

**SUPREME COURT OF INDIA**

Abdul Gafur

Vs.

State of Uttarakhand

C.A.No.4982 of 2008

(C.K. Thakker and D.K. Jain JJ.)

11.08.2008

**JUDGMENT**

**D.K. Jain, J.**

1. Leave granted.
2. This appeal, by special leave, is directed against the order, dated 29th March, 2007, passed by the High Court of Uttarakhand in Writ Petition Misc. No.272 of 2007 whereby the two suits filed by the appellants for perpetual injunction have been dismissed in limine.
3. Facts necessary for the disposal of this appeal are as follows:

“On 2/28th March, 2005, a gazette Notification was issued under Section 4 of the *Land Acquisition Act, 1894* (for short the Act') for acquiring 0.6900 Hec. of land belonging to one Tek Chand, respondent No.4 herein, for construction of approach road for Himalayan Institute Hospital Trust, Dehradun, respondent No.3 (hereinafter referred to as "the Hospital"). Tek Chand objected to the said acquisition. In the meanwhile, on 25th May, 2005, he alienated a part of the said land in favour of appellants No.1 and 2 by way of gift deeds. Gazette notification under Section 6 of the Act was published on 16th June, 2005.”

4. On 4th July, 2005, Tek Chand (respondent No.4) preferred a Writ Petition challenging the validity of Notifications under Sections 4 and 6 of the Act. It appears that on 27th March, 2006, a clarification was issued by the State Government, respondent No.1, to the effect that the possession of the passage to the Hospital shall remain with them; the Government would be making financial contribution in its construction and the public would be entitled to use the same. In the affidavit filed on behalf of the Government in the Writ Petition it was reiterated that the road was not going to be used exclusively by the Hospital. Ultimately, the Writ Petition was dismissed. Special Leave Petition filed by Tek Chand against the said order was also dismissed on 15th September, 2006. Licence deed in respect of the said land

was executed in favour of the Hospital on 16th November, 2006 and construction of the road commenced some time in November, 2006.

5. Apprehending that the Hospital was planning to raise a wall on both sides of the road, obstructing use of the road by the public at large, including the appellants, the appellants filed the aforementioned two suits against the Hospital and Tek Chand for perpetual injunction in the court of Civil Judge (JD), Dehradun, restraining the Hospital from raising construction of any nature in the said property. Applications under Order 39, Rules 1 & 2 of the *Code of Civil Procedure, 1908* (for short "the Code") were also filed for grant of interim injunction.

6. The suits were contested by the Hospital. Taking into consideration the written statement filed on behalf of the Hospital and after hearing the parties, the trial court, by detailed orders, dated 2nd February, 2007, granted temporary injunction in favour of the appellants and restrained the Hospital from constructing boundary wall on both sides of the road in question. Being aggrieved, the Hospital, filed appeals to the court of District Judge, Dehradun. Arguments in the appeals were heard and orders were reserved.

7. During the pendency of the appeals, Tek Chand filed yet another Writ Petition on 11th March, 2007, inter alia, alleging that the acquisition was fraudulent. While entertaining the Writ Petition, exercising its power under Section 24 of the Code, vide an ex-parte order dated 20th March, 2007, the High Court transferred both the said suits as well as the civil appeals to itself in order to get the dispute settled between the parties. In the said order, the High Court directed that both the lower courts shall give notices to all the parties in the suit and the appeals, informing them that the suits and appeals stand transferred to the High Court and they were required to appear in person before the Court on 28th March, 2007. On the said order being communicated to the appellants, they filed Misc. Application No. 499 of 2007 in the said Writ Petition seeking recall of order dated 20th March, 2007.

8. When the Writ Petition came up for consideration, on 29th March, 2007, the High Court dismissed both the suits and the appeals by passing the following short order:

"We have perused the averments made in the suits as well as in the appeals, which are represented by Sri Neeraj Garg (Advocate).

Since, the question involved is directly raised in the writ petition and we are hearing the writ petition, therefore, the suits as well as appeals pending before the court below are dismissed accordingly.

Let this writ petition for final hearing on 03.04.2007. Learned Counsel for the Respondents may file Counter Affidavit, if any, by 03.04.2007.

In the meantime, if the Respondents shall raise any construction that will be at their own risk."

