

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Shivakant Prasad

C.O. No. 274 of 2014

Amartya Mukherjee & Ors.

Versus

Board of Councillors, South Dum Dum Municipality & Ors.

For the Petitioners : Mr. Aniruddha Chatterjee
Mr. Rahul Karmakar

For the Opposite Party Nos. 6 & 7 : Mr. Ashim Kumar Routh

Heard On : 11.5.2015, 12.5.2015 & 14.5.2015

Judgment On : **02.6.2015**

SHIVAKANT PRASAD, J.

Challenge in this revisional application under the scheme of Constitution of India is against the order dated January 28, 2014 passed by the learned District Judge, Barasat, District-North 24-Parganas, in Misc. Appeal No. 18 of 2014.

An order of demolition against the structure constructed in the year 1950 on the premises no. 118, Shyamnagar Road, Kolkata-700 055 and holding no. 799 was issued by the Chairperson of South Dum Dum Municipality on December 31, 2013.

The petitioners preferred an appeal under Section 218(3) of the West Bengal Municipal Act, 1993 before the learned District Judge at Barasat who by the order impugned took up the issue of maintainability of the Appeal and ordered for return of the Memorandum of Appeal to the appellants for presentation of the same before the court having jurisdiction.

Being aggrieved by and dissatisfied with the order impugned, petitioners have preferred this revision on the grounds, inter-alia, that the learned court ought to

have considered the appeal before him being a statutory appeal and should have stayed the operation of the said order dated December 31, 2013 passed by the Municipal authorities.

The moot issue before this Court is whether the appeal lies before the District Judge or Civil judge (Junior Division). Position is required to be clarified as to which court will have jurisdiction to entertain an appeal under section 218(3) of the said Act.

Learned counsel appearing for the petitioners has contended that the learned court has misdirected himself while recording finding to the effect that the provision of Section 14H of the West Bengal Land Reforms Act, 1955 has got sufficient relevance in the context of a special provision for appeal given under the said Act, whereas S. 218(3) of the West Bengal Municipal Act 1993 relates to an appeal against the order made by the Board of Councillors which shall lie with the court having jurisdiction. In support of his contention, learned counsel referred to the provisions of Sections 19, 20, 21 & 25 of the Bengal, Agra & Assam Civil Courts Act, 1887 (hereinafter referred to as the said Act).

Section 19 of the said Act reads as under:

“Extent of jurisdiction of [Civil Judge (Junior Division)]-

(1) Save as aforesaid, and subject to the provisions of sub-section (2), the jurisdiction of a [Civil Judge (Junior Division)] extends to all like suits of which the value does not exceed [fifteen thousand rupees].

(2) The State Government may, on the recommendation of the High Court, direct, by notification in the Official Gazette, with respect to any [Civil Judge (Junior Division)] named therein that his jurisdictions shall extend to all like suits of such value not exceeding [thirty thousand rupees] as may be specified in the notification:

Provided that the State Government may, by notification in the Official Gazette, delegate to the High Court its powers under this sub-section.”

Section 20 provides that an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court and Section 21 of the said Act, provides that an appeal from a decree or order of [Civil Judge(Senior Division)] shall be to the District Judge where the value of the original suit in which or in any proceeding

arising out of which the decree or order was made did not exceed (sixty thousand rupees) and to the High Court in any other case likewise an appeal from a decree or order of the Civil Judge (Junior Division) shall lie to the District Judge.

The provision of Section 25 of the said Act relates to power to invest Civil Judge (Senior Division) and Civil Judge (Junior Division) with Small Cause Court jurisdiction.

Adverting to the provisions of said Act as noted above, the learned counsel for the petitioners fortifies his argument that the appellate forum under Section 218(3) of the West Bengal Municipal Act, 1993 meant the forum of the District Judge wherein, it has been envisaged that a "Court having jurisdiction" shall exercise the power of appeal from the orders passed under Section 218 of the said Act. This Act is a special statute unlike others, it does not specify and/or define the word "Court". Initially, the Act enshrined a "Municipal Appellate Tribunal" instead of "Court", but by the amendment in the year 1995, the word "Court" has been inserted. It is further submitted that the word "Court" has to be interpreted in the background of the objects of the said amending Act of 1995. Previously, the appellate authority being the Municipal Appellate Tribunal to be constituted under this Act having failed to do so, the said amendment was incorporated. Provision under Section 415(3) of the Kolkata Municipal Corporation Act, 1980 is parimateria to the West Bengal Municipal Act, 1993. The Chairman of the Municipal Building Tribunal under the said Act has to be a member of Higher Judicial Service. It is further submitted that an officer in the cadre of District Judge has to be appointed as a Chairman of the Building Tribunal and deriving the analogy in the present Act, when no such definition of Court has been specified, it has to be construed that the word "Court" shall mean the District Judge under whose jurisdiction the Municipality is situated.

