

(2002) 03 RAJ CK 0010

Rajasthan High Court

Case No: Civil Revision Petition No. 222 of 2002

R.S.R.T.C.

APPELLANT

Vs

General Manager, Western
Railway and Others

RESPONDENT

Date of Decision: March 14, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115, 9
- Constitution of India, 1950 - Article 226, 227
- Motor Vehicles Act, 1988 - Section 117, 138, 20, 64, 86

Citation: (2002) 3 WLC 193 : (2002) 3 WLN 689

Hon'ble Judges: B.S. Chauhan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

B.S. Chauhan, J.

The present revision petition has been filed against the order passed by the learned Additional District Judge, Abu Road, Sirohi dated 21.11.2001 allowing the appeal of the respondents Railways against the order dated 17.9.2001 passed by the trial court granting interim relief Under Order 39 Rules 1 and 2 of the CPC (hereinafter referred to as "the Code").

2. The facts and circumstances giving rise to this case are that the revisionist filed a suit on 8.8.2001 for permanent injunction along with an application Under Order 39 Rules 1 and 2 of the Code praying that the respondents-defendants be restrained from dispossessing the revisionist from the land in dispute which it uses as a bus stand for picking up and setting down the passengers. The learned trial court, vide order dated 17.9.2001, passed the order that the respondents-defendants shall not dispossess the revisionist Corporation from the land in dispute which is being used as bus stand for picking up or setting down the passengers without due process of

law. Being aggrieved and dissatisfied the respondents-defendants preferred the appeal which has been allowed by the impugned order dated 21.11.2001. Hence, this revision petition.

3. Shri Sangeet Lodha, learned Counsel appearing for the revisionist has raised large number of issues challenging the impugned order. However, he was confronted as to whether in a case like instant the Civil Suit is maintainable if the bus stand for picking up or setting down the passengers is to be made by the transport authorities under the provisions of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act, 1988") in absence of any pleading that the transport authorities had ever notified the bus stand on the premises in dispute.

4. The control of transport vehicles or traffic is to be governed by the provisions of the Act, 1988 Section 86(2)(xi) thereof empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter VI of the Act in respect to all or any of the matters mentioned therein, Clause (xi) thereof reads as under:

Prohibiting the picking up or setting down of passengers by stage or contract carriages at specified places or in specified area or at the place other than duly notified stand or halting places and requiring the driver of a stage carriage to stop or remain stationary for a reasonable time when so required by a passenger, desiring to board or alight from the vehicle at the notified halting place.

5. Section 117 of the Act provides that the State Government, or any Authority authorised in this behalf by the State Government, may, in consultation with the local authority having jurisdiction in the area concern, determine the places at which motor vehicles in a stand either indefinitely or for a specified period of time, and may determine the places at which the public service vehicles may stop for a longer time than is necessary for the taking up and setting down passengers. Section 138 of the Act empowers the State Government to make Rules. Clause (e) of Sub-section (2) of Section 138 of the Act provides for making Rules for the maintenance and management of a parking place and stand and the fee, if any, which may be charged for their use. The cumulative effect of all these provisions, if they are read together, comes to that the provisions of Section 96 provides for determining the place for playing of vehicles or terminating the same and it specifically requires for that purpose the duly notified stand.

6. The analogous provision under Motor Vehicles Act, 1939 (for short, "the Old Act") was considered by the Constitution Bench of the Hon"ble Supreme Court in T.B. Ibrahim v. Regional Transport Authority, Tanjore AIR 1953 SC 290 and held as under:

The expression "duly notified stand" is not defined in the Act but it is reasonable to presume that a duly notified bus stand must be one which is notified by the Transport Authority and by none else. There is no warrant for the presumption that it must be notified by the Municipality.

7. An another Constitution Bench of the Supreme Court in [Municipal Board, Pushkar Vs. State Transport Authority, Rajasthan and Others](#), held that location of the bus stand can be fixed only by the Transport Authorities and if any person is aggrieved of that order, he would be entitled only to file a revision u/s 64-A of the Old Act. The Court placed reliance upon its earlier judgment in Ibrahim (supra) observing that u/s 68(2)(r) of the Old Act, the State Government had competence to frame the Rules empowering the Transport Authority to fix or alter the bus stand. It further held that the person aggrieved of such a resolution would have a right to maintain a revision before the Transport Appellate Authority. The Court further held that provisions of Section 76 of the Old Act, corresponding to Section 117 of the Act, were not attracted so far as fixation or alteration of the bus stand or issuing a notification in that respect was concerned.

