

Adarsh Cooperative Housing Society Ltd.
 Union of India Vs The Government of Maharashtra and Another

Court: Bombay High Court

Date of Decision: May 2, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 27 Rule 1, Order 6 Rule 15, Order 6 Rule 6, Order 7 Rule 11(d)

Constitution of India, 1950 â€” Article 300, 77(3)

Citation: (2014) 3 BomCR 492

Hon'ble Judges: R.S. Dalvi, J

Bench: Single Bench

Advocate: Kevic Setalwad, Mr. Som Sinha, Mr. Dhiren Shah, Ms. S.M. Chheda, Navroz Seervai, Sr. Advocate, Mr. Sharan Jagtiyani, Mr. Saket Mone, Ms. Tejaswini Bhakare i/b Vidhii Partners for Applicant, Advocate for the Appellant; Navroz Seervai, Sr. Advocate, Mr. Sharan Jagtiyani, Mr. Saket Mone, Ms. Tejaswini Bhakare i/b Vidhii Partners for Defendant No. 2, Mr. A.Y. Sakhare, Sr. Advocate, Mr. Uday Nighot and Mr. R.M. Vasudeo, AGP for Defendant No. 1, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R.S. Dalvi, J.

This Notice of Motion is taken out by defendant No. 2 for a declaration that the suit filed by the plaintiff through the General

Officer in Command (GOC) is without sanction an authority in law as per the provisions contained in Military Lands Manual (MLM) and the rules

for the Acquisition, Custody and Relinquishment of Military Lands in India, 1944 (ACR) and the instructions contained in "Disposal of Old

Records" and for holding that the suit is barred by law under Order 7 Rule 11(d) of the CPC and to reject the plaint.

2. The suit is filed by the Union of India. It is on title. The plaintiff has applied for declaration that it is the sole and absolute owner of the suit

property for recovery of possession and other incidental reliefs. Being a suit by the Union of India, it is filed by the officer appointed by the

Government in that behalf.

3. Paragraph 75 of the plaint shows the averments that the plaint is declared by Major General Deepak Saxena, Chief of Staff, HQ, MG & G

Area, who is duly authorized by GOC, MG & G area, who is in turn is duly authorized by the plaintiff to file the suit.

4. Defendant No. 2 has challenged the verification as being barred by law and called upon the Court to reject the plaint on that ground.

5. The plaint is verified under the provisions of Order 27 Rule 1 of the CPC which runs thus:

ORDER XXVII

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS

IN THEIR OFFICIAL CAPACITY

1. Suits by or against Government. -In any suit by or against [the Government], the plaint or written statement shall be signed by such person as the

Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint

and who is acquainted with the facts of the case.

6. The plaintiff has, therefore, averred how the deponent of the plaint is the officer appointed by the Government of India. This the plaintiff has

shown from 4 letters annexed to its affidavit-in-reply upon the objection of defendant No. 2 of the valid appointment of the deponent. Learned

Additional Solicitor General of India drew the Court's attention to Article 300 of the Constitution of India, under which the Government of India

may sue or being sued in the name of Union of India and the Government of any State. Further under Article 77(3) the conduct of business of the

Government of India are under the rules of business made by the President for more convenient transaction of the business of the Government of

India and for allocation of the said business amongst Ministers. The learned Solicitor General referred to and produced the Government of India

Allocations of Business Rules (ABR) issued by the President on 14.01.1961. Under Rule 2 of the said rules the business of Government of India is

to be transacted in Ministries, Departments, Secretariats and offices specified therein. Under Rule 3 of the rules, the distribution of the space

amongst the various departments as shown in the second schedule is made. Under Rule 4 the allocations of departments amongst Ministries is

made. Item No. 9 in the first schedule to the rules relating to Rule 2 deals with the Ministry of Defence (Raksha Mantralaya). The second schedule

under Rule 3 inter alia shows the Ministry of Defence (Raksha Mantralaya) being inter alia in charge of ACR of properties and eviction of

unauthorized defence land and property.

