HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR
(SINGLE BENCH : HON'BLE SHRI JUSTICE J.P GUPTA)

First Appeal No. 646/2013

Adarsh Balak Mandir

vs.

Chairman, Nagar Palika Parishad, Harda and ors.

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Shri R.P. Agrawal, Advocate, Shri Pranjal Agrawal, Advocate with Shri Hemant Namdeo, Advocate for the appellant/plaintiff.
Shri V.S. Shroti, Advocate with Shri Ashish Shroti, Advocate for the respondents/defendants.

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Whether approved for reporting : (Yes/No).

J U D G M E N T
(01.08.2019)

This appeal has been preferred against the judgment and decree dated 3.8.2013 passed in Civil Suit No. 19-A/12 passed by Ist Additional District Judge, Harda whereby the appellant's/plaintiff's suit for declaration of Bhuswami right and the possession over suit land of 1.97 acres land out of Khasra no. 237, area 0.55 acres, Khasra No. 238, area 0.15 acres, Khasra No. 239, area 1.53 acres and to remove the Vardan complex made over it and to delete the name of respondent no. 1 from revenue record and to restrain the respondents/defendants from making any construction and to sell the shops, was rejected.

2. It is not disputed in this case that the aforesaid suit land was

given by erstwhile Provincial Government of CP and Berar by Memo dated 20.9.1943 to the Maharashtra Children Club, Harda for use as play ground. The appellant/plaintiff is successor of Maharashtra Children Club. On the aforesaid land, respondents/defendants are constructing sport complex as well as shopping complex on the basis of the aid given by the Central Government to provide multifarious facility for sports with the modern equipments of exercise and play activities.

3. On 3.6.2005, the appellant/plaintiff files a suit before the Additional District Judge, Harda stating that after getting the aforesaid land from the provincial government, the appellant/plaintiff is using it for the purpose of play grounds and cultural activities organized by the institute. On 5.9.1988, a part of aforesaid land was exchanged with the respondent no. 2, Municipal Council, Harda and the appellant/plaintiff is owner of the land and without following the due procedure of law, name of the respondent no. 2/Municipal Council, Harda has been recorded in the revenue record and this fact came into the knowledge of the appellant/plaintiff on 25.4.2005 and it was also come into the notice of the appellant/plaintiff that the respondents/defendants are intended to construct the sport complex and shops, therefore, the suit is filed to get aforesaid relief against the respondents/defendants with permission under Section 80 (2) of the CPC.

4. On behalf of the respondent/defendant nos. 1 and 2 and respondent/defendant nos. 3 to 6 filed written statements separately denied the claim of the plaintiff/appellant and stated that on behalf of the appellant/plaintiff, the lands were not being used for sports and cultural activities and on account of breach of terms of the allotment, it has been cancelled and advance possession has been

given to the respondent/defendant no. 2, Municipal Council, Harda and in the revenue record, necessary correction has been done in accordance with law and the construction of Vardhan complex and other constructions have been done legally. The appellant/plaintiff has no right and title to challenge it. Apart from it the suit is not maintainable because no notices under Section 80 of the CPC have been given, hence the suit be dismissed.

5. After trial, the learned trial Court has held that the suit land is a state government land and the appellant/plaintiff has not adduced any evidence to show its Bhuswami rights and Patta or ownership over it and it appears that the only permission was given for organizing sports activities and the appellant/plaintiff was not using the disputed land for sports and cultural activities, therefore, the appellant/plaintiff is not entitled to get any relief in the suit. Further dismissed the suit on the ground of non-compliance of provision of Section 80 (1) of the CPC and Section 319 of M.P. Municipalities Act, 1961 as the notices required under the aforesaid sections have not been given before filing of the suit.

