

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CSA No. 19/2010

Reserved on : 01.02.2024

Pronounced on: 09.02.2024

J&K Housing Board through
its Managing Director,
Green Belt Park, Gandhi
Nagar, Jammu.

.....Appellant(s)/Petitioner(s)

Through: Mr. S. S. Nanda, Sr. AAG

vs

1. Smt. Harbans Kour Wd/o Shri
Karan Singh.
2. Inder Singh S/o Late Sh.
Karam Singh.
3. Ms. Gurvinder Kour D/o Late
Shri Karam Singh.
4. Kulbir Saw Mills, Channi
Himmat, Jammu.
5. State of J&K through Chief
Secretary, J&K Govt. Srinagar.
6. Minister Incharge, H&UD
Department.
7. Collector (Deputy Commr.)
Jammu.

...Respondents

...Proforma respondents

Through: Mr. Anil Mahajan, Advocate

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) This appeal is directed against judgment dated 03.05.2010 passed by the learned Additional District Judge, Jammu (hereinafter to be referred as “the 1st Appellate Court”), whereby an appeal filed by the respondents against order dated 20.02.2010 passed by the learned Sub Judge (CJM), Jammu (hereinafter to

be referred as “the trial court”) has been allowed and the judgment passed by the trial court has been set aside.

2) The facts leading to the filing of the instant appeal are that respondents/plaintiffs had filed a civil suit against appellant/defendants before the trial court seeking permanent prohibitory injunction restraining the defendants from interfering into the land measuring 19 marlas, comprised under survey No. 314 min situated at Thangar Tehsil Jammu. It was pleaded by the plaintiffs that they have purchased the land in question by virtue of a sale deed dated 18.08.1988 and a mutation bearing No. 424 stands attested in favour of the plaintiff, Karam Singh. According to the plaintiffs, they have set up a Saw Mill on the land in question after obtaining licence from the competent authority. It was alleged in the plaint that the defendants, particularly defendant No. 3-J&K Housing Board is threatening to interfere in the possession of the plaintiffs over the suit property, which compelled the plaintiffs to file a suit for injunction against the defendants on 26.09.1997. The said suit was dismissed as withdrawn with liberty to the plaintiffs to file a fresh suit. Accordingly, the plaintiffs filed another suit, which is subject matter of the instant appeal seeking permanent prohibitory injunction against the defendants.

3) The defendants, appellant herein contested the suit by filing its written statement, in which it was claimed that the land in respect of which the plaintiffs claim their ownership is subject matter of award, where-under the appellant-Housing Board has acquired the said land in the year 1982. According to the defendants, the plaintiffs are the encroachers and they have encroached upon the land belonging to the Housing Board. It has been pleaded that out of the total

land of 59 kanals and 9 marlas under khasra No. 314, the Housing Board has acquired 34 kanals and 5 marlas of land by virtue of award dated 30.11.1981. It has been pleaded that the area of land claimed by the plaintiffs falls on the western side of the National Highway Bye-pass, which is a part of the acquired land, whereas rest of land under khasra No. 314 has come under the National Highway Bye-pass and some portion of it is located on the northern side of the National Highway. It has been further submitted that land in question has been kept vacant by the respondent-Housing Board for developing it into a green belt parallel to the National Highway, but the same has been encroached upon by the plaintiffs.

4) Besides, filing reply on merits, the defendants in their written statement raised preliminary objections to the maintainability of the suit. It was submitted that the suit is not maintainable as no notice under Section 57 of the J&K Housing Board Act has been issued or served by the plaintiffs upon the appellant-Housing Board before filing the suit. It has also been contended that the suit is not maintainable as jurisdiction of civil Court is barred under Section 44 of the J&K Housing Board Act. Preliminary objection with regard to the maintainability on the ground of non-payment of proper court fee was also raised by the defendants.

