

(1991) 07 AHC CK 0039

Allahabad High Court (Lucknow Bench)

Case No: Civil Miscellaneous Writ Petition No. 28868 of 1990

Municipal Board, Kotdwara

APPELLANT

Vs

District Judge, Pauri Garhwal and
others

RESPONDENT

Date of Decision: July 25, 1991

Acts Referred:

- Constitution of India, 1950 - Article 226
- Limitation Act, 1963 - Section 14, 15(2), 29(2)
- Specific Relief Act, 1963 - Section 6
- Uttar Pradesh Municipalities Act, 1916 - Section 326

Hon'ble Judges: N.L.Ganguly, J

Final Decision: Dismissed

Judgement

1. The Municipal Board. Kotdwara, district Pauri Garhwal, through its Executive Officer filed this writ petition challenging the judgment and decree passed by the learned Munsif, Landsdown, Pauri Garhwal, decreeing the suit under Section 6/38 of the Specific Relief Act for restoration of possession over the disputed house from which respondent no. 3 was forcibly evicted by the Municipal Board. The petitioner also challenged the judgment of the revisional court of the District Judge, Pauri Garhwal affirming the judgment and decree of the Munsif.

2. The facts of the case are not disputed. Admittedly, respondent no. 3 occupied quarter no. 1/1, Devi Road, Kotdwara as a tenant of Municipal Board at monthly rent of Rs. 20. A notice dated 16/23786 terminating tenancy of respondent no. 3 was issued by the petitioner. The notice was replied by respondent no. 3 on 4986. The petitioner is said to have locked the premises in dispute on 191986. A notice dated 17th September, 1986 was sent by registered post to the respondent no. 3 by petitioner for evicting him by 25th September, 1986. The petitioner, Municipal Board, in absence of the respondent no. 3, broke open the lock and illegally took

over possession of the disputed quarter along with household goods kept there. The respondent no. 3 had filed a Misc. Appeal No. 35 of 1986 before the learned District Judge challenging the notice for eviction served on him. The learned District Judge disposed of the Misc. Appeal No. 35 of 1986 by order dated 22/10/1986 holding the appeal was not maintainable.

3. The respondent no. 3 thus filed the suit on 8/4/87 in the Court of Munsif, Landsdown, Pauri Garhwal under Sections 6 and 36 of the Specific Relief Act after serving the petitioner with a notice under Section 326 of the U.P. Municipalities Act. The respondent no. 3 in his plaint pleaded that Municipal Board, petitioner, served a notice dated 16/9/1986 illegally and evicted him on 25/9/86 and illegally took over possession of the accommodation in question and household goods kept therein. The respondent stated that he was illegally evicted by force without following due process of law. Some time was bona fide consumed in prosecuting the aforesaid Misc. Appeal No. 35 of 1986 before the District Judge. After the learned District Judge disposed of the said Misc. Appeal as not maintainable, the respondent no. 3 served the statutory notice under Section 326 of the U.P. Municipalities Act to the petitioner before filing the suit.

4. The Municipal Board, petitioner, contested the suit on the grounds of:

(i) the suit was barred by Limitation:

(ii) no notice under Section 326 of the U.P. Municipalities Act was necessary for the plaintiff/respondent no. 3 for filing the suit under Sections 6 and 38 of the Specific Relief Act; and

(iii) the respondent no. 3 is not entitled to get benefit of S. 14 Of the Limitation Act.

5. These were the main points urged and canvassed before the Court" of Munsif in suit and the District Judge in revision and both the courts concurrently held that the suit was filed within time and the time consumed in prosecuting the Misc. Appeal under legal advice bona fide is liable to be excluded and he is entitled for benefits of Section 14 of the Limitation Act. Sri Ravi Kiran Jain, Senior Advocate, appearing for the petitioner strenuously urged the same submissions before the Court also. The learned counsel for petitioner urged that a suit under Section 6 of the Specific Relief Act could be filed within a period of six months from the date of his dispossession as contemplated under Section 6(2) of the Specific Relief Act itself. He states that the respondent no. 3 on his own showing was evicted on 19/1/1986 the date on which lock was put at the premises in question by the Municipal Board, He suggested that at the most on 25/9/86 when respondent no. 3 removed his goods from the accommodation or he was forced to vacate the premises would be the date for cause of action for filing suit. The limitation being six months from the date of dispossession i.e. 25/9/1986. The learned District Judge also held that by merely putting lock on 19/1/86 it cannot be inferred that respondent no. 3 was evicted from the accommodation. It was on 25/9/1986 when respondent was actually evicted and

