

Tarlok Singh

Vs

Municipal Corporation of Amritsar and Another

Civil Appeal No. 2843 of 1986

(G. L. Oza, R. S. Pathak JJ)

20.08.1986

JUDGMENT

OZA, J. –

1. Leave granted.

2. This appeal arises out of the judgment of the High Court of Punjab and Haryana in Civil Writ Petition No. 5548 of 1982 dated December 17, 1982.

3. The appellant is a shopkeeper occupying Shop No. 15 situated on the road alongside the railway line, Golebagh site in the city of Amritsar. There are 56 other shops similarly situated which are occupied by other allottees like the petitioner. The premises in occupation of the petitioner and other shopkeepers are on licences given by the railway since April 1981. After the sanction was given to railway for construction of these shops some dispute arose and the corporation chose to revoke the sanction and ultimately as a result of litigation the present petitioner and the other shopkeepers similarly situated were given a notice to show cause by the Municipal Corporation, Amritsar under Section 269(1) of the Punjab Municipal Corporation Act, 1976. This was a composite notice also under Section 270(1) of the said Act. The petitioner received this notice alongwith other shopkeepers in the first half of October 1981.

4. The petitioner and other shopkeepers submitted their replies to the Commissioner of Municipal Corporation and the Commissioner passed an order directing the demolition of the shops on November 9, 1981. This order was served on the petitioner and all other shopkeepers. The petitioner being aggrieved by this order referred an appeal before the District Judge under Section 269 sub-clause (2). In this appeal before the District Judge the District Judge rejected an application submitted by the petitioner for recording of evidence and it was against this order passed by the District Judge that the petitioner filed a writ petition before the High Court wherein the Division Bench of the High Court took a view that if the District Judge so feels the application for recording of evidence could be considered under Order 41 Rule 27.

5. The only question raised in this appeal is about the interpretation of Section 384. It was contended before us by the learned counsel for the appellant that in view of the language of Section 384 of the Punjab Municipal Corporation Act, 1976 in this appeal before the District Judge the procedure of a civil suit as provided in the Code of Civil Procedure will have to be followed and on the basis of this provision it was contended that the District Judge was bound to follow the procedure of a civil suit thereby framing of issues and recording of evidence is necessary whereas the learned counsel for the respondent Municipal Corporation contended that the language of

Section 384 only provides that in these proceedings before the District Judge the procedure of a civil suit as far as possible will be followed. It was, therefore, contended that the expression "civil suit" in Section 384 includes an appeal as an appeal is nothing but a continuation of proceedings of the civil suit and therefore the meaning of Section 384 could only be that in case of appeal the procedure of appeal under the Code of Civil Procedure shall be followed.

6. Learned counsel for the parties also draw our attention to various facts and the manner in which the shops were initially allotted and the grievance that the Municipal Corporation had about the allotment of these shops to the particular persons. But in our opinion those are matters not relevant for the purpose of decision of this case. The only question that arises is as to whether in an appeal filed under Section 269 sub-clause (2) the procedure of a civil suit as provided in the Code of Civil Procedure will have to be followed in view of language of Section 384 of the Punjab Municipal Corporation Act, 1976. Section 384 reads as follows :

The procedure provided in the Code of Civil Procedure, 1908, in regard to suits shall be followed, as far as it can be made applicable, in the disposal of applications, appeals or references that may be made to the court of the District Judge under this Act or any bye-law made thereunder.

7. This provision talks of the procedure provided in the Code of Civil Procedure in regard to a suit shall be followed but it also refers to "as far as it can be made applicable" and the phrase that follows refers to an application, appeal or reference.

8. This, therefore, clearly indicates that in the appeal, application or reference the same procedure need not be followed although it talks of the procedure of a civil suit but it is also mentioned that as far as it can be made applicable this goes to show that the procedure of a civil suit will have to be followed if it is consistent with the proceedings pending before the District Judge.

9. The suit has not been specifically defined in the Code and from the scheme of the Code of Civil Procedure it appears that an appeal also is a continuation of the suit. The language used in Section 384 therefore only indicates that the procedure as contemplated in the Code of Civil Procedure will have to be followed in these proceedings under this Act when the matter goes to the District Judge either by way of an application, reference or appeal. The procedure of this suit will include even the procedure of an appeal and it is because of this that the phrase as far as it can be made applicable has been used in this section. It, therefore, could not be contended that in an appeal under Section 269 sub-clause (2) before a District Judge the procedure of a suit as provided in the Code of Civil Procedure (filing of plaint, written statements, issues, recording of evidence) will be necessary. The three proceedings contemplated in Section 384 are application, reference and appeal and therefore out of the scheme of the Code of Civil Procedure pertaining to the procedure of a civil suit or an appeal the relevant provisions will have to be applied for purposes of guidance of procedure and therefore the use of the phrase as far as it can be made applicable clearly indicates that it is not expected in any one of these proceedings to follow the procedure of a suit technically and strictly in accordance with the provisions contained in the Code of Civil Procedure. It is only for purposes of guidance that the procedure of a suit as provided in the Code of Civil Procedure can be considered and it will be the discretion of the authority (the District Judge) to apply as far as it could be applied in the appropriate proceedings. In our view, therefore, what High Court said, appears to be proper as the High Court stated in the impugned judgment that if the District Judge so feels, he may allow any additional evidence to be led under Order 41 Rule 27 of the Code of Civil Procedure. In fact, it would be enough to say that in an appropriate case whenever the District Judge feels satisfied he

may give an opportunity to the parties to lead evidence as it will be open to the District Judge to apply the procedure as far as it can be made applicable in the facts and circumstances of each case. We, therefore, see no substance in this appeal. It is, therefore, dismissed. In the circumstances, no order as to costs.

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