

(2004) 03 GAU CK 0041

Gauhati High Court (Shillong Bench)

Case No: C.R.P. No. 3 (SH) of 2004

Libera Passi

APPELLANT

Vs

Jowai Municipal Board and
Another

RESPONDENT

Date of Decision: March 11, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1, 151, 16

Citation: AIR 2005 Guw 51 : (2005) 2 GLR 572 : (2004) 3 GLT 692

Hon'ble Judges: B. Lamape, J

Bench: Single Bench

Advocate: D. Das, A. Das and I. Lahiri, for the Appellant; K.S. Kyinjing and K. Sunar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B. Lampe, J.

Heard Mr. D. Das, learnedcounsel assisted by Mr. A. Das and Mr. I. Lahiri, learned counsel for the petitioner. Also heard Mr. K.S. Kyinjing, learned Senior counsel assisted by Mr. K. Sunar, learned counsel for the respondents.

2. Briefly stated the case is the petitioner was authorized to collect tolls from the vehicles at three Municipal toll gates located at Mooralong, New Hills and Mynthong vide order dated 6-7-2001 for a period of one year. Pursuant to his appointment, the petitioner was collecting tolls from the said three gates continuously. After the expiry of the said period of one year, the petitioner submitted an application in the month of May, 2003, praying for extension of the period for another three years on the ground that in course of the operation of the toll gates the petitioner had suffered huge loss due to the low collection from the toll gates. On the basis that the petitioner had submitted an application the respondent No. 2 vide letter dated

24-6-2003 informed the Director of Urban Affairs, Meghalaya that the extension application of the petitioner ought to be considered in view of the fact that the petitioner had actually suffered huge losses due to certain unavoidable circumstances as stated in the application of the petitioner. However, by the letter dated 18-8-2002 issued by the respondent No. 2 the petitioner was intimated that his application for extension was rejected by the Director of Urban Affairs, Meghalaya, Shillong. In the said letter of the respondent No. 2 a reference also made to the letter dated 4-8-2003 issued by the Government. However, the petitioner was allowed to collect the tolls from the three gates on private basis.

3. After the petitioner's application was rejected the respondents floated tender for settlement of the said three toll gates which are being run by the petitioner. The petitioner, therefore, had no alternative but to approach the Court. The petitioner, accordingly, filed a Title Suit. No. 40(H)2003 in the Court of Munsiff, Shillong praying *inter alia* that the tender notice floated by the respondents is null and void *ab initio* and also that the petitioner be allowed to continue collecting tolls from the said three toll gates. Along with the said Title suit, the petitioner also filed an application for injunction under Order 39, Rule 1 and 2 of the CPC read with Section 151, C.P.C. The petitioner also filed another application u/s 80(2), C.P.C. the application for temporary injunction was registered as Misc. Case No. 43(H)2003. The learned Munsiff, Shillong by order dated 13-10-2003 passed in Misc. Case No. 43(H)2003 was pleased to direct the parties to maintain status quo as on 13-10-2003 with regard to the operation of the said three toll gates and further directed that any further proceeding/process pertaining to the said tolls shall not be made till the injunction petition is finally disposed of and fix the matter for injunction petition on 13-10-2003.

4. The respondents being aggrieved by the said order dated 13-10-2003 passed in Misc. Case 43(H)03 by the learned Munsiff, Shillong preferred an appeal under Order 43, Rule 1 of the CPC before the District Judge, Shillong. The appeal was registered as FAO & (H)03.

5. The learned District Judge by judgment and order dated 15-12-2003 passed in the said FAO 7(H)03 allowed the appeal on the ground that the learned Munsiff, Shillong has no jurisdiction to pass the said order dated 13-10-2003. The petitioner being aggrieved by the judgment and order dated 16-12-2003 passed by the learned District Judge has approached this Court in this petition.