his household goods removed by the Municipal Board authorities, would be the date of forcible eviction of the respondent no. 3. Admittedly, the present suit was filed on 841987 after service of notice under Section 326 of the U.P. Municipalities Act. The learned counsel for petitioner submitted that Municipal Board is not Government. It was not necessary to serve the notice under S. 326 of the said Act before filing the suit under Section 6 read with Section 38 of the Specific Relief Act, Sri Ravi Kiran Jain, learned counsel for the petitioner, submitted that the notice to vacate dated 191986 was served by the petitioner to respondent no. 3 for vacating the premises on or before 2591986. The respondent no. 3, instead of vacating the premises, filed a Misc. Appeal No. 35 of 1986 before the District Judge on 2691986 and obtained a stay order staying dispossession. The said appeal remained pending before the District Judge till 22101986 on which date it was dismissed on the ground of nonmaintainability. It is submitted that 26 day's time consumed by the respondent no 3 by seeking legal proceedings at a wrong forum not permissible in law is not liable to be excluded and no benefit under S. 14 of Limitation Act could be given to respondent. He submitted that benefit of Section 14 of Limitation Act could be given in cases specified in the Schedule of the Act. It is said that suit under Section 6 read with Section 38 of the specific Relief Act is not included in the Schedule of Limitation Act.

6. The parties had already exchanged affidavits and the petition was heard finally with the consent of the parties and rules of the Court without passing any order for admission of the petition. The learned counsel for petitioner feebly submitted that no notice under Section 326 of the Municipalities Act was necessary. The provisions of Section 326 of the Municipalities Act clearly show that such a notice is necessary. The only exception is provided in Section 326(4) of the Municipalities Act. It is settled law that omission to serve notice under Section 326 of U.P. Municipalities Act renders the suit liable to be dismissed, vide AIR 1952 All 711 (F.B.): Ahmad Raza v. Allahabad Municipality. Thus the submission that there was no necessity of serving notice under Section 326 before filing suit and the statutory period of notice is not liable to be computed in calculating the limitation is misconceived. I am of the view that notice under Section 326 of Municipalities Act was necessary and the statutory period of notice is to be added for calculating the period of limitation by adding the period of notice. The suit of respondent no, 3 was not covered under Section 326(4) of Municipalities Act, as such, notice was mandatory requirement before filing of the suit. The suit was correctly treated to be within limitation by excluding the period of notice under Section 326 of the Act.

7. Sri S.C. Mamgain, learned counsel for the respondent submitted that provision of Section 15(2) of Limitation Act (sic). This point need not further detain the Court. It is held that notice under Section 326 of the Municipalities Act was a mandatory requirement before filing the suit and period of notice is liable to be excluded in computing the period of limitation.

8. The next point for consideration is whether plaintiffrespondent no. 3 is entitled to the benefit of Section 14 of Limitation Act. Sri Ravi Kiran Jain, learned counsel for the petitioner submitted that suit under Section 6 of the Specific Relief Act is not included in the Schedule of the Limitation Act. The benefit of Section 14 of the Limitation Act cannot legally be given in such suits. The submission of Sri Jain is controverted by the learned counsel for the respondent, Sri S.C. Mamgain. He submitted that Provisions of Section 29(2) of the Limitation Act fully covers respondent's case. The provision of Section 29(2) of Limitation Act are quoted as under:

◆2 (2). Where any special or local law prescribes for any suit, appeal or application the period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.◆

The learned counsel Sri Ravi Kiran Jain cited 1978 Allahabad Law Journal 261: Jagannath Prasad v. Sant Hardasram Sewashram, which was a case under Sections 5 and 14 of Limitation Act. Sri Ravi Kiran Jain submitted that the petitioners served the notice dated 191986 to the respondent no 3 for ejectment by 2591986, the respondent had chosen to file a Misc. Appeal No. 35 of 1986 before the District Judge. The said appeal was rejected as not maintainable by the Court by order dated 22101986. It is submitted that the time period consumed in the said Misc. Appeal could not be considered for giving benefit of Section 14 of the Limitation Act.

9. The case Saw of 1978 ALJ 26I have been cited for the proposition that benefit of Section 14 of the Limitation Act could be given to a party ◆where any mistake with regard to the forum of presenting an appeal has been committed and the Court is satisfied on the facts of the case that this was either due to some forgetfulness or oversight or uncertainty as to the law regarding the forum for presenting the appeal, then it may be fit case for applying provisions of Section 14 of the Limitation Act. There is no doubt about the proposition of law. The Division Bench of this Hon"ble Court in the 1978 ALJ case (supra) correctly relied the observations of 1956 All LJ 367: Lala Hanuman Das v. Prithwi Nath, that the appellant has to make out a case showing sufficient cause and therefore reckless or grossly negligent conduct of appellant would be inconsistent with such, p ea of sufficient cause.