5) Vide order dated 19.04.2007, the learned trial court framed the following issues:

- Issue No. 1. Whether the notice issued by the plaintiff upon defendants is in accordance with provisions of Section 57 of J&K Housing Board Act, if so what is its effect? OPD.

Issue No. 2. Whether the suit is not maintainable in view of Section 44 of the Housing Board Act? OPD

Issue No. 3. Whether the suit is not valued properly for the purpose of court fee and jurisdiction? OPD

Out of the afore-quoted issues, issues Nos. 1 to 3 were treated as preliminary issues.

6) Vide judgment dated 20.02.2010 passed by the learned trial court, preliminary issues were decided and it was held that the suit is not maintained because of non-issuance of notice under Section 57 of the J&K Housing Board Act and it was also held that the civil Court lacks jurisdiction to entertain and decide the suit in view of the provisions contained under Section 44 of the aforesaid Act.

7) The aforesaid judgment dated 20.02.2010 of the trial court was challenged by the respondents/plaintiffs by way of an appeal before the learned Principal District Judge, Jammu, who vide the impugned judgment dated 03.05.2010 set aside judgment of the learned trial court and held that the issues regarding non-issuance of notice under Section 57 of the J&K Housing Board Act and lack of jurisdiction of the Civil Court in view of Section 44 of the said Act, are mixed questions of facts and law and therefore, the same can be decided only after trial of the case.

8) The appellant/defendant has challenged the impugned judgment passed by the 1st Appellate Court through the medium of the present appeal by contending that notice under Section 57 of the J&K Housing Board Act is mandatory in nature and without issuance of the said notice, the suit could not

have been filed by the plaintiffs against the defendants. It has also been contended that the suit is not maintainable as the jurisdiction of Civil Court is barred under Section 44 of the J&K Housing Board Act. It has been further contended that the land under khasra No. 314 and khasra No. 314 min is one chunk of land and the learned 1st Appellate Court has fallen into an error by treating the land under aforesaid khasra numbers as a separate chunks of land.

9) In terms of order dated 26.10.2015, the appeal was admitted to hearing and the following questions of law were framed:

- 1) Whether the suit filed by the plaintiff was maintainable against the J&K Housing Board in view of the specific bar provided for under Section 44 of the J&K Housing Board Act.
- 2) Whether the notice under Section 57 of the J&K Housing Board is mandatory in nature.

10) So far as the first question of law framed by this Court is concerned, it is the contention of the appellant-Housing Board that in terms of Section 44 of J&K Housing Board Act, there is a specific bar provided for the jurisdiction of the Civil Court to entertain a suit in respect of eviction of any person from any Board premises or recovery of rent or damages for use or occupation of such premises. The learned trial Court has also held that bar contained under Section 44 of the J&K Housing Board Act is attracted to the present case and as such, the suit filed by the plaintiffs is not maintainable, whereas the learned 1st Appellate Court has taken a different view and held that this bar to jurisdiction of the Civil Court to entertain a suit is attracted only to the cases of eviction

from Board premises or in relation to cases of recovery of rent or damages in respect of the Board premises and not in respect of any other premises.

11) In order to answer the first question of law, it would be apt to refer to the provisions contained in Section 44 of the J&K Housing Board Act. It reads as under:

“44. Bar of jurisdictions of Civil Courts. - No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person from any Board premises under this chapter or the recovery of the arrears of rent or damages for use or occupation of such premises, or in respect of any order made or to be made or any action taken or to be taken by the competent authority or the Government in exercise of any power conferred by or under this chapter or to grant any injunction in respect of such order or action.”

12) From a bare perusal of the aforesaid provision, it is clear that jurisdiction of the Civil Court is barred in respect of the suit or proceeding, which relates to eviction of a person from any Board premises or which relates to the recovery of the arrears of rents or damages for use or occupation of such premises. It also covers orders made or actions taken by the competent authority or the Government in exercise of any power conferred by or under Chapter-V of the Act or to grant any injunction in respect of such order or action.

