REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No(s). 2511/2011

THE MUNICIPAL COUNCIL, RAGHOGARH & ANR. …Appellant(s)

VERSUS

NATIONAL FERTILIZER LTD. & ORS. …Respondent(s)

WITH

Civil Appeal No. 2512/2011

THE MUNICIPAL COUNCIL, RAGHOGARH & ANR. …Appellant(s)

VERSUS

GAS AUTHORITY OF INDIA LIMITED & ORS. …Respondent(s)

JUDGMENT

N.V. RAMANA, J.

1. These two Appeals arise out of a common Judgment

passed on 3rd August, 2007 in First Appeal Nos.1 of 1996 and 175 of 1995, respectively, by the High Court of Madhya Pradesh, Bench at Gwalior.

2. The short question that arises for our consideration in these appeals is whether the contesting respondents herein, i.e. National Fertilizers Limited and Gas Authority of India Limited, are liable to pay external development charges to the appellant—Municipal Council as per its demand?

3. Both the contesting respondents in these appeals were allotted forest lands within the municipal limits of the appellant Council. Subsequently, the respondents were served with a notice calling upon them to deposit external development charges @ Rs.5/- per sq. meter in consonance with Government of Madhya Pradesh, Housing and Environment Department, Notification No. F.3-39/32/85, dated 28-11-1985. Raising objections, respondents challenged the notices by filing Civil Suits before the District Judge, Guna, Madhya Pradesh contending that they are Central Government entities and would not come under the purview of the said Notification and hence sought declaration and permanent injunction restraining the appellant from demanding external

development fee from them.

4. The District Judge, Guna by separate judgments dated 11th October, 1995 decreed the Suits in favour of respondents and declared that the defendants (appellant and proforma respondents herein) jointly or severally have no right to recover amount by name of external development fee and no amount shall be recovered from the plaintiffs (respondents herein) in the form of external development fee.

5. Against the said judgment of the District Judge, the appellant moved the High Court by way of First Appeals challenging the decree that the Suit has been filed before expiry of period of notice under Section 80, CPC and no Suit is maintainable against the Municipal Council without notice under Section 319 of the Municipalities Act. The other stand taken by the appellant was that since the plaintiffs are avoiding recovery of external development fee, therefore, without payment of ad valorem court fee suit ought to have been dismissed or the trial Court should have rejected the plaint for insufficient payment of court fee.

6. The Division Bench of the High Court by judgment dated

12th May, 2005 allowed the First Appeals and set aside the decree passed by the trial Court. The High Court, however, without giving its opinion on the merits, held that both the Suits have not been properly valued and notice issued was not one under Section 80, CPC and Suits as filed were not maintainable. In the absence of notice under Section 319 of the Madhya Pradesh Municipalities Act, Suit against Municipal Council is not maintainable.

7. The contesting respondents herein challenged aforesaid judgment of the High Court in Civil Appeal Nos. 3502 and 3503 of 2006 before this Court. By order dated 21st November, 2006 this Court opined that having regard to the fact that the State of M.P. did not prefer any appeal against the judgment and decree passed by the learned trial Judge, the Division Bench of the High Court went wrong in holding that the suit was barred under Section 80, CPC. So far as the non-maintainability of the suit for want of notice under Section 319 of the M.P. Municipalities Act is concerned, neither any such plea was taken in the written statement nor any issue was raised before the trial Court by the Municipal Council. Therefore, it was held that the Division Bench of the High Court was wrong in holding that the Suit was not maintainable. This Court, accordingly, set aside the judgment passed by the High

Court and remitted the matter back to the High Court for consideration of the first appeals on merit.

8. The High Court, after considering the matter on merits, by the judgment impugned herein, formed the opinion that the trial Court did not commit any error in declaring that the appellant Municipal Council had no authority under law to charge external development cost and thereby affirmed the judgment of the trial Court and dismissed the appeals of the Municipal Council. Aggrieved thereby, the said Municipal Council is in appeal before us.