It is against this order of the High Court that this appeal, by special leave, has been filed.

9. Mr. Mukul Rohtagi and Mr. P.S. Patwalia, learned senior counsel appearing on behalf of the appellants submitted that the High Court has committed a manifest error in dismissing the suits by a cryptic order without taking into consideration the nature and the purport of the two suits. Learned counsel argued that the scope of the Writ Petition filed by the original owner of the subject land and the suits filed by the appellants was entirely different inasmuch as in the suits there is no challenge to the acquisition of the piece of land as in the case of the Writ Petition. It was pointed out that the relief in the suits is confined to the right of the appellants to use the public road laid on the acquired land. On merit, it was strenuously urged that being a public street, neither the State nor any one claiming under it could cause any obstruction or hindrance in its user by enclosing it with the walls. In support of the proposition that the land having been acquired for construction of a public road, it could not be leased out for private use, learned counsel placed reliance on a decision of this Court in *Municipal Board, Manglaur Vs. Sri Mahadeoji Maharaj*<sup>1</sup> as also on a decision of the Allahabad High Court in *Ram Swarup & Anr. Vs. Municipal Board, Bulandshahr & Anr.*<sup>2</sup> It was also alleged that taking advantage of the time gap between the dismissal of the suits and ad interim injunction by this Court, the Hospital has completed the wall on both sides of the road in a tearing hurry to make the present appeal a fait accompli. It is, thus, pleaded that the Hospital should be directed to demolish the wall and restore status quo ante.

10. Per contra, Mr. Jayant Bhushan, learned senior counsel appearing on behalf of the Hospital, while candidly admitting that the manner in which the two suits have been dismissed by the High Court is totally indefensible, submitted that said suits were nothing but yet another attempt by the original owner, respondent No.4 herein, to somehow retain the control on the acquired land, now a public road, as it would enhance the value of his remaining land on both sides of the road. Learned counsel was at pains to assert that the land on both sides of the road was proposed to be developed by respondent No.4 as a commercial venture in connivance with the appellants. It was argued that if the road is used as a thoroughfare, the very purpose of acquisition of land for providing free and smooth passage to those visiting the Hospital, would be defeated.

11. Mr. V.K. Jain, learned counsel, appearing on behalf of the State Government, supporting the stand of the Hospital, submitted that both the suits being meritless, the High Court was justified in dismissing them. To buttress the submission that vexatious and meaningless litigation should be closed at the earliest stage, learned counsel placed reliance on a decision of this Court in *T. Arivandandam Vs. T.V. Satyapal & Anr.*<sup>3</sup>.

12. Thus, the short question for consideration is whether the High Court was justified in dismissing the two suits on the sole ground that it was proposing to examine a similar issue in the Writ Petition preferred by the original owner of the land?

13. Section 9 of the Code provides that civil court shall have jurisdiction to try all suits of a civil nature excepting the suits of which their cognizance is either expressly or impliedly barred. To put it differently, as per Section 9 of the Code, in all types of civil disputes, civil

courts have inherent jurisdiction unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication by any statutory provision and conferred on Tribunal or Authority. Thus, the law confers on every an inherent right to bring a suit of civil nature of choice, at one's peril, howsoever frivolous the claim be, unless it is barred by a statute.

14. In *Smt. Ganga Bai Vs. Vijay Kumar & Ors.*<sup>4</sup>, this Court had observed as under:

"There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at ones peril, bring a suit of one's choice. It is no answering to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit."

15. In *Dhannalal Vs. Kalawatibai & Ors.*<sup>5</sup> relying on the afore-extracted observation in *Ganga Bai's* case (supra), this Court had held as follows:

"Plaintiff is dominus litis, that is, master of, or having dominion over, the case. He is the person who has carriage and control of an action. In case of conflict of jurisdiction the choice ought to lie with the plaintiff to choose the forum best suited to him unless there be a rule of law excluding access to a forum of plaintiff's choice or permitting recourse to a forum will be opposed to public policy or will be an abuse of the process of law."

