunction itself shall be defeated if an ex parte order is not passed. But any such ex parte order should be in force upto a particular date before which the plaintiff should be required

to serve the notice on the defendant concerned. In the Supreme Court Practice 1993, Vol. 1, at page 514, reference has been made to the views of the English Courts saying:- "Exparte injunctions are for cases of real urgency where there has been a true impossibility of giving notice of motion....

An ex parte injunction should generally be until a certain day, usually the next motion day. . . ."

Accordingly we direct that the application for interim injunction should be considered and disposed of in the following manner:-

(i)The Court should first direct the plaintiff to serve a copy of the application with a copy of the plaint along with relevant documents on the counsel for the Corporation or any competent authority of the Corporation and the order should be passed only after hearing the parties.

(ii)If the circumstances of a case so warrant and where the Court is of the opinion, that the object of granting the injunction would be defeated by delay, the Court should record reasons for its opinion as required by proviso to Rule 3 of order 39 of the Code, before passing an order for injunction. The Court must direct that such order shall operate only for a period of two weeks, during which notice along with copy of the application, plaint and relevant documents should be served on the competent authority or the counsel for the Corporation. Affidavit of service of notice should be filed as provided by proviso to Rule 3 of order 39 aforesaid If the Corporation has entered appearance, any such exparte order of injunction should be extended only after hearing the counsel for the Corporation.

(iii)While passing an ex parte order of injunction the Court shall direct the plaintiff to give an undertaking that he will not make any further construction upon the premises till the application for injunction is finally heard and disposed of.

In the result, the appeals are allowed to the extent indicated above. In the circumstances of these cases, there shall be no order as to costs.

VPR.

Appeals allowed.