6. Challenging the aforesaid findings, this appeal has been preferred on the ground that the impugned finding of the learned trial Court is absolutely illegal, erroneous and arbitrary and the learned trial Court has completely failed to appreciate the documentary and oral evidence in right perspective and resulted into the impugned judgment and decree. The suit land was given under The (Government) Grants Act, 1895 by Provincial Government and this grant will govern by the provision of The (Government) Grants Act, 1895 and it will not come under the provision of M.P. Land Revenue Code. The respondent nos. 3 to 6 have failed to produce any evidence, on behalf of the State Government with regard to cancellation of allotment of the suit premises and taking possession

of the appellant/plaintiff and the learned trial Court has committed legal error in ignoring the fact that the land was given by the provincial government on the permanent lease, therefore, the dismissal of suit and denying the aforesaid relief is contrary to law and further submitted that learned trial Court has wrongly dismissed the suit on the ground of non-compliance of provision of Section 80 (1) of CPC and 319 of MP Municipalities Act, 1961 as with regard to non-compliance of Section 319 of M.P. Municipalities Act, 1961 no objection has been taken by the respondent nos. 1 and 2 and apart from it, in the present case, no such notices are required as it is the suit for declaration, title and injunction. Similarly, the provision of Section 80 (1) of CPC also not applicable in this case as the suit has been filed after taking permission under Section 80 (2) of the CPC. In such case, requirement of notices is not mandatory. In this regard, learned trial Court has mislead itself. Hence the impugned judgment and decree be set aside and the suit of the appellant/plaintiff be decreed.

7. Learned counsel appearing on behalf of the respondent nos. 1 and 2 has submitted that the suit land was given to the appellant/plaintiff for use as a play ground and the land was not given on lease or as a gift as the land was granted for specific use, therefore, no right of ownership or Bhuswami rights can be claimed under any law and the exchange of land with the respondent nos. 1 and 2 with the permission of the Government does not confer any title of the appellant/plaintiff on the land. In this regard language of Ex. P-37 is clear. Apart from it, the suit is time barred. The advance possession of the suit land was given by the State Government in the year 1983 to the Town Improvement Trust, Harda by order dated 4.10.2005, permission was granted to the appellant/plaintiff for using the land as play ground was cancelled and the learned trial Court rightly dismissed the suit for want of notices under Section

80(1) of the CPC and Section 319 M.P. Municipalities Act, 1961. Therefore, the appeal has no substance. It should be dismissed with cost.

8. Having heard the contention of learned counsel for the parties and perusal of record, in view of this court in this appeal following questions arise for determination :-

1. Whether the trial Court committed legal error in rejecting the appellant/plaintiff's suit for want of the notices under Section 80 of CPC and under Section 319 of the M.P. Municipalities Act, 1961?
2. Whether the learned trial Court has committed legal error in not holding that the suit is time barred?
3. Whether the learned trial Court had committed legal error holding that the appellant/plaintiff has no right, title and interest in the suit land?

9. **Question No. 1** :- On perusal of the record of trial Court, it is found that vide order dated 4.6.2005, District Judge, Harda gave permission to file this suit under Section 80 (2) of the CPC in absence of notices under Section 80 (1) of the CPC. Neither this order was challenged before the trial Court nor it has been challenged here by way of cross-objection, therefore, the suit cannot be dismissed for want of notices under Section 80 (1) of the CPC, the learned trial Court has wrongly relied on the case of **Municipality, through Chief Municipal Officer, Raghogarh v. Gas Authority of India Ltd and ors, 2005 (3) MPLJ, 530.** As in the aforesaid case, the permission given under Section 80 (2) of the CPC was challenged before the appellate Court and it was found that the permission was given illegal and no notices were given under

Section 80 of the CPC. Hence this case law is not applicable in the fact and circumstances of the present case and learned trial Court completely ignored the circumstances that the suit was filed after taking permission under Section 80 (2) of CPC and which attended finality.

10. Learned counsel appearing on behalf of the respondent nos. 1 and 2 has also placed reliance on the judgment of this court passed in **Manoj Kumar Shrivastava v. Arvind Kumar Choubey 2002 (1) MPLJ 172**, in which the notice given under Section 80 of CPC was considered insufficient as the same did not fulfill the requirement of statutory notice. The fact of the present case is different. Therefore, the judgment passed in **Manoj Kumar Shrivastava (Supra)** is not relevant here. Hence it cannot be held that the suit is not maintainable for want of notice under Section 80(1) of CPC.