9. The case put forward on behalf of the appellant Municipal Council is that it is a statutory body providing various amenities and necessities to the general public residing in its area limits. Relying on Order No.F./3-39/32/85 dated 28-11-1983 of Housing and Environment Department, Government of Madhya Pradesh, it is stated that the areas where there is a Municipal Committee or Municipal Corporation, the internal development work of colonies by House Construction Societies and individual persons will be done in supervision of respective Municipal Committee or Municipal Corporation. For that all the activities pertaining to maintenance,

civil amenities, development work and construction require heavy expenditure. About Rs.5 lakhs per month is the electricity bill to maintain the streetlights and to run pump houses. Nearly Rs.25 lakhs per annum are the vehicle maintenance charges, Rs.50 lakhs for supply of water and pipeline maintenance and about Rs.25 lakhs for sanitation and Rs.2 crores per year is required for maintenance, construction and development of roads. In view thereof, in accordance with the prevailing rules, the externational development fee @ Rs.5/- per. Sq.m. has been legally charged on the contesting respondents and they are liable to make payment. But, unfortunately the trial Court committed legal error and declared that the defendants (appellant and proforma respondents herein) jointly or severally have no right to recover amount by name of external development fee from the plaintiffs (respondents herein) and the same view has been affirmed by the High Court. The entire development activity in the Municipality, Rahograh has come to standstill and it is therefore necessary for this Court to set aside the impugned judgment.

10. On behalf of contesting respondents, it is contended that the contesting respondents are not private entities, nor colonizers. The ownership of the institutions lies with the Government of India

in whose control the day to day activities of the institutions are run. The institutions being totally secured, no outsider can enter the Company premises without prior permission. As regards the maintenance, cleanliness, electricity, roads and safeguarding environment in the entire area is being done by the institutions and therefore they are not binding on the demands of Municipal Council for making payment of external development charges. The Courts below have thoroughly examined the issue in clear legal view and only thereafter rendered the judgment in their favour and therefore there is no occasion for this Court to exercise the power under Article 136 of the Constitution to interfere in these appeals.

11. Having heard learned counsel on either side, we have also given our thoughtful consideration to various Government of Madhya Pradesh Orders including the first and foremost Order on the issue in question viz., No. 2681/1677/32, dated 6th July, 1978 for levying internal development charges. The subsequent Order No. 2997/C.R.129/32/Bhopal, dated 27th July, 1978 provides certain relaxations regarding the mode of payment of the amount required to be deposited under original order dated 6th July, 1978. The next one is the Order No. F.3-39/32/85 dated 28th November, 1983 on levying external development fee @ Rs.5/- per sq. mtr.

12. It is clearly noticeable from the aforementioned Government Orders that they are meant for housing construction societies, colonizers and individual persons where the internal developmental works of the colonies are done by the respective house construction society, colonizers or individual persons. In the same way, if any colonizer, house construction society or individual person constructs a colony under the supervision of Municipal Committee or Municipal Corporation, as the case may be, Rs.5/- per sq. mtr. towards external development charges are applicable. While so, in the case on hand, the contesting respondents are neither colonizers nor house construction societies or individuals. The dwelling units developed by them are for their employees only and not meant for sale or for letting out on rent. Apparently, the construction of dwelling units and the residential areas developed by the contesting respondents are done by the contesting respondents i.e. Government entities being Public Sector Undertakings with the investment of Central Government.

13. For all the aforementioned reasons we do not see any error in the impugned judgment. In our opinion, the trial Court as well as the High Court considered all the relevant issues in their

true spirit and came to the right conclusion that the contesting respondents are not liable to pay any amount in the form of external development fee as demanded by the appellants. The appeals fail and therefore stand dismissed devoid of merit without any order as to costs.

..................................J.
(N.V. RAMANA)

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(S. ABDUL NAZEER)

NEW DELHI,
JANUARY 30, 2018.