8. In [Municipal Council, Bhopal Vs. Sindhi Sahiti Multipurpose Transport Co-op. Society Ltd. and Another](#), the Hon''ble Supreme Court held that a municipality or municipal board, in exercise of its power under the provisions of the Municipalities Act or the Rules framed thereunder, cannot compel bus operator to use its bus stand as the Board is not competent to fix the bus stand. The matter exclusive fell within the competence of transport authorities and no one else can fix the bus stand or issue notification in that respect. The Hon''ble Supreme Court examined the validity of a provision of the Bye Law which was enacted to compel the bus owners to use a particular bus stand on charges. The Court declared it void, observing as under:

The Bye Laws compel persons incharge of motor buses to use the municipal bus stand which the municipality has no power to do. Consequently, it is held that the bye-law is not valid and with it goes the other bye-laws.

9. In [Hari Om Gautam Vs. District Magistrate, Mathura and Another](#), the Hon''ble Supreme Court considered the provisions of Rule 93 of the UP. Motor Vehicles Rules, 1940, which authorised the District Magistrate to specify the place within the limit of any municipality, notified area, town area or cantonment area or within such other limit as he may define, where alone public service vehicles or any specified class or classes of public service vehicles may stand indefinitely or for such period as may be specified than is necessary for taking up and setting down of passengers. That provision authorised the District Magistrate only to fix the determination of parking places and halting places which are not the same as bus stands duly notified which can only be notified by the Regional Transport Authority.

10. In view of the above, it can be summed up that there is a distinction between duly notified bus stand which is meant for picking up or setting down the passengers, and a parking place which may be used for night halt or for other purpose by the vehicles. So far as fixation of bus stand for picking up or setting down the passengers is concerned, whether it is a place of initiation of route or termination thereof or any where on that route, the transport authority is only

competent to fix such a bus stand by passing a resolution. Neither the State Government nor District Administration nor local bodies, e.g. municipal board, Gram Panchayat etc. has any jurisdiction to fix the bus stand for picking up or setting down the passengers. A person, aggrieved of the resolution of transport authority fixing a particular bus stand, may maintain a revision under the provisions of Section 90 of the Act and any other resolution passed by any local body or administrative authority in this respect would be nullity being without jurisdiction.

11. Once the remedy of revision is available the question of resorting to any other forum for redressal of the grievances does not arise.

12. A Constitution Bench of the Hon"ble Supreme Court, in [Veerappa Pillai Vs. Raman and Raman Ltd. and Others](#), held that as the Motor Vehicles Act is a self contained Code and itself provides for appellate/revisonal forum, under the provisions of Sections 64 and 64-A of the Old Act, the writ jurisdiction should not be invoked in-matters relating to its provision.

13. In [Sheela Devi Vs. Jaspal Singh](#), the Hon"ble Apex Court has held that if the statute itself provides for a remedy of revision, writ jurisdiction cannot be invoked.

14. In a recent judgment of the Hon"ble Supreme Court in Punjab National Bank v. O.C. Krishnan and others AIR 2001 SCW 2993 the Hon"ble Supreme Court observed as under:

The Act has been enacted with a view to provide a special procedure for recovery of debts dues to the banks and the financial institutions. There is hierarchy of appeal provided in the Act, namely, filing of an appeal u/s 20 and this fast trak procedure cannot be allowed to be derailed either by taking recourse to proceedings Under Articles 226 and 227 of the Constitution or by filing a civil suit, which is expressly barred. Even though a provision under an Act cannot expressly oust the jurisdiction of the Court Under Articles 226 and 227 of the Constitution, nevertheless when there is an alternative remedy available judicial prudence demands that the Court refrains from exercising its jurisdiction under the said constitutional provisions. This was a case where the High Court should not have entertained the petition Under Article 227 of the Constitution and should have directed the respondent to take recourse to the appeal mechanism provided by the Act.