13) Coming to the facts of the instant case, the plaintiffs claim that the suit land is their proprietary land, which they have purchased by virtue of a proper sale deed from its erstwhile owner, whereas the defendants/appellant claim that the land in question belongs to the Housing Board as it has been acquired by the Board in terms of award dated 30.11.1981. The plaintiffs have placed on record copies of the sale deed and the revenue record, which *prima facie* show that the land in question, which is comprised in khasra No. 314, even on date of

execution of the sale deed i.e. in the year 1988, was recorded in the name of erstwhile owner and not in the name of the defendant-Board.

14) It has been admitted by the defendant-Board in its reply that whole of the land under khasra No. 314 has not been acquired by the Board and only a portion thereof has been acquired. In the face of the documents placed on record by the plaintiffs and the stand of the Board that whole of land under khasra No. 314 was not acquired by the Board, the question whether the suit land, which is comprised in khasra No. 314, is Board premises, becomes a triable issue.

15) If after trial of the case, it is shown that the suit land is actually the Board premises, then certainly the Civil Court will have no jurisdiction to entertain the suit for injunction in respect of the said land. Similarly, under Chapter-V of the J&K Housing Board Act, orders and actions can be taken by the competent authority or the Government only in respect of the Board premises and not in respect of any other property. Thus, unless it is proved that the appellant-Board proposed to take action against the plaintiffs with regard to the property that belongs to the Board, their action cannot be termed as one under Chapter –V of the Act. So, this can also be determined only after trial of the case.

16) Therefore, the learned 1st Appellate Court is right in holding that the question as to whether the suit is barred under Section 44 of the J&K Housing Board Act, is a mixed question of fact and law, which can be decided only after trial of the case. The learned trial Court, despite being conscious of the fact that there is a dispute about the status of the suit land, has proceeded to hold that the

suit is not maintainable in view of the bar contained under Section 44 of the Act. Therefore, when the trial of the case was yet to take place, it was not open to the learned trial court to hold that the suit is not maintainable.

17) The second question is as regards the maintainability of the suit in view of the provisions contained under Section 57 of the J&K Housing Board Act. The learned trial court has held that no notice was issued or served by the plaintiffs upon the defendant-Board before filing the suit, as such, the suit is not maintainable. The learned 1st Appellate Court has held that this is also a triable issue because unless it is shown that Board or its officers have undertaken any action in pursuance of the J&K Housing Board Act, there would be no requirement of service of the previous notice. As per the impugned judgment passed by the 1st Appellate Court, the question whether the Board or its officers have done anything under J&K Housing Board Act in pursuance of the Act, is a question of fact, which can be determined after trial of the case.

18) Without going into the question whether action of the defendant-Board in trying to interfere in the possession of the plaintiffs over the suit land was an act done under the colour of its powers in terms of the provisions of J&K Housing Board Act, it is to be noted that during the pendency of the earlier suit filed by the plaintiffs, a notice dated 24.10.1997 was issued and served by the plaintiffs upon the appellant-Board in which details about the cause of action were intimated to the defendant-Board. The earlier suit was withdrawn by the plaintiffs in terms of order dated 17.05.2005 and liberty was given to the plaintiffs to file a fresh suit on the same cause of action. It is pertinent to mention here that prior to filing of the earlier suit, the plaintiffs had not served

any notice under Section 57 of the J&K Housing Board Act upon the defendants. It is also worth noting that the suit, which is subject matter of present appeal, was filed by the plaintiffs on 10.09.2005 after withdrawal of the earlier suit on 17.05.2005.

19) The question that arises for consideration is as to whether by serving notice dated 24.10.1997 upon the defendant-Board, during pendency of the earlier suit, the plaintiffs have complied with the provisions contained in Section 57 of the Act. In this regard, the provisions contained in Section 57 of Act need to be noticed. The same read as under:

“57. Notice of suit against Board. - No person shall commence any suit against the Board or against any officer or servant of the Board or any person acting under the orders of the Board for anything done or purporting to have been done in pursuance of this Act, without giving to the Board, officer or servant or person two months previous notice in writing of the intended suit and of the cause thereof, nor after six months from the date of the act complained of.”