11. So far the notices under Section 319 of M.P. Municipalities Act, 1961 are concerned, the present suit is for declaration of title and protection of possession. It is not a suit to challenge the action taken under the Municipal Act, therefore, the aforesaid provision is not attracted in this case.

12. In this regard, the learned counsel for the appellant/plaintiff has rightly placed reliance on the judgment of this court passed in **Kanhaiyalal v. Nagar Palika Dewas and another, 1958 MPLJ 676** in which Section 17 (1) of Dewas Municipality Act, 1941 was considered and the aforesaid provision was same as under Section 319 of the M.P. Municipalities Act, 1961 in which this court held that the provision of Section 17 of the Dewas Municipalities Act does not attract to the suit for declaration of the title to a land, then it follows that it is also not attracted to suit in so far as it claims, the

relief of declaration with regard to the demolition of the wall.

13. Learned counsel for the appellant/plaintiff has also placed reliance on the judgment of this court passed by **Indore Bench in Civil Revision No. 328/1970 dated 6.10.1972.** The relevant para 6 is as under :-

> 6. It is no doubt true that under Section 319 notice is a must before filing of the suit but that must relate to "for anything done or purporting to be done under the Act by the Council or any Councillor, officer or servant thereof or any person acting under the direction of such Council, Councillor, officer or servant". In the present case the applicant Municipal Committee wanted to remove the encroachment of the non-applicant and the non-applicant is merely asserting his title and for the declaration of his title he filed the present suit. A mere notice by the council cannot be termed as an act done. The assertion of title to a property cannot be said to be doing an act or purporting to do an act and as such the suit if filed by the plaintiff cannot be said to be one for any act done or purporting to be done under the Act by the Council or any officer. The relief of declaration that the encroachment cannot be removed as the property belongs to the non-applicant is merely an ancillary relief of the declaration of title. If I hold that clause (1) of Sec. 319 of the Act is not attracted to a suit for declaration of title to a land, then necessarily follows that it is also not attracted to the suit in so far as it claims the relief of declaration with regard to demolition of the encroachment. Mere combining of

> the two reliefs that is to say reliefs for declaration and injunction in the same suit would not attract the provisions of clause (1) of Section 319. A suit for injunction could be filed without notice and there is no doubt about it. Sub-Clause (3) of Section 319 of the Act is clear on the point. A suit for declaration of title could also be filed without notice as it does not relate to any act done or purporting to be done under the Act by the Municipality or any of its officers which is a condition precedent when a notice is required to be given in a suit where such an act is being challenged. The object of the provision of clause (1) of Section 319 of the Act is to give an opportunity to reconsider the position with regard to the claim and to make amends or settle the claim if that is necessary looking to the notice of the party. This principle cannot be applied to a suit whose object was to obtain a declaration of title to the property. Since a suit for injunction could be filed without notice under clause (3) of Sec. 319 of the Act and a suit for declaration for title to the property can also be filed without notice, it was not at all necessary in the present case, even though both the reliefs were claimed by the non-applicant in the same suit, to serve a notice on the applicant. The lower Court has correctly held that the present suit is maintainable without service of a notice on the applicant as contemplated under clause (1) of Section 319 of the Act."

14. On the other hand the learned counsel appearing on behalf of the respondent nos. 1 and 2 has placed reliance on the judgment passed in **Municipality, through CMO (Supra)** in which the

suit was filed to restrain the municipality to recover the external development fees without giving notices under Section 319 of the Municipalities Act, 1961 therefore, in that case, the requirement of the notices was considered essential but the fact of the present case is different as in the present case, no action under M.P. Municipalities Act has been challenged. Similarly, another judgment relied by the learned counsel for the respondent **Manoj Kumar (Supra)** is concerned the same is also relating to the suit for damages on account of demolition of Hotel by municipal corporation in which it is held that without notice suit was not maintainable, accordingly, the facts of that case is totally different from the present case.