15. This leads to further consideration as to whether in such a case, jurisdiction of Civil Court is also impliedly barred. In [Shri Chand Vs. Government of U.P., Lucknow and Others](#), ; and [Anwar Vs. First Additional District Judge, Bulandshahr and Others](#), the Hon"ble Supreme Court categorically held that Section 9 of the Code impliedly barred the jurisdiction of civil court to try the suits in respect of the cause of action falling in the Motor Vehicles Act. The Court observed that where the Statute used the expression that a decision of the authority shall be final, the injunction of the civil court could go into the correctness or otherwise of the decision is taken away. Thus, in a case where jurisdiction is not there with any other authority, even the

question of entertaining the suit, may not arise at all, what to talk of an interim relief.

16. In [Sankaranarayanan Potti \(Dead\) By L.R.S. Vs. K. Sreedevi and Others](#), the Hon"ble Supreme Court observed as under:

It is obvious that in all types of civil disputes, civil courts have inherent jurisdiction as per Section 9 of the CPC unless a part of that jurisdiction is carved out from such jurisdiction, expressly or by necessary implication, by any statutory provision and conferred on any other Tribunal or authority.

17. Similar view has been reiterated in [Shri Panch Nagar Parakh Mandsaur Vs. Purushottam Das](#),

18. In [P.A. Ahammed Ibrahim Vs. The Food Corporation of India](#), the Hon"ble Supreme Court held that the applications under the provisions of various Statutes cannot be treated as suits or claims unless such possibility is specifically provided for under those particular Statutes.

19. In Bhanu Construction Co. Ltd. v. Andhra Bank, Hyderabad (2001) 1 SCC 347 the Hon"ble Supreme Court considered the provisions of recovery of the debts due to banks and financial institutions under the Act, 1953 and held that after the commencement of provisions of the said Act into force, the suit could not be instituted as conferring the jurisdiction upon the Tribunal under the Act would take away the jurisdiction of the Civil Court.

20. In Vannattankandy Ibrai v. Kunhabduula Hajee (2001) 1 SCC 565 the Hon"ble Supreme Court considered the provisions of the Kerla Building and Lease Control Act, 1965, which barred the jurisdiction of civil court for recovery of premises on various grounds by the landlord before the Authority prescribed under the Act and the suit was not maintainable. The Court held that where the building stood washed off because of natural calamity, possession of the remaining land may be recovered before the Civil Court. The Court held that under such circumstances, civil court may have jurisdiction, but had the building been there, its jurisdiction was barred by Section 9 of the Code because it ceased to be a building and remained land and in such a situation, only civil court was competent to entertain and try the suit.

21. In Shree Ram and Anr. v. First Addl. District Judge and Ors. (2001) 3 SCC 24 the Apex Court held that in tenancy matters, generally revenue court has the jurisdiction. But in case a suit is filed for cancellation of a void document, Section 9 of the Code does not impliedly bar such a suit because the document has been obtained by fraud or impersonation as in such a case the mere declaration of title is required and the document, being void, is merely to be ignored for giving relief for declaration and possession.

22. In [Ghulam Qadir Vs. Special Tribunal and Others](#), the Hon"ble Supreme Court held that in case the title is to be established, the remedy of civil court is available

and in such case, Section 9 of the Code would not bar the civil suit and would ask the authority only to avail the remedy under the provisions of J & K State Evacuees (Administration of Property) Act, 1949.

23. Thus, in view of the above, the Court has to examine whether there is a specific statute dealing with the subject matter providing for a particular remedy and whether availability of such a forum bars the jurisdiction of civil court, expressly or impliedly, as contemplated under the provisions of Section 9 of the Code and in case the Court comes to the conclusion that the suit is barred by Section 9 of the Code and Court does not have jurisdiction to entertain and try the suit, it can certainly not pass any order accepting or rejecting the application for interim relief/temporary injunction as well. (Vide [Ajmer Kaur and others Vs. Punjab State and others](#),

24. Thus, in view of the above, I am not inclined to interfere with the order passed by the first appellate court. Even otherwise the question of facts, on the basis of which the appellate court has based its judgment cannot be probed herein in the limited jurisdiction u/s 115 of the Code. The revision petition is, therefore, dismissed. The trial court may consider the legal position explained herein this judgment and decide the suit expeditiously.