16. It is trite that the rule of pleadings postulate that a plaint must contain material facts. When the plaint read as a whole does not disclose material facts giving rise to a cause of action which can be entertained by a civil court, it may be rejected in terms of Order 7, Rule 11 of the Code. Similarly, a plea of bar to jurisdiction of a civil court has to be considered having regard to the contentions raised in the plaint. For the said purpose, averments disclosing cause of action and the reliefs sought for therein must be considered in their entirety and the court would not be justified in determining the question, one way or the other, only having regard to the reliefs claimed de'hors the factual averments made in the plaint. (See: *Church of North India Vs. Lavajibhai Ratanjibhai & Ors.*<sup>6</sup>)

17. Having considered the matter in the light of the afore-stated legal position, we are of the opinion that the impugned order cannot be sustained. It is true that under Section 24 of the Code, the High Court has jurisdiction to suo motu withdraw a suit or appeal, pending in any court subordinate to it, to its file and adjudicate itself on the issues involved therein and dispose of the same. Unless the High Court decides to transfer the suit or the appeal, as the case may be, to some other court or the same court, it is obliged to try, adjudicate and dispose of the same. It needs little emphasis that the High Court is competent to dispose of the suit on preliminary issues, as contemplated in Order 14 Rule 1 & 2 of the Code, which may include the issues with regard to maintainability of the suit. If the High Court is convinced that the plaint read as a whole does not disclose any cause of action, it may reject the plaint in terms of Order 7 Rule 11 of the Code. As a matter of fact, as observed by V.R.

Krishna Iyer, J., in *T. Arivandandam* (supra), if on a meaningful - not formal - reading of the plaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the court should exercise its power - under the said provision. And if clever drafting has created an illusion of a cause of action, it should be nipped in the bud at the first hearing by examining the party searchingly under Order X CPC. Nonetheless, the fact remains that the suit has to be disposed of either by the High Court or by the courts subordinate to it in a meaningful manner as per the procedure prescribed in the Code and not on one's own whims.

18. In the instant case, as noted above, vide order dated 20th March, 2007, the High Court transferred the two suits and the appeals to itself. On being served with a copy of the said order, the appellants immediately moved an application for recall of the said order. In the said application, it was pointed out that in the appeals, preferred by the Hospital against the interim injunction granted by the civil judge, argument had been heard by the district judge and order was to be pronounced on 26th March, 2007 but in the meanwhile on 20th March, 2007, the High Court passed the order withdrawing the appeals to itself. When the transferred case came up for consideration before the High Court on 29th March, 2007, without passing any order on the application preferred by the appellants for recall of order dated 20th March, 2007, the High Court dismissed the suits on the aforementioned ground, namely, the issues raised in the suits were being examined in the Writ Petition. We have no hesitation in holding that the procedure adopted by the High Court is unknown to law. We are conscious of the fact that the object of filing of the suits could be a dubious and indirect attempt on the part of Tek Chand, respondent No.4, to derive some undue advantage in connivance with the plaintiffs, yet that was no ground to dismiss the suits summarily in the aforementioned manner. It must be kept in mind that one of the fundamental norms of judicial process is that arguable questions either legal or factual should not be summarily dismissed without recording a reasoned order. A mere entertainment of the Writ Petition, to which the appellants herein were not parties, even if it involved determination of similar issues, in our opinion, was not a good ground to dismiss the two suits without granting opportunity to the parties to prove their respective stands. Moreover, the scope of the Writ Petition and the two suits also seems to be different.

19. On a conspectus of the factual scenario and in view of the above discussion, the appeal is allowed; the impugned order, dated 29th March, 2007, is set aside and the two suits and the appeal, dismissed in terms of the said order, are restored to the file of the High Court for fresh adjudication and disposal in accordance with law. The High Court may also pass appropriate orders on the appellant's prayer for restitution, for which purpose I.A. No.7 of 2007 shall stand transferred to the High Court. We may clarify that we have not expressed any opinion on the merits of the two suits or the appeals, which shall be considered and disposed of on their own merits, uninfluenced by any observation in this judgment.

20. In the facts and circumstances of the case, the parties will bear their own costs.

<sup>1</sup>1965 2 SCR 242  
<sup>4</sup>(1974) 2 SCC 393

<sup>2</sup>AIR 1979 Allahabad 361  
<sup>5</sup>(2002) 6 SCC 16

<sup>3</sup>(1977) 4 SCC 467  
<sup>6</sup>(2005) 10 SCC 760