Moreover, it is contended that in absence of any mention of a specific Court in this Act, provisions of the Bengal, Agra and Assam Civil Courts Act, 1887 shall guide the construction of the word "Court", as the provisions envisaged in Sections 19, 20, 21 and 25. It is also argued that upon scrutiny of the said Sections, it becomes evident

that the appellate power can exclusively be exercised only by the District Judge in addition to some of the original proceedings.

The Learned Judge proceeded on the basis of Section 14(h) of the West Bengal Land Reforms Act, 1955 wherein it has been specified that appeal shall lie before the Civil Judge. The said Act is a special statute which has nominated Civil Judge as its appellate authority. It is urged that such implication cannot have any application in this case as the Act belongs to a different field. A special statute unless specifically empowers a particular post, the said post cannot usurp jurisdiction and general rule of interpretation shall prevail. The question of persona designate has no manner of application in this case inasmuch as the Act does not specify anything. Learned counsel for the petitioners concludes with the submission that Civil Judge cannot have jurisdiction in any manner whatsoever to hear out an appeal unless specifically empowered.

Furthermore, it is contended that Municipal Authority is the best institution to provide assistance for the construction of Section 218(3) of the said Act as the same has been contemplated at their behest. The learned Counsel for the South Dum Dum Municipality has volunteered and admitted that the appeal under Section 218(3) of the said Act shall lie before the District Judge, in agreement with the argument advanced on behalf of the petitioners.

In absence of any specification provided for a particular Section, the Court has to construct the said word, in the present case "Court" having jurisdiction", in a manner to give meaningful construction of the same so that the word fits in the best for the purpose of the Act or Provision. Accordingly, it is urged that the finding of the Learned Judge is perverse and is a testimony of failure to exercise its jurisdiction by passing the order impugned.

Per contra , learned counsel for the Opposite Party Nos. 6 and 7 submits that the provision of Section 218(3) of the West Bengal Municipal Act, 1993 does not mean the forum of the District Judge, as the intention of the legislature is clear that a Civil Court having jurisdiction is the appellate forum, which means a Civil Judge (Junior Division) and not the District Judge and that the order dated 31st December,

2015 passed by the Board of Councillors, South Dum Dum Municipality is an appealable order under Section 218(3) of the West Bengal Municipal Act, 1993 which can be challenged before the Court having jurisdiction.

Learned Counsel appearing on behalf of the opposite parties refers to Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the Arbitration and Conciliation Act, 1996 to section 2(i) (e) therein to submit that where the Parliament required appeals from orders made by authorities other than Court to lie before the District Judge it had specifically legislated so. Hence, appeals from other authorities not specifically provided must be filed before the lowest competent Court having jurisdiction being the Court of the Civil Judge (Junior Division). My attention is also invited to Sections 9(c) and 14(h) of the West Bengal Land Reforms Act, 1955 which have relevance to the instant case. It is submitted that the legislature had by that Act required appeals from orders passed by the prescribed authority therein to lie before the Munsiff.

Section 218 (3) of the West Bengal Municipal Act, 1993 reads as under: -

"An appeal against an order made by the Board of Councillors in this behalf shall lie with the [Court having jurisdiction]".

It is submitted that an appeal against the order of demolition under section 218 shall lie with the Court having jurisdiction and that this court has no alternative but to consider relevant provision of the Bengal, Agra and Assam Civil Courts Act to find as to in which forum an appeal shall lie against an order made under Section 218 of the West Bengal Municipal Act, 1993. Since the Act of 1887 provides the Court of the Civil Judge (Junior Division) to be the original Court whereas under Section 21 of the said Act appeals from the Court of Junior Division is to lie to the District Judge.

Now, this court is called upon to interpret the legislative mandate about the definition of 'the court having jurisdiction'. In doing so, observations from the Judgement of Lord Denning passed in the case of Seaford Court Estates –Vs- Asher reported in (1949)2 All ER at page 164 may help in considering the interpretation of "the Court having jurisdiction" is the Court having the original jurisdiction to entertain the case like suit etc. in the District. His Lordship has observed at paragraph 42 thus,

“... When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament..... and then he must supplement the written word so as to give “force and life” to the intention of the Legislature..... A judge should ask himself the question how, if the makers of the Act had themselves come across, this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the materiel of which the Act is woven, but he can and should iron out the creases”.

