Upleta Municipality, Upleta Vs. Yunus Haji Adam Fulara and ors.

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Court : Gujarat

Decided On : Jun-28-1978

Reported in : AIR1979Guj117; (1978)GLR1123

Judge : N.H. Bhatt, J.

Acts : Gujarat Municipalities Act, 1964 - Sections 253 and 253(1); District Municipal Act; Limitation Act, 1963 - Sections 22

Appeal No. : Second Appeal No. 409 of 1974

Appellant : Upleta Municipality, Upleta

Respondent : Yunus Haji Adam Fulara and ors.

Advocate for Def. : Suresh M. Shah, Adv.

Advocate for Pet/Ap. : H.M. Mehta, Adv.

Judgement :

1-4. x x x x

5. It is in the light of the above admitted or established facts that the various questions raised in this case are required to be decided. The first and foremost question which goes to the root of the plaintiff's case and which was urged in both the courts below was the question of a notice before the institution of the suit. Under S. 253 of the Gujarat Municipalities, Act, 1963, the notice is required to be given before any action is taken against the municipality. S. 253(1) is quoted below:

'253(1) No suit shall lie against a municipality or against any officer or servant of municipality in respect of any act done in pursuance or execution or intended execution of this Act, or in respect of any alleged neglect or default in the execution of this Act-

(a) unless it is instituted within six months next after the accrual of the cause of action; and

(b) until the expiration of one month after notice in writing has been, in the case of a municipality, delivered or left at the municipal office and, in the case of an officer or servant of a municipality, delivered to him or left at his office or place of abode; and all such notices shall state with reasonable particularity the cause of action and the name and place of abode of the Intending plaintiff and his advocate, pleader or agent if any, for the purpose of the suit.'

Mr. Mehta urged that when the action of the municipality in putting up the four latrines was considered to be in pursuance of the Act or in pursaunce of the execution of the Act or at any rate intended execution of the duty under this Act, the suit, which is in respect of this very Act, could not be instituted unless the notice contemplated in Clause (b) was given. Admittedly no such notice was given prior to the institution of the suit. Mr. Suresh M. Shah, the learned advocate for the respondent original plaintiff however, urged that the action of the municipality was illegal in so far as the municipality had committed an act infringing the plaintiff's right as the owner of the adjacent property to have access to every inch of the public street and the said act of the municipality cannot be said to be in the intended execution of the Act. If the argument advanced by Mr. Shah holds good the question of notice and even the question of limitation would not arise. I am not prepared to hold that the action of the municipality in purporting to close the said road under Section 146 of the Act and constructing the latrines on that part of the public street with a view to stop that part of the public street from being used by the public for passing and repassing was an act dehors the provisions of the Gujarat Municipalities Act. It is one of the duties of the municipalities to make provision for public latrines. In the year 1959, the provisions of the District Municipal Act were applicable and Section 54 laid down putting up of such latrines as one of the duties of the municipality. So the act of putting up of latrines, was in pursuance of the Act or in execution of the duties laid down under the Act or at any rate Was an action undertaken with the intention to execute the duties under the Act. If it be so, the suit filed without any notice would be a suit still-born and liable to be dismissed on that count.

6. Mr. Shah, the learned advocate for the plaintiffs, however, invited my attention to the judgment of the Saurashtra High Court in the case of Tilakchand Dhanji v. Dhoraji Municipality (AIR 1955 San 63) and urged that the owner of an adjacent property has a right of access to the highway on all points on his boundary and the access is not to be restricted to any particular point. He, therefore, urged that if there was any obstruction to the access at any point be had a right to have the obstruction removed and the obstruction municipality's act could be said to be an unauthorised and illegal act. I do not subscribe to the latter part of the submission of Mr. Shah. If the municipality had done any act mala fide or out of ulterior objects or Without any statutory powers with it, the matter would have been totally different. As I said above, the municipality purported to discharge its statutory duties. The act cannot be said to be illegal in the sense of violating some specific provision of law. It may be an act offending against a private individual',; right, but that cannot be said to be an act unlawful or illegal or ultra vires. If it be so, Section 253 will be squarely attracted and the original suit having been filed without giving a notice in Writing was initially bad and on this count is liable to be dismissed.

7. Mr. Mehta had also urged that the suit barred by limitation in so far as the suit was filed after the period of six months as laid down Clause (a) (1) of S. 253 of the Act. In this connection, Mr. Shah for the plaintiffs urged that the action of the municipality in putting tip the latrines was a continuing wrong and Section 22 of the Indian Limitation Act would be attracted. In this connection reliance was placed upon the Judgment of the Division Bench of this High Court in the case the President, Kalol District Municipality, Kalol v. Bal Champa (1976) 17 Guj LR 44. In that case putting up of cabins by the municipality in the public street was held to be a continuing wrong am bound to follow the said judgment be cause the ratio laid down there would squarely apply to the present case where instead cabins there are latrines constructed. How ever, this finding in favour of the plaintiff will not save their suit

which, as said above is liable to be dismissed for want of a statutory notice as required under S. 258(b) of the Gujarat Municipalities Act.

8. The result is that the appeal is required to be allowed and is allowed. The judgment and decree passed by the learned appellate Judge are set aside and the plaintiffs' suit stands dismissed. In view of the various technical pleas that were raised honestly and bona fide, it is in the fitness of things that the parties should bear their own costs.

9. Appeal allowed.