20) From a perusal of the aforesaid provision, it is clear that before filing a suit against the Board or against any officer of the Board, two months previous notice in writing of the intended suit and of the cause thereof, has to be served upon the Board or the officer concerned. The provisions contained in Section 57 of the Act are only intended to make the Housing Board aware about the proposed grievance of the plaintiffs so that they can look into the said grievance and avoid the litigation. The purpose of giving prior notice for filing of the suit under Section 57 of the Act can never be to non-suit a litigant on technical grounds. Its purpose is only to give the Housing Board and its officers an opportunity to re-consider the legal position and to make amends and settle the claim of the proposed plaintiff so that public money and time is not wasted on

unnecessary litigation. The aim of Section 57 of the Act is to advance the cause of justice and to give an opportunity to the Housing Board to examine the claim made by the plaintiffs against them lest they should be drawn into avoidable litigation.

21) As already stated, in the instant case, the plaintiffs during the pendency of earlier suit, have served a notice dated 24.10.1997 upon the defendant-Board intimating it about their grievance and cause of action and after withdrawal of their earlier suit, they filed the instant suit. There was no requirement for the plaintiffs to serve another notice after the withdrawal of earlier suit and prior to filing of subsequent suit. The observation of the trial court in this regard is not tenable. By service of notice dated 24.10.1997 on the defendant-Board by the plaintiffs, substantial compliance to the provisions contained under section 57 of the Act has been done by the plaintiffs as the only purpose to serve a prior notice upon the defendants-Board was to make it aware about the cause of action, which they were well informed with service of the aforesaid notice upon them. However, keeping in view the fact that the respondents/plaintiffs have not challenged the finding of 1st Appellate Court on issue No. 1, as such, the said finding is left unaltered.

22) Learned trial court has, while interpreting the words “nor after six months from the date of the act complained of” appearing in the last portion of Section 57 of the Act, held that the suit has to be filed within six months of service of the notice. I am afraid, the interpretation given by the learned trial court to the aforesaid portion of the Section 57 of the Act, is not tenable. What the aforesaid words, when read as a whole with the other portion of the

provision, convey is that the suit has to be filed within six months of the act complained of, which means within six months of the cause of action and not within six months of the service of the notice.

23) In the present case, as per the plaint, the cause of action in favour of plaintiffs arose on 25.09.1997 and the suit has been filed on 10.09.2005. During the intervening period, the plaintiffs had filed previous suit on 26.09.1997, which was dismissed as withdrawn on 17.08.2005 on the ground that it was suffering from formal defect of not having served the notice upon the defendants. In terms of Section 14(1) of the J&K Limitation Act, the time during which the plaintiff has been prosecuting with due diligence, another civil proceeding against the defendant has to be excluded, where the proceeding is founded on the same cause of action and is prosecuted in good faith in a court which, from defect of jurisdiction, or cause of a like nature, is unable to entertain it. Thus, the period from 26.09.1997 to 17.08.2005 is eligible to be excluded while computing six months from the date of cause of action i.e. from 25.09.1997. When this period is excluded, the second suit filed by the plaintiffs is within time. Thus, the trial court landed itself into error by observing that the suit was to be filed within six months of service of the notice.

24) For the foregoing reasons, this Court finds no ground to interfere in the impugned judgment of the 1st Appellate Court. The same is, accordingly, upheld and the appeal is dismissed, leaving it open to the learned trial court to decide issue Nos. 1 & 2 framed in the suit in accordance with the findings recorded by

the 1st Appellate Court without getting influenced by the observations made by this Court on issue No. 1.

25) Copy of this judgment be sent to the learned trial court.

**(SANJAY DHAR)
JUDGE**

Jammu

09. 02.2024

Karam Chand/Secy.

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

