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considered better by an accused, if his case has to go to the High Court, that it should go by way of appeal than by way of revision.

In these circumstances I am still of the opinion that the view we took in *Gurcharan Singh's case* (1), was correct and that if there is any discriminatory provision in the Prevention of Corruption Act, read with the Criminal Law Amendment Act of 1952, which offends against Article 14 of the Constitution, it is not section 5(2)(c), but section 5(4) which still permits the prosecution of public servants at the caprice of the local authorities under section 409, Indian Penal Code, in the ordinary magisterial Courts and without the previous sanction of any authority.

I therefore agree with my learned brother that section 5(2)(c) of the Prevention of Corruption Act is *intra vires* and does not offend the provisions of Article 14 of the Constitution and that the appeal should now be decided on its merits by a Single Judge.

APPELLATE CIVIL

Before Bishan Narain, J.

THE MUNICIPAL COMMITTEE, NAKODAR,—

Defendant-Appellant

v.

SADHU RAM AND OTHERS,—Respondents

Civil Regular Second Appeal No. 856 of 1955.

1956
Sept. 27th

Punjab Municipal Act (III of 1911)—Section 49—Specific Relief Act (I of 1877)—Section 54—Resolution passed by Municipal Committee claiming the disputed land to be its property—Suit for declaration and mandatory injunction—No notice given to the Committee—Suit whether competent—Specific Relief Act—Section 54, applicability of.

Held, that the passing of the resolution by the Municipal Committee is an act covered by section 49 of the Punjab Municipal Act and no suit could be instituted against it without a notice under this provision of law.

Held also, that a suit for declaration in which relief for injunction is claimed as a consequential relief is not a suit of the nature mentioned in section 54, Specific Relief Act.

Bhag Chand Dagadusa and others v. Secretary of State for India in Council and others (1), relied upon. *Ishar v. The Municipal Committee of Lahore* (2), *Municipal Committee, Dinga v. Fateh Mohd and others* (3), held to be impliedly overruled by the Privy Council.

Second Appeal from the decree of the Court of Shri H. S. Bhandari, Senior Sub-Judge, with enhanced appellate powers, Jullundur, dated the 16th day of August, 1955, reversing that of Shri Om Parkash, Sub-Judge, 1st Class, Jullundur, dated the 29th April, 1955, and decreeing the plaintiff's suit and leaving the parties to bear their own costs throughout.

F. C. MITTAL, for Appellants.

TEK CHAND, for Respondent.

JUDGMENT.

BISHAN NARAIN, J.—This second appeal arises Bishan Narain, out of a suit filed by Sadhu Ram against the Municipal Committee, Nakodar, which was dismissed by the trial Court but was decreed by the Senior Sub-Judge, Jullundur, on appeal. The Municipal Committee has filed this second appeal.

The only point that requires decision in this appeal is whether the present suit could be instituted without complying with the provisions of section 49 of the Punjab Municipal Act.

(1) I.L.R. 51 Bom. 725

(2) 32 P.R. 1914

(3) A.I.R. 1939 Lah. 254

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Sadhu Ram applied to the Municipal Committee, Nakodar, for permission to erect superstructure on a piece of land which, according to his allegations, belonged to him. The Municipal Committee, however, by resolution No. 50, dated the 11th of August, 1954, refused this permission on the ground that in fact the plot of land belonged to it. Thereupon the present suit was filed by Sadhu Ram for a declaration that the site in question belonged to him and for an injunction that the Municipal Committee be restrained from preventing him from erecting superstructure thereon. The Municipal Committee *inter alia* pleaded that the suit without a previous notice under section 49 of the Municipal Act is incompetent. It is common ground in the present case that no such notice was given by the plaintiff before filing the suit nor was there any averment in the plaint that any such notice was given. The trial Court held that no notice was necessary and for this decision it relied upon *Ishar v. The Municipal Committee of Lahore*, (1), and on the decision of the Lahore High Court reported in *Municipal Committee, Dinga v. Fateh Mohamad and others* (2). The trial Court, however, dismissed the suit on the ground that the plaintiff had failed to prove his title to the site in dispute. On plaintiff's appeal the Senior Sub-Judge came to the conclusion that the plaintiff had succeeded in proving his title and accordingly decreed the suit. It appears that the issue regarding notice was either not argued before him or he did not deal with it. The Municipal Committee, Nakodar, has filed a second appeal and the first point urged before me relates to the notice under section 49 of the Punjab Municipal Act.