15. In view of the discussions, it is held that in the present case, there is no requirement of notices under Section 80 (1) of the CPC or 319 of the Municipalities Act, 1961 before filing of the suit, therefore, learned trial Court has committed legal error in holding that the suit is not maintainable for want of the aforesaid notices.

16. **Question no. 2 :** It is contended by learned counsel for the respondent nos. 1 and 2 that the suit was barred as the advance possession was given by the State Government in the year 1983 to the Town Improvement Trust but in the case, there is no evidence to prove the fact that the aforesaid so called transfer of possession, which was taken on the paper, was taken place in the knowledge of the appellant/plaintiff in absence of it this cannot be said that the suit of the appellant/plaintiff is time barred, therefore, learned trial Court has not committed any error holding that the suit is within time.

17. **Question no. 3** :- Now next question is that whether the appellant/plaintiff has established any title, interest over the suit

property and learned trial Court has committed error in dismissing the suit? According to the pleading of the appellant/plaintiff, the suit land was given to the appellant/plaintiff for use as a play ground by the order of the grant dated 20.9.1943. As per the pleading of the appellant/plaintiff, the suit land was not given on lease or as a gift. So far permission for lying fencing and to exchange some part of land with another land of the respondent nos. 1 and 2 by Ex. P-37 is concerned, the same do not confer any right of the appellant/plaintiff to the suit land. Apart from it, there is no pleading with regard to grant of accrual of title to the suit land. The evidence laid by the appellant/plaintiff by the statements of Abhay Kakre P.W. 1 and Krishna Bohare P.W. 2 are related to use of the land and getting permission for fencing of the land and exchange of some part of the land from respondent nos. 1 and 2 with the permission of the Government and no document has been filed to prove the fact that the appellant/plaintiff has got any title in the suit land, therefore, learned trial Court has not committed any error in dismissing the suit for declaration of title.

18. Learned counsel appearing on behalf of the appellant/plaintiff has submitted here that the suit land which was given by the CP and Berar Govt. under The (Government) Grants Act, 1895 and on this grant, Provision of Transfer of Property Act is not applicable and this grant can be cancelled only on the terms of the grant and no action has been taken in the terms of the grant to cancel it, therefore, the respondents/defendants cannot deprive the appellant/plaintiff to use the suit land as a play ground and to that extent the appellant's suit should have been decreed.

19. In the present case, on behalf of the respondents/defendants, no iota of evidence or any document has been produced to establish the fact that the grant was given on which terms. Neither the term

has been pleaded nor any evidence has been adduced to prove the terms in accordance with Evidence Act.

20. Learned counsel appearing on behalf of respondent nos. 1 and 2 has further contended that in absence of specific pleadings and evidence with regard to terms of grant, the term of the grant cannot be implemented in air and further submitted that the grant came in purview of license and it was only for use of the land for specific purpose without any premium or fee, therefore, it can be revoked at any time by the M.P. State Government who is successor of erstwhile C.P. and Berar Government and licensee has no right to claim injunction or possession except the claim of compensation under Section 64 of the Indian Easement Act, if the license was granted for consideration, at present case, this section is also not applicable, as no consideration has been paid for the license. Therefore, the appellant/plaintiff has no right to get any relief in this case.

21. In the present case, the appellant/plaintiff has not pleaded the terms of the grant and no evidence has been adduced to prove the term of the grant. In this regard, it is said that the copy of the deed of the grant is available in the record of the revenue court which was called by the learned trial Court during the trial and it is also available in this court. But in view of this court, the document which has not been tendered in evidence cannot be considered as piece of evidence in the case and no reliance can be placed here on such document which has not been tendered in evidence. It is the duty of the appellant/plaintiff to plead and then prove it in accordance with law, therefore, in this case, the appellant/plaintiff has failed to prove the terms of the grant.