7. The plaintiff has shown the Ministry of Defence, which is the relevant department in charge of property of the Department of Defence and

consequently in charge of eviction of unauthorized occupants from defence land. The letter dated 19.05.2011 signed by the Director (Vigilance) of

the Ministry of Defence shows that the Defence Minister (Raksha Mantri) has approved appropriate action to be taken by the Army in

consultation with the DGDE.

8. The Joint Secretary (C & W) of the Ministry of Defence authorized HQ, MG & G Area, Mumbai on behalf of the Ministry of Defence to file

the above title suit. The letter states that it is issued with the approval of the Minister of Defence.

9. Consequently the relevant officer of the Army being the Lieutenant Colonel I of the integrated HQ, MOD (Army) issued a letter that the Chief of

Army Staff (COAS) has directed his department to file the title suit in consultation with the Law Officer and Representative of DGDE.

10. The averments in para 75 are thus substantiated. The suit of the plaintiff through the Ministry of Defence has been directed to be filed by the

HQ, MG & G Area represented by Major General Deepak Saxena who has verified the plaint.

11. If he is not duly authorized, he would not be entitled to verify the plaint. The suit of the plaintiff would nevertheless be filed. The verification of

the plaint is under Order 6 Rule 15 of the CPC. The plaint would be verified by the officer of the Government of India duly appointed as per

Order 27 Rule 1 of the CPC.

12. In the case of All India Reporter Ltd. and Another Vs. Ramchandra Dhondo Datar, to which my attention has been drawn by the learned

Additional Solicitor General, the extent of defects in the matter of procedure which would invalidate the suit is shown. In paras 13 & 14 of the

judgment it has been held that signing, verification and presentation of the plaint relate merely to procedure. If the plaintiff does not strictly comply

with the requirements of Order 6 it would be merely a defect or irregularity which could be rectified. Relying upon the judgment in the case of

Uttaram Vithaldas Vs. Thakur Das Parshottamdas AIR 1922 Bombay 113 (DB); ILR 46 Bombay 150 (DB) in which the dismissal of the suit on

the ground of the defects in the verification and presentation of the plaint was set aside, it was held that the suit itself cannot be invalidated, the

technical irregularities can be cured at any time irrespective of the question of limitation.

13. It would have to be shown by defendant No. 2 who seeks rejection of the plaint under Order 7 Rule 11(d) of the CPC how from a reading of

the plaint the authority of the person verifying the plaint is not made out. As aforesaid the averments in para 75 have been substantiated upon the

objections taken by defendant No. 2 to the authority of the deponent of the plaint on behalf of the Union of India.

14. Defendant No. 2 has relied upon not the plaint itself but the MLM, the rules for the ACR and the instructions of "Disposal of Old Records" for

which a declaration is claimed that the suit being filed by the GOC was without sanction or authority in law. Mr. Seervai on behalf of defendant

No. 2 would contend that this lack of authority goes to the root of the matter necessitating the rejection of the plaint. That lack of authority sought

to be shown by the aforesaid documents may cursorily be seen thus.

15. The introduction to the rules are expressly stated to be for the information and guidance of all concerned. The rules are for ACR etc. They

bear no reference to filing of suits. Reliance thereupon is, therefore, wholly misconceived.

16. Defendant No. 2 would contend that the Defence Estate Officer (DEO) (who is the successor-in-title of the Military Estate Officer (MEO)) is

in immediate control over defence land and consequently the custodian of the title documents of defence properties. Defendant No. 2 contends

that the title documents are maintained in the forms of entries in Military Lands Register. Mr. Seervai has produced the MLM 1945 Edition as

modified upto 31.12.1944, to show the various notifications of the Government issued from time to time which could constitute ""law"". The

introduction to the MLM shows that it is intended to be a guide to the procedure to be adopted with regard to the administration of Military lands

as also their requisition and relinquishment.

