

A

MUNICIPAL BOARD, SUMERPUR

v.

KUNDANMAL & ORS.

(Civil Appeal No. 460 of 2008)

B

APRIL 21, 2017

[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

C

*Supreme Court – Directions – Appellant-Municipal Board filed writ petition against respondents challenging order passed by the Collector – Single Judge of High Court dismissed the writ petition in limine – Appeal before Division Bench was also dismissed in limine – On appeal, held: Both writ Court and the Appellate Court did not even set out the factual controversy nor dealt with the submissions urged by the appellant nor examined the issues in the context of relevant provisions of the Act, which governed the controversy – Therefore, issues cannot be examined in proper perspective by Supreme Court – Thus, matter remanded back to writ Court for deciding the writ petition on merits in accordance with law.*

D

**Partly allowing the appeal, the Court**

E

**HELD: 1. In order to appreciate the factual and legal controversy involved in the *lis*, the least which is expected of is that the order which decides the *lis* between the parties should contain the brief facts involved in the case, the grounds on which the action is impugned, the stand of the parties defending the action, the submissions of the parties in support of their stand, legal provisions, if any, applicable to the controversy involved in the *lis*, and lastly, the brief reasons as to why the case of one party deserves acceptance or rejection, as the case may be. This enables the superior Court to examine the legality of the decision in its proper perspective in its appellate jurisdiction. [Paras 9, 10] [471-B-D]**

F

G

**2. The writ Court should have issued notice of the writ petition to the respondents and then decided the writ petition on merits by reasoned order rather than to dismiss it *in limine*. [Para 11] [471-E]**

H

3. The Appellate Court too while dismissing the appeal *in limine* did not deal with any of the submissions raised by the appellant and nor assigned any reason much less in detail thereby depriving the Appellate Court to examine the issues arising in the case in its proper perspective. [Para 12] [471-E-F]

4. It is for these reasons, the conclusion arrived at by the two Courts below is not satisfactory and it is proper in the facts of this case to remand it to the writ Court for deciding the writ petition on merits in accordance with law. The need to remand the case to the writ Court has occasioned due to the reason that both, i.e., the writ Court and the Appellate Court did not set out even the factual controversy nor dealt with the submissions urged by the appellant and nor examined the issues in the context of relevant provisions of the Act which governed the controversy. [Paras 8, 13] [471-A-B, F-G]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 460 of 2008.

From the Judgment and Order dated 09.03.2006 of the High Court of Rajasthan at Jodhpur in D. B. Civil Special Appeal No. 92 of 2006.

Puneet Jain, Abhinav Gupta, Ms. Chhaya K., Ms. Pratibha Jain, Advs. for the Appellant.

Varinder Kumar Sharma, Ms. Parul Sharma, Advs. for the Respondents.

The Judgment of the Court was delivered by

**ABHAY MANOHAR SAPRE, J.** 1. This appeal is filed against the final judgment and order dated 09.03.2006 passed by the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Special Appeal No. 92 of 2006 whereby the High Court dismissed the special appeal filed by the appellant herein and affirmed the judgment/order dated 02.08.2005 of the Single Judge in S.B.C.W.P. No.1403 of 2004.

2. Facts of the case need not be mentioned in detail except to the extent necessary for the disposal of this appeal.

3. The appellant - a Municipal Board, Sumerpur (writ petitioner) filed a writ petition being Civil Writ No. 1403 of 2004 against the

A

B

C

D

E

F

G

H

A respondents challenging therein the order dated 30.09.2003 passed by the Collector, Pali in Municipal Appeal No.03/2001. The Single Judge of the High Court dismissed the writ petition *in limine* by order dated 02.08.2005 which reads as under:

**“Heard learned counsel for the parties.**

B

**The order impugned, Annex.8 has been passed in compliance of the order passed by Division Bench of this Court dated 15.1.2001 passed inter-parties being Annex.7. It is not shown, as to how the order, Annex.8 is not in accordance with the directions contained in Annex.7. In that view of the matter, I do not find any ground to interfere. The writ petition is, therefore, dismissed summarily.”**

C

4. The appellant, felt aggrieved, filed writ appeal before the Division Bench. By impugned order, the Division Bench dismissed the appeal *in limine*. The impugned order reads as under:

D

**“Having heard learned counsel for the appellant we are of the opinion that no interference is called for in this appeal in the judgment of learned Single Judge who has rightly exercised his discretion in not interfering with the order passed by the Collector as the learned counsel has not been able to show how the impugned order is contrary to direction of Division Bench.**

E

F

**In essence learned counsel for the appellant tried to urge that the decision rendered in Hotechad’s case in the light of which the Division Bench in his earlier decision has directed to decide his representation, was erroneous. That is not permissible.”**

5. Felt aggrieved, the appellant (writ petitioner) has filed appeal by way of special leave before this Court.

G

6. Heard Mr. Puneet Jain, learned counsel for the appellant and Mr. Varinder Kumar Sharma, learned counsel for the respondents.

7. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal in part and while setting aside the impugned order also of the writ Court, restore

H

the appellant's writ petition to its file for its decision on merits in accordance with law. A

8. In our considered opinion, the need to remand the case to the writ Court has occasioned due to the reason that both, i.e., the writ Court and the Appellate Court did not set out even the factual controversy nor dealt with the submissions urged by the appellant and nor examined the issues in the context of relevant provisions of the Act which governed the controversy. B

9. In our considered view, in order to appreciate the factual and legal controversy involved in the *lis*, the least which is expected of is that the order which decides the *lis* between the parties should contain the brief facts involved in the case, the grounds on which the action is impugned, the stand of the parties defending the action, the submissions of the parties in support of their stand, legal provisions, if any, applicable to the controversy involved in the *lis*, and lastly, the brief reasons as to why the case of one party deserves acceptance or rejection, as the case may be. C  
D

10. This enables the superior Court to examine the legality of the decision in its proper perspective in its appellate jurisdiction.

11. Having regard to the nature of controversy involved in the case in hand, in our view, the writ Court should have issued notice of the writ petition to the respondents and then decided the writ petition on merits by reasoned order rather than to dismiss it *in limine*. E

12. The Appellate Court too while dismissing the appeal *in limine* did not deal with any of the submissions raised by the appellant and nor assigned any reason much less in detail thereby depriving the Appellate Court to examine the issues arising in the case in its proper perspective. F

13. It is for these reasons, we cannot concur with the conclusion arrived at by the two Courts below and consider it proper in the facts of this case to remand it to the writ Court for deciding the writ petition on merits in accordance with law. G

14. Since we have formed an opinion to remand the case, we have refrained from recording any finding on merits on any of the issues arising in the case.

15. In view of foregoing discussion, the appeal succeeds and is accordingly allowed in part. The impugned order and the order of the H

A Writ Court are set aside. The writ petition out of which this appeal arises is restored to its file. The writ Court (Single Judge) is requested to decide the writ petition on merits in accordance with law uninfluenced by any of our observations.

16. Since the matter is quite old, we request the Single Judge to  
B decide the writ petition expeditiously.

Ankit Gyan

Appeal partly allowed.