6. At the outset it is noticed that by the impugned judgment and order dated 15-12-2003, the learned District Judge has held that the learned Munsiff, Shillong has no jurisdiction to entertain the Title suit and Misc. Case in question and that being so any order passed by the learned Munsiff in the Title Suit as well as in the Misc. Case is without jurisdiction and accordingly, the order dated 13-10-2003 passed by the learned Munsiff was set aside by the impugned judgment and order of the learned District Judge. By this order, the lis between the parties has been

finally decided. Now the question to be seen as to whether the learned District judge as an appellate Court has any jurisdiction to enter into the question of jurisdiction of the trial Court to entertain the suit and the Misc. Case.

7. From the judgment and order dated 15-12-2003 passed by the learned District Judge, it is seen that the learned District Judge has referred Section 16 and Section 20 of the Code of Civil Procedure. Section 16, C. P.C. provides for institution of a suit where the subject-matter is situated subject to pecuniary or other limitations as prescribed by law. Section 20, C.P.C. provides for institution of a suit in a place where the defendants reside or cause of action arose. On the basis of these two sections, the learned District Judge had entered into the jurisdiction of the Munsiff to entertain the suit and Misc. Case and held that the learned Munsiff has no jurisdiction to entertain the suit and the Misc.. Case.

8. Now let us look into the provision of Section 21 of the CPC which reads as follows :

Objections to jurisdiction -- No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

3) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice."

Sub-section (1) of Section 21 clearly provides that no objection as to the place of institution of a Suit shall be allowed by the Appellate or Revisional Court unless such objection was taken in the Court of the First instance at the earliest possible opportunity. In the instant case the learned trial Court had not decided anything about the jurisdiction as to whether the trial Court could entertain the suit and the Misc.. Case or not. Record also shows that the question of jurisdiction has not been raised by the respondents before the Munsiff. On the other hand, immediately after passing of the status quo order on 13-10-2003 in Misc. Case No. 43(H)03, the respondents preferred an appeal before the learned District Judge and the learned District Judge disposed the appeal by the impugned judgment and order. Therefore, in view of the bar imposed on the Appellate or Revisional Court by Sub-section 1 of Section 21 of the Code, the learned District Judge ought not to have entered into the question of jurisdiction when the matter before the Appellate Court is only in

respect of the interim status quo order passed by the learned Munsiff in Misc. Case. The learned Appellate Court below should not have allowed the question of jurisdiction to be raised before the Appellate Court when no order has been passed by the Court of learned Munsiff. Needless to say that no objection with regard to the jurisdiction of the Court was raised by the respondents before the learned Munsiff, no order to this effect has also been passed by the learned Munsiff. The appeal before the learned District Judge relates only to the interim status quo order dated 13-10-2003.

9. The Apex Court in the case of R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd., held as follows :

Sub-section (1) of Section 21 of the CPC provides that no objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and unless there has been consequent failure of justice. The above provision clearly lays down that such objection as to the place of suing shall be allowed by the appellate or revisional Court subject to the following conditions :--

- i) That such objection was taken in the Court of first instance at the earliest possible opportunity;
- ii) in all cases where issues are settled then at or before such settlement of Issues;
- iii) there has been a consequent failure of justice."

10. In view of the clear provision of Subsection (1) of Section 21, C.P.C. the lower appellate Court can enter into the question of jurisdiction only if all the three requirements provide under Sub-section (1) had been complied with, but in the instant case that the three requirements of Sub-section (1) of Section 21, C.P.C. had not been complied with. But instead the appellate Court below had entered into the jurisdiction by merely relying on Sections 16 and 20 of the Code. The impugned judgment and order therefore, is not a confirmity with the provision of Sub-section (1) of Section 21 of the Code. The impugned judgment and order is therefore, not tenable in law and is liable to be set aside and quashed,

11. For the aforesaid reasons, the operation of the impugned judgment and order dated 15-12-2003 passed by the learned District Judge in FAO 7(H) is hereby set aside and quashed. The matter be remanded back to the learned Munsiff, Shillong.

12. The learned Munsiff, Shillong is therefore, directed to proceed with the suit and the Misc. Case in accordance with the law.

13. In the facts and circumstances of the case, there will be no order as to costs.