17. This guide inter alia shows certain orders passed by the Governor General in Council (GGC). Appendix "C" to the MLM is in respect of

various matters including the signing of plaints and written statement which is considered under item No. 10 thus:

10. Signing of plaints and written statements.-The Governor General in Council has empowered the Military Estates Officers and Executive

Officers of Cantonments to sign plaints and written statements in connection with suits relating to military lands.

(1505-L.C/A.D. 4, dated 2nd July, 1930.)

18. Defendant No. 2 has further contended that the suit property is outside cantonment area and suits in respect of such properties are to be filed

by the MEO as decided by the Government of India under notification dated 31.12.1930 which is item No. 13 in the aforesaid Appendix "C" to

the MLM. Item No. 13 runs thus:

13. Suit in connection with military lands outside Cantts.-The Government of India have decided that law suits in connection with military lands

outside Cantts should be filed and defended by the M.E.Os. Concerned.

(A.D. No. 876-R/A.D. 4, dated 31st December, 1930.)

19. The aforesaid items under the aforesaid manuals which is specifically to be intended to be a guide to the procedure would be required to be

seen under the aforesaid item Nos. 10 & 13 being the orders dated 02.07.1930 and 31.12.1930. The MEO (who is the predecessors-in- title of

the DEO) is empowered to sign the plaint of Military lands. Suits relating to Military lands outside the cantonment ""should"" be filed by MEOs.

These are by way of a guide. These rules, which are in the nature of guidelines, show the empowerment and show who should file the suit. It does

not exclude any other authority. It does not even confer exclusive powers upon the authorities mentioned namely the MEO (and later the DEO).

20. Suits by and against the Government are required to be filed by the person whom the Government has appointed in a given case under Order

27 Rule 1 of the CPC. That specific appointment is of the deponent of the plaint as shown above under Order 27 Rule 1 of the CPC such specific

appointment would, therefore, supersede the orders passed and rules made under the MLM which is a mere guide.

21. Defendant No. 2 would contend that the order of the GOC would survive even the repeal of a statute. (See. Mohan Agarwal Vs. Union of

India (UOI) and Others,) which has been followed in Chief Executive Officer Vs. Surendra Kumar Vakil and Others, .

22. Defendant No. has relied upon a letter issued by the Government of India, Ministry of Defence on 18.03.1989 to the Director General,

Defence Estate, Ministry of Defence to show that the aforesaid two orders of the GOC of 1930 were in fact continued in 1989. The letter dated

16.03.1989 relates to ""consultation of orders delegating powers for management of defence land"" and not for filing suits. Enclosures to the letter of

the Ministry of Defence inter alia shows the power to handle legal proceedings. It relates to the sanction which is required to be obtained for filing

suits, appeals and other proceedings including writ petitions. It does not relate to the authority to be given by Government to verify the plaint. This

however would be subject to a specified appointment conferring specified authority to file the specific suit on behalf of the Government.

23. Defendant No. 2 has also relied upon what are stated to be instructions contained in "Disposal of Old Records" which, as the name suggests,

is wholly extraneous to the filing of suits or verification of plaints.

24. Defendant No. 2 has sought declaration of the lack of authority of the deponent of the plaint and the consequent rejection of the plaint. The

Court must only see the averments in the plaint to conclude that the suit is barred by law to reject the plaint under Order 7 Rule 11(d) of the CPC.

That law is shown to be the aforesaid orders of the GOC shown in Annexure "C" to the MLM which is mere a guide. Though the orders show the

empowerment of the MEO or the Rule that MEO ""should"" file suits, it is not the exclusive authority which bars a suit being filed by any other

authority specifically authorized by the Government as per Order 27 Rule 1 of the CPC.

25. The bar created by any law is, therefore, not shown by defendant No. 2. The plaint, therefore, is seen to be correctly filed by the person

authorized in that behalf as averred in para 75 of the plaint and as shown in the aforesaid letters of the Ministry of Defence produced by the plaintiff

in reply to the Notice of Motion.

26. Notice of Motion is wholly misconceived and is, therefore, dismissed.