Supreme Court of India
Nagar Palika Parishad, Mihona And ... vs Ramnath And Anr on 9 April, 1947
Author: .....J.
Bench: Sudhansu Jyoti Mukhopadhaya, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4454 OF 2014
(arising out of SLP(C)No.30146 of 2012)

NAGAR PALIKA PARISHAD,
MIHONA AND ANR. … APPELLANTS

VERSUS

RAMNATH AND ANR. … RESPONDENTS

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted.

2. This appeal has been preferred by the appellants-Nagar Palika Parishad, Mihona (hereinafter referred to as "Nagar Palika") against the judgment dated 11th April, 2012 passed by the High Court of Madhya Pradesh Bench at Gwalior in Second Appeal No.568 of 2009. By the impugned judgment the High Court dismissed the Second Appeal and affirmed the judgments passed by the first appellate court and the trial court.

3. The case of the appellant–Nagar Palika is that on finding that respondent No.1 – plaintiff has made encroachment on a public road, namely, Khitoli Road, a notice under Section 187 of the M.P. Municipalities Act, 1961 (hereinafter referred o as "Act, 1961") dated 26th November, 1982 was issued to respondent No.1–plaintiff calling upon him to remove the encroachment from Khitoli Road at Mihona, District Bhind, M.P. (hereinafter referred to as "suit land"). As respondent No.1 – plaintiff refused to comply with the aforesaid notice and also failed to show any title over the encroached land, another notice was issued on 23rd December, 1982, intimating respondent No.1–plaintiff that if the encroachment is not removed by him it shall be removed by the appellant, in exercise of power conferred under Section 109 read with Section 223 of the Act, 1961.

4. Instead of complying with the aforesaid notices, respondent No.1 – plaintiff filed Civil Suit No.79/90 in the Court of 1st Civil Judge, Class- I, Lahar, District Bhind for declaration of his title and permanent injunction for restraining the appellants from interfering in his possession over the suit land contending that the suit land was his ancestral property. The aforesaid suit was contested

by the appellant by filing written statement contending, inter alia, that the suit land is a public road which the appellants intend to make a Pakka (Road) in consonance with the public policy and public interest due to which the action for removal of encroachment has been taken and that the suit was not maintainable for want of notice under Section 319 of the Act, 1961.

5. The trial court on hearing the parties by its judgment and decree dated 20th August, 2008 decreed the suit in favour of respondent No.1–plaintiff. The trial court held that no notice under Section 319 of the Act, 1961 is required to be issued before filing a suit for permanent injunction. The aforesaid judgment was upheld by the first appellate court by the judgment and decree dated 31st August, 2009 in C.A. No. 20/09.

6. The second appeal preferred by the appellant was dismissed by the High Court though the appellant raised one of the following substantial questions of law:

> ?Whether the suit filed by respondent No.1 - plaintiff was maintainable for non-compliance of statutory requirement of notice as contemplated by Section 319 of the Act, 1961.

7. Section 319 of the Act, 1961 bars suits in absence of notice and reads as follows:

> “Section 319-Bar of suit in absence of notice.-(1) No suit shall be instituted against any Council or any Councilor, officer or servant thereof or any person acting under the direction of any such Council, Councilor, officer or servant for anything done or purporting to be done under this Act, until the expiration of two months next after a notice, in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of a Council delivered or left at its office, and, in the case of any such member, officer, servant or person as aforesaid, delivered to him or left at his office or usual place of abode; and the plaint shall contain a statement that such notice has been delivered or left.
>
> (2)Every suit shall be dismissed unless it is instituted within eight months from the date of the accrual of the alleged cause of action.
>
> (3)Nothing in this section shall be deemed to apply to any suit instituted under Section 54 of the Specific Relief Act, 1877 (I of 1877).”

8. Respondent No.1-plaintiff filed the suit for declaration of title and permanent injunction. In view of bar of suit for declaration of title in absence of notice under Section 319 the suit was not maintainable. The Courts below wrongly held that the suit was perpetual injunction though the respondent No.1-plaintiff filed the suit for declaration of title and for permanent injunction.

9. Respondent No.1-plaintiff cannot derive advantage of sub Section (3) of Section 319 which stipulates non-application of the Section 319 when the suit was instituted under Section 54 of the Specific Relief Act, 1877 (old provision) equivalent to Section 38 of the Specific Relief Act, 1963 and

reads as follows:

> "Section 38.Perpetual injunction when granted.-(1)Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.
>
> (2)When any such obligation arises from contract, the Court shall be guided by the rules and provisions contained in Chapter- II.
>
> (3)When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases, namely:
>
> (a)where the defendant is trustee of the property for the plaintiff;
>
> (b)where there exists no standard for ascertaining the actual damage caused, or likely to be causes, by the invasion;
>
> (c)where the invasion in such , that compensation in money would not afford adequate relief;
>
> (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings." The benefit aforesaid cannot derive by Respondent No.1-plaintiff as the suit was filed for declaration of title coupled with permanent injunction. Respondent No.1 having claimed title, the suit cannot be termed to be suit for perpetual injunction alone.

10. Along with the trial court and the appellate court, the High Court also failed to appreciate the aforesaid fact and also overlooked the valuable interest and right of public at large, to use the suit land which is a part of public street. Further, in absence of challenge to the notice of eviction issued by the appellant, it was not open to the trial court to decide the title merely because permanent injunction coupled with declaration of title was also sought for.

11. In view of our finding, we set aside the impugned judgment dated 11th April, 2012 passed by the High Court in second appeal as also the judgment and decree passed by the first appellate court and the trial court. It will be open to the appellant to proceed in accordance with law. The appeal is allowed with aforesaid observations.

.....J.

(SUDHANSU JYOTI MUKHOPADHAYA) .....J.

(V. GOPALA GOWDA) NEW DELHI;

APRIL 9, 2014.