

17.04.2013:-

The parties are present through their respective learned counsels. Today is fixed for passing order on following preliminary issues .

1. Whether the suit is maintainable for non issuance of prior notice to the defendant no 1, The Mariani Town Committee?
2. Whether this court has jurisdiction to try the suit?

I have already heard both the sides. Ld counsel for the defendant has submitted that the suit is barred under section 9 of C.P.C. It is stated that this court has no jurisdiction to try the suit in view of section 321,326 of Assam Municipal Act as well as due to bar contained in section 60 and 63 of Assam Town and Country Planning Act.

Whereas Ld counsel for the plaintiff submitted that suit is maintainable in view of section 67 of Assam Town and Country Planning act, which provides that , when any land ,whether within or without the limits of municipality, is required for the purpose of this Act , The State Government may at the request of the board ,proceed to acquire under the provision of land Acquisition Act 1894.

Perused the available materials on record which reveals that plaintiff has filed the suit for declaration of his right of possession and that defendant no 1 have no authority or right to remove the boundary wall and to evict him from suit land. Perusal of Plaint further reveals that plaintiff has pleaded that father of the plaintiff had erected the boundary wall of schedule 'A' land after obtaining due permission from the Mariani Town Committee. It is alleged that due to some ulterior motive and personal interest of defendant no 1 , notice dtd 18.07.12 was issued demanding the plaintiff to demolish the pucca wall . Whereas defendant no 1 in their W.S had stated that the notice was issued upon the name of father of the plaintiff for widening the bye lane.

Section 22, of Assam land and Country Planning Act Provides that The authority shall from time to time with the sanction of the State Government, specify the minimum width of different cases of public streets according to the nature of the Traffic to be carried there , the public localities in which they are situated etc.

Section 23 of the said Act provides that the authority may prescribe a line on one or both side of any public street ,provided a public notice of the proposal has been issued by the authority in the prescribed manner. Like wise section 24,25 and 26 states the power and function of the Authority under the Act.

From the above provisions of The act it appears that the notice dtd 18.07.12& 4.08.12 issued by the Mariani Town Committee was not without jurisdiction.

Now as per section 47 of The Assam Town and Country planning act no suit ,prosecution or other legal proceeding shall lie against any person for anything which is done in good faith intended to be done in pursuance of this Act .

As per section 60 of The said Act No suit prosecution or other proceeding shall lie against an authority or any officer or servant thereof or any person acting under their direction or any Government

Officer or servant employed for the purpose of this Act for anything which is done in good faith in pursuance of this Act or any rules made there under.

Section 63 of the said Act provides that no order made in exercise of any power conferred by or under this act shall be called in question in any court except as provided in this Act.

As per section 9 of Code of Civil Procedure , the courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

In view of the provision 60 and 63 of Assam Town and Country Planning Act , it is seen that there is an express bar of the jurisdiction of civil courts in entertaining suits against order passed by the authority in pursuance of the Act . And as such I am of the considered opinion this court has no jurisdiction to try the instant suit.

As the suit is itself is not maintainable hence question of determining requirement of issuance of prior notice for filing the suit does not arise. Preliminary issue no 1 & 2 are accordingly decided against the plaintiff. In view of the aforesaid fact situation I am of the considered opinion that the plaint is liable to be returned. Show this order to the plaintiff.

Fix- 22.04.13 for appearance of the plaintiff.

(Achma Rahman)

Munsiff No 1, Jorhat.