This observations does find place in the case of Jnan Prakash –Vs- State of West Bengal reported in 1992(1) CHN 213 at page 233.

In the case of State of Tamil Nadu v. Kodaikanal Motor Union (1) Limited reported in AIR 1986 SC 1973 drawing inspiration from the above observations of Lord Denning , Hon,ble Apex Court observed as follows :-

43. “The courts must always seek to find out the intention of the Legislature. Though the courts find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make for trees out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision where the purpose is apparent to the judicial eye “some” violence to language is permissible. (See K. P. Varghese v. Income-tax office, Ernakulam, 131 IRT 597 at 604 to 606 (AIR 1981 SC 1922 at pp. 1927 to 1928) and Luke v. Inland Revenue Commissioners, (1964) 54 ITR 692.”

It is settled proposition of law that an appeal can also lie to the court of Civil Judge having territorial jurisdiction and it must not necessarily mean that an appeal can lie to the District Judge in a district.

There are certain statues wherein the law makers as their wisdoms made the specific provisions that a particular appeal can lie to the District Judge in the District and to the Chief Judge of the Metropolitan City.

Analogy has to be taken from Section 2(1)(e) of Arbitration Act 1996 containing an exhaustive definition marking out only the Principal Civil Court of original jurisdiction in a district or a High Court having original civil jurisdiction in the State, and no other court as "court" .

It would be apt to refer to a decision in case of State of West Bengal v. Associated Contractors , wherein the Hon'ble Apex Court observed that under section 2(1)(e) of Arbitration and Conciliation Act 1996 'Court' means the principal civil court of original jurisdiction in a district and includes High court in exercise of its ordinary civil jurisdiction having jurisdiction to decide the question forming the subject matter of a suit but does not include any civil court of a grade inferior to such principal civil court, or any court of small causes whereas under Section 2(c) of Arbitration Act 1940 , Court means a civil court having jurisdiction to decide the question forming the subject matter of the reference if the same had been the subject matter of a suit.

Under the Guardians and wards Act, 1890 interpretation clause of "the court" means the District Court having jurisdiction entertains an application.

Yet , it will be noticed from statutory definition of district as per Section 2(4) of the Code of Civil Procedure, 1908 that "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court.

The Law makers have consciously did not mention the grade of "District Judge" having jurisdiction under Section 218(3) of the West Bengal Municipal Act, 1993 instead the Civil Court at the first instance having jurisdiction.

It must also be born in mind that to be a court, the person constituting it must have been entrusted with judicial functions and jurisdiction means the extent of the authority of a court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to a subject matter, ergo the Board of Councillors cannot be equated with that of a civil court so as to warrant an appeal to lie before the District Judge against an order of demolition passed by the Board of Councillors. Thus, it is evident that the provisions of Sections 19, 20 and 21 of Chapter III of Bengal, Agra and Assam Civil Courts Act, 1887 have no manner of application in as much as the same confer the pecuniary jurisdiction of the Civil Courts.

Taking the cue from the above observation, this court is of the considered view that the District Judge is not the persona designate under Section 218(3) of the West Bengal Municipal Act, 1993, and as such no one can claim that the appeals directly lie to the District Judge. It cannot be said that since the provision of Section 218(3) of the said Act provides for an appeal so it should lie before the District Judge.

I am of the considered view that since there is no specific empowerment given to the District Judge to hear the appeal under Section 218(3) of the West Bengal Municipal Act, 1993, the District Judge ordinarily cannot be construed to be a Court having jurisdiction. Legislative intent is that the litigants at large may avail the forum of appeal before the lowest competent Court having jurisdiction being the Court of the Civil Judge (Junior Division). Had the intention of the legislature been to give appellate jurisdiction to a Court of District Judge under Sections 218 (3) of the Act, the framer of the statute must have inserted the word Principal Civil Court to mean the court of the District Judge in a district.

It will appear that the concerned Learned District Judge did not dismiss the appeal of the petitioners rather returned the Memo of Appeal to the petitioners as appellants therein for presentation before the Court having jurisdiction.

In the context of what has been observed in the foregoing paragraphs this court holds that there is no ground to interfere with the impugned order passed by the Learned District Judge in Misc. Appeal No. 18 of 2014 and is not liable to be

interfered with by this Court under its supervisory power of Article 227 of the Constitution of India.

Accordingly, the Revisional Application being C.O. No. 274 of 2014 is dismissed however, without any order as to cost.

Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SHIVAKANT PRASAD, J.)