Section 49 of this Act reads—

“No suit shall be instituted against a committee, or against any officer or servant of a Committee, in respect of any act purporting to

(1) 32 P.R. 1914

(2) A.I.R. 1939 Lah. 254

be done in its or his official capacity, until the expiration of one month next after notice in writing has been, in the case of a committee, delivered or left at its office, and in the case of an officer or servant, delivered to him or left at his office or place of abode, stating the cause of action and the name and place of abode of the intending plaintiff; and the plaint must contain a statement that such notice has been so delivered or left:

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Provided that nothing in this section shall apply to any suit instituted under section 54 of the Specific Relief Act, 1877."

This section in effect reproduces the provisions of section 80 of the Code of Civil Procedure with necessary changes to make it applicable to Municipal Committees and their officers, but the period after which the suit is to be filed is reduced to one month. Section 49, however, contains a proviso to it which does not find place in section 80, Civil Procedure Code.

It is argued by the learned counsel for the plaintiff-respondent that the present suit is not a suit in respect of any act of the Municipal Committee purporting to be done in its official capacity and therefore section 49 has no application to it. There is no substance in this contention. The grievance of the plaintiff is that the Municipal Committee has passed a resolution claiming the disputed land to be its property. This resolution has been passed in accordance with the provisions of section 193(2) of the Punjab Municipal Act. The resolution, therefore, must be held to be an act done or purporting to be done under the Punjab Municipal Act. In any case their Lordships

The Municipal Committee, Nakodar v. Sadhu Ram and others of the Privy Council construing similar words in section 80, Civil Procedure Code, have laid down in *Bhagchand Dagadusa and others v. Secretary of State for India in Council and others.* (1)—

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“The Act, albeit a Procedure Code, must be read in accordance with the natural meaning of its words. Section 80 is express, explicit and mandatory, and it admits of no implications or exceptions. A suit in which *inter alia* an injunction is prayed is still ‘a suit’ within the words of the section, and to read any qualification into it is an encroachment on the function of legislation.”

Their Lordships in this judgment noticed the conflict in various Courts in India on this question and came to the conclusion that the view taken by Bombay was unsound and that the view taken by the Courts of Calcutta, Madras and Allahabad was sound. Thus the passing of the resolution of the Municipal Committee must be held to be an act covered by section 49 and no suit could be instituted against it without a notice under the provision of law, which admittedly has not been done in the present case.

It was then argued that the present suit is of the nature mentioned in the proviso to section 49 and therefore, no notice before institution of the suit was necessary. This proviso lays down that section 49 is not applicable to suits instituted under section 54 of the Specific Relief Act. It is to be noticed that this proviso does not apply to all suits for injunction but only to those suits which seek injunction of the nature mentioned in section 54 of the Specific Relief Act.

(1) I.L.R. 51 Bom. 725

To decide this matter it is necessary to determine the nature of the present suit and for this purpose the plaintiff must be construed and the substance of the relief, as distinct from its mere form, must be determined. It is clear from the present plaintiff that according to the plaintiff the resolution dated the 11th of August, 1954, casts cloud on his title and affords him a cause of action inasmuch as thereby the Municipal Committee claims ownership of the site. Accordingly he has filed the suit for a declaration of his title and for a mandatory injunction that on this ground the Municipal Committee should be restrained from preventing him from constructing on the site. Obviously a suit of this nature is for a declaration of title and for a consequential relief of injunction. It may be pointed out that in the plaintiff the resolution is alleged to be invalid, *ultra vires*, capricious, etc. It is not a case in which the Court is free to uphold the title and yet in the exercise of its discretion refuse to grant the relief of injunction. This relief cannot be claimed as a substantive relief independently of the declaration sought. From this it follows that the relief for injunction claimed is merely auxiliary of the declaration of title and flows directly from the principal relief for declaration. The real object of the present suit is to establish the title to the site in question and to disapprove the assertion of the Municipal Committee that it is the owner thereof.

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The learned counsel, however, argues that the present suit is of the nature mentioned in section 54, Specific Relief Act. Now that provision of law contemplates a suit in which the relief of injunction is claimed as a substantive relief as distinct from consequential relief. Section 7(iv)(d) of the Court-fees Act relates to such suits. I am, however, unable to see how this suit can be taken to be one under section 54 of the Specific Relief Act. It is argued that the suit is covered by the cases mentioned in (b)(c) and