10. Another case of 1984 All LJ 994 SC: Zafar Khan and others v. Board of Revenue, U.P. and others, has been cited by Sri Ravi Kiran Jain, He relied on paragraph 11 at page 1000 which is being quoted below:

◆11. In order to attract the application of Sec. 14 (1) the parties seeking its benefit must satisfy the Court that: (1) that the party as the plaintiff was prosecuting

another civil proceeding with due diligence ; (ii) that the earlier proceeding and the later proceeding related to the same matter in issue and

(iii) the former proceeding was being prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it. It may be assumed that the earlier proceeding under Section 144 of the Code of Civil Procedure was a civil proceeding for the purpose of Section 14. It may as well be assumed in favour of the appellants that they were prosecuting the same with due diligence to the High Court invoking its extraordinary jurisdiction. The first of the aforementioned three cumulative conditions can be said to have been satisfied. ♦

As already observed, there is no dispute about the proposition of law as enunciated by the Hon"ble High Court in Division Bench case and Supreme Court judgment of 1984 (supra). The only thing is that all these arguments about the availability and application of Section 14 of Limitation Act would be of any help to the petitioner if the petitioner had pleaded the facts in the written statement and the respondent no. 3 had opportunity to rebut the allegations of petitioner. The petitioner no doubt annexed the true copy of the plaint of respondent. It shows that the respondent no. 3 in his para 15 of the plaint pleaded that suit filed is within limitation and in the jurisdiction of the Court. Since the petitioner has avoided filing of the written statement it is not known whether the plea of limitation and Section 14 of Act, as has been argued before the High Court, was raised in defence or not. The judgment of the learned Munsif shows that plea of limitation was decided in favour of respondent no. 3. It appears that the petitioners had not raised the plea that benefit of Section 14 of the Limitation Act would not be available to the respondent, before the learned Munsif. It appears that this plea was no doubt argued before the learned District Judge in Civil Revision. But the judgment of the District Judge is silent on the point that petitioners ever urged that plaintiff respondent no. 3 had filed the Misc. Appeal without any bona fides, carelessly, as such the time period consumed between 25/9/1986 to 22/10/1986 could not be excluded for calculating the limitation and giving benefit of Section 14 of the Limitation Act. The petitioner has not filed the copy of the statement of plaintiff respondent no. 3 to show that petitioner put the questioner suggestion of fact to the respondent no. 3 that proceedings in Misc. Appeal No. 35 of 1986 was filed recklessly, negligently, without proper legal advice. It is also not clear from record of the writ petition that the petitioner had put to the respondent the question or suggestion when he was in witness box that document dated 25/9/1986 was a notice to quit and no appeal lay against it. The learned District Judge recorded a finding after consideration of all the facts and circumstances that respondent is entitled for benefit of Section 14 of the Limitation Act. In fact, the respondent no. 3 before the learned District Judge in Civil Revision had relied on 1984 All LJ 994 (supra). The learned District Judge in paragraph 5 of the judgment recorded finding that plaintiff in a bonafide manner also gave notice under Section 326 of the Municipalities Act which may not be necessary in every case but which was necessary in the facts of the present case. In

the circumstances, it is clear that the finding about bonafide of respondent no. 3 for sending notice under Section 326 of Municipalities Act before filing of the suit is concerned (sic). The suit was rightly filed within limitation. Otherwise also, the time consumed in Misc. Appeal would be liable to be excluded for giving benefit of Section 14 of the Limitation Act.

11. After giving anxious consideration to the facts and circumstances of the case, I am of the view that the petitionerMunicipal Board Kodtwar, which is a public body and acted recklessly and evicted the respondent no. 3 without following due process of law and hurriedly inducted another person to the accommodation, shows nothing but their mala fides disentitling them any benefit in proceedings under Article 226 of the Constitution. There is no error of law or jurisdiction in the proceedings conducted in the Courts below and the judgments impugned in the writ petition do not call for interference under the writ jurisdiction. The writ petition is thus dismissed with costs. The interim stay order dated 145 199 is vacated. A certified copy of the judgment be issued to the learned counsel for parties in a week on payment of usual charges.

[Petition dismissed]