22. Undoubtedly, the grant was given under The (Government) Grants Act, 1895 and given by the CP and Berar Government as it is

found to be proved by Ex. P-28 which is a permission for fencing of the land given by the Commissioner, Jabalpur. Therefore, it will be governed by the provision of the Act. The relevant provision of The (Government) Grants Act, 1895 are Sections 2 and 3 which are as under :-

> 2. Transfer of Property Act, 1882, not to apply to Government grants.- Nothing in the Transfer of Property Act, 1882 (4 of 1882), contained shall apply or be deemed ever to have applied to any grants or other transfer of land or of any interest therein heretofore made or hereafter to be made [by or on behalf of the [Government]] to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.
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> 3. Government grants to take effect according to their tenor.- All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

23. The aforesaid provision of the Section 2 made it clear that The Transfer of Property Act will be non-applicable, on any grant made under the aforesaid provision and Section 3 made it mandatory that grant will be governed by its term despite of any thing in any other law.

24. As mentioned earlier that in this case no term of grant has

been pleaded or proved, therefore, the grant cannot be implemented as per its term, which is not clear, therefore, the appellant's/plaintiff's claim on the basis of the so called terms of grant is concerned the same is not justifiable.

25. The grant given under Government Grant Act, 1895 given for use of suit land as play ground without any consideration and fee, came in preview of definition of license, as defined in Section 52 of the Indian Easement Act, 1882 and in absence of specific pleading and proof of the term of the grant, the aforesaid license is revokable as per provision of Section 60 of Indian Easement Act and the licensee has no right to claim relief of injunction against the granter, hence in view of this court, the appellant/plaintiff is not entitled to get any relief as claimed in the suit or as claimed in the appeal.

26. In view of the aforesaid reasons, the learned trial Court has not committed any legal error to reject the suit of the appellant/plaintiff with regard to the suit land for the prayer as claimed in the plaint. Hence this appeal is dismissed.

27. Consequently, the cost of the suit and this appeal be paid by the appellant/plaintiff to the respondents/defendants and the decree be framed accordingly.

(J.P. GUPTA)
JUDGE

VKV/-

HIGH COURT OF MADHYA PRADESH : PRINCIPAL SEAT AT JABALPUR

1	Case Number	First Appeal No. 646/2013
2	Parties Name	Adarsh Balak Mandir vs. Chairman, Nagar Palika Parishad, Harda and ors.
3	Date of Judgment/Order	01.08.2019
4	Bench Constituted of	Hon. Shri Justice J.P. Gupta
5	Judgment delivered by	Hon. Shri Justice J.P. Gupta
6	Whether approved for reporting	YES
7	Name of the counsel for the parties	Shri R.P. Agrawal, Advocate, Shri Pranjal Agrawal, Advocate with Shri Hemant Namdeo, Advocate for the appellant/plaintiff. Shri V.S. Shroti, Advocate with Shri Ashish Shroti, Advocate for the respondents/defendants.
8	Law laid down & Significant paragraphs number. 1. Paras 9 and 10 2. Paras 11 to 15 3. Paras 22 to 25	1. If the suit is filed against the Government after taking permission under Section 80(2) of CPC and the order has not been challenged, the suit cannot be dismissed for want of notice under Section 80 (1) of the CPC. 2. Suit filed for declaration and injunction to restrain the interference in the possession of the property is not a suit challenging action of the Municipalities discharging under the M.P. Municipalities Act. Therefore, no notice under Section 319 of M.P. Municipalities Act is required before filing of the suit (see Kanhaiyalal v. Nagar Palika Dewas and another, 1958 MPLJ 676 and Judgment dated 6.10.1972 passed in Civil Revision No. 328/1970 by Indore Bench of this court. 3. The land granted for use of play ground under the Government Grants Act, 1985 by the C.P. and Berar Government is a license, firstly it will be governed by the terms of grant and in absence of proof of the terms it will be governed by the provisions of Indian Easement Act and on illegal revocation no relief can be claimed except the relief may be claimed under the Act.

(J.P. GUPTA)

JUDGE