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(d) of section 54, but the mere reading of these sub-clauses makes it obvious that the present suit has nothing to do with them. The learned counsel has, however, relied on *Ishar v. The Municipal Committee of Lahore*, (1), and on the decision in *Municipal Committee, Dinga v. Fateh Mohammad and others*, (2), in support of his arguments. There is no doubt that these cases support the learned counsel. In the Punjab Record case Reid C. J. has given the decision in accordance with the view which prevailed at that time in Bombay. That Bombay view, however, has been held to be unsound by their Lordships of the Privy Council in *Bhagchand Dagadusa and others v. Secretary of State for India in Council and others*, (3),—(vide *Vithoba Babaji Narote and others v. Sholapur Municipality*, (4), in this connection). The case reported in *Municipal Committee Dinga v. Fateh Mohammad and others* (2), merely follows *Ishar v. The Municipal Committee of Lahore* (1). I am, therefore, of the opinion that both these cases must be considered to have been impliedly overruled by the Privy Council. For all these reasons I am of the opinion that the present suit is not of the nature mentioned in section 54, Specific Relief Act, and that it is a case in which relief for injunction is claimed as a consequential relief to the declaration sought.

Finally the learned counsel argues that the Municipal Committee must be deemed to have waived the privilege of the previous notice granted to it by section 49. The facts relevant for the purposes of this matter are as follows. The plaintiff in his plaint had not mentioned that any notice had been given to the defendant committee under section 49 of the Act. The

(1) 32 P.R. 1914

(2) A.I.R. 1939 Lah. 254

(3) I.L.R. 51 Bom. 725

(4) A.I.R. 1947 Bom. 241

Municipal Committee in its written statement objected to the competency of the suit on the ground of non-compliance with this provision of law. The trial Court framed an issue, but it decided it against the Municipal Committee. The suit was, however, dismissed on merits. The plaintiff appealed to the Senior Sub-Judge who decided the appeal on merits and decreed the plaintiff's suit, but did not discuss the issue relating to section 49 of the Punjab Municipal Act. The contention is that by not arguing this matter before the Senior Sub-Judge the Municipal Committee must be deemed to have given up this point and waived its right to get the suit dismissed on this ground. There is in my opinion no substance in this contention. The provisions of section 49 are mandatory and a suit without notice cannot be instituted and therefore cannot be entertained. The principle of waiver and estoppel cannot possibly apply to a case where the plaintiff does not allege that any notice had been given by him before the institution of the suit. In the Privy Council case already referred to, the plea under section 80, Civil Procedure Code, was raised after the expiry of two years of the institution of the suit and yet the plea was entertained and given effect to. The present is a stronger case because the plea was raised in the written statement and an issue was framed and decided by the trial Court. Mere omission to raise the plea before the Senior Sub-Judge as a respondent cannot amount to an admission that a suit without notice is competent. Whether section 49 applies to the present case is a pure question of law and no facts are in dispute. This being so, I see no reason for disallowing this plea being argued in second appeal or for not enforcing the mandatory provisions of this section. For all these reasons I am of the opinion that the present suit could not be instituted before the expiry of one month of the notice under section 49 of the Punjab Municipal Act to the Municipal Committee, Nakodar.

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In this view of the matter the suit must be held to be incompetent and the plaint must be rejected under Order VII rule 11 (d) of the Code of Civil Procedure. It follows therefore that it is not necessary to discuss other issues raised or decided in the present case as the entire proceedings have been held to be invalid.

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The result is that this appeal succeeds and is accordingly accepted. The plaint is rejected under Order VII, rule 11(d), Civil Procedure Code. The parties are left to bear their own costs in this Court.

APPELLATE CIVIL

Before Bishan Narain, J.

FIRM RAM LAL-HARNAM DASS,—*Defendants-Appellants*

v.

SHRI BAL KRISHAN AND OTHERS,—*Petitioners-Respondents*

First Appeal from Order No. 157 of 1954.

1956

Oct- 23rd

Indian Partnership Act (IX of 1932)—Section 69—Scope of—Expression “or other proceeding”—Meaning of—Displaced Persons (Debts Adjustment) Act (LXX of 1951)—Proceedings under by unregistered firm and its partners—Whether barred by section 69(3) of the Partnership Act—Interpretation of Statutes—General words following particular and specific word—Construction of.

Held, that section 69 of the Indian Partnership Act does not purport to make registration of a partnership compulsory nor does it prohibit enforcement of a claim by an unregistered firm. The language used in subsection (1) and (2) of the section suggests that the institution of a plaint was being prohibited and not any other proceedings and as a suit is instituted by filing of a plaint, the prohibition is against the institution of a suit only.

Held, that the words “or other proceeding” in section 69(3) of the Act relate to the proceedings of the nature of set-off and nothing else. These words do not apply to other judicial proceedings in contra-distinction to a “suit”