

**“God, Give us men, a time like this demands;  
strong minds, great hearts, true faith and ready hands;  
men whom the lust of office does not kill;  
men whom the spoils of office cannot buy;  
men who possess opinions and a will;  
men who have honour; men who will not lie;  
men who can stand before a demagogue and  
damn his treacherous flatteries without winking;  
tall men, sun-crowned, who live above the fog,  
in public duty and in private thinking;  
for while the rabble, with their thumb-worn creeds,  
their large professions and their little deeds,  
mingle in selfish strife, lo! Freedom weeps,  
wrong rules the land and waiting Justice sleeps.”**

**Josiah Gilbert Holland**

## **JURISDICTION OF CIVIL COURT**

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With my advent to Dehradun civil court from Khatima, a new Act was introduced to me which often baffled me regarding the question of Jurisdiction of civil courts. I was aware of the fact that Section 9 of Code of Civil Procedure 1908, enable the civil court to determine all the disputes but with the little knowledge of the new Act, UP Urban Planning & Development Act, 1973 my queries regarding the jurisdiction kept on increasing. UP Urban Planning & Development Act, 1973 was enacted to tackle the problems of town planning and Urban development, which were beyond the control of the then existing local bodies. On perusing Section 9 Code of Civil Procedure 1908, it provides as under:-

“Courts to try all civil suits unless barred :- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

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The jurisdiction of the Civil Courts is all embracing except to the extent it is excluded by an express provision of law. This is the purport of Section 9 of the Code of Civil Procedure. The ratio of **Dulabhai vs. State of MP, AIR 1969 SC 78**, as laid by the Hon'ble Constitutional bench is as under:-

(i) Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(ii) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court,

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out, the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

(iii) Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.

(iv) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(v) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(vi) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(vii) An exclusion of the jurisdiction of the Civil Court is not readily to be inferred unless the conditions above set down apply.

The above land mark judgment provides that all disputes of civil nature are being covered under Section 9 and the explanation there under is so exhaustive that it purports to cover all issues therein. When I take Section 37 of UP Urban Planning & Development Act, 1973 under consideration, question is raised that whether the civil courts can intervene in the proceedings under the provisions of the Act without availing the remedy provided under the Act.

Section 37 of UP Urban Planning & Development Act, 1973 provides as under:-

“Except as provided in **Sec 41**, every decision of the Chairman on appeal, and subject only to any decision on appeal (if it lies and is preferred), the order of the Vice Chairman or other officer under **Sec 15**, or Section 27, shall be final and shall not be questioned in any court.”

Thus Sec. 37 of the Act hereby attaches finality to order passed in appeal under **Sub-Sec (5)** of Section 15. A question is raised that Section 37 doesn't covers the proceedings under Section 28A as same was introduced and inserted vide amendment of 1997 and prior to the 1997 there was no provision of sealing the premises or development under the Act. It is relevant to deal relevant Sections of UP Urban Planning & Development Act, 1973 in consonance of Section 9 of the Code of Civil Procedure, 1908.

### **Section 27:-Order of demolition of building:-**

1) Where any development has been commenced or is being carried on or has been completed in contravention of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Section 14 or in contravention of any conditions subject to which such permission, approval or sanction has been granted, in relation to the

development area, then, without prejudice to the provisions of Section 26, [the Vice Chairman or any officer of the Authority empowered by him in that behalf] may make an order directing that such development shall be removed by demolition, filling or otherwise by the owner thereof or by the person at whose instance the development has been commenced or is being carried out or has been completed, within such period not being less than fifteen days and more than forty days from the date on which a copy of the order of removal, with a brief statement of the reasons therefore, has been delivered to the owner or that person as may be specified in. The order and on his failure to comply with the order, the Vice-Chairman or such officer may remove or cause to be removed the development, and the expenses of such removal as certified by the Vice- Chairman or such officer shall be recoverable from the owner of the person at whose instance the development was commenced or was being carried out or completed as arrears of land revenue and no suit shall lie in the Civil Court for recovery of such expenses:

Provided that no such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made.”

It provides that where any development has been carried on or completed in contravention of the master plan or Zonal Development Plan or without permission or approval or sanction referred to in Section 14 or in contravention of any conditions subject to which such permission was granted the Vice-Chairman or any officer of the Authority empowered by him in that behalf may make an order directing that such development shall be removed by demolition. **Proviso to this sub-section lays down that** no such order shall be made unless the owner or the person concerned has been given a reasonable opportunity to show cause why the order should not be made.

**REMEDY AGAINST ORDER OF DEMOLITION TO THE AGGRIEVED PERSON IS PROVIDED UNDER SECTION 27(2) OF THE ACT:-**

**Sub-section (2) of Section 27 of the Act** gives a right of appeal before the Chairman against the order passed under sub-section (1) of Section 27.

**Sub section (2) of Section 27 reads as under:-**

*“(2) Any person aggrieved by an order under Sub-section (1) may appeal to the Chairman against that order within thirty days from the date thereof and the Chairman may after hearing, the parties to the appeal either allow or dismiss the appeal or may reverse or vary any part of the order.”*

**Sub-section (3) of Section 27 of the Act** gives power to the Chairman to stay the execution of the order against which the appeal has been instituted.

**Sub-section (3) of Section 27 reads as under:-**

*“(3) The Chairman may stay the execution of an order against which an appeal has been filed before it under sub-section (2).”*

#### **FINALITY ATTACHED TO THE DECISION OF THE CHAIRMAN:-**

**Sub-section (4) of Section 27 of the Act** provides that the “decision of the Chairman on the appeal and subject only to such decision, the order under sub-section (1), shall be final and shall not be questioned in any Court.”

**Here again it may be noticed that the Act is itself a self contained code, and provides a remedy to the aggrieved person. A person who would be aggrieved by an order of demolition passed under Section 27(1) of the Act has remedy provided under the Act itself by way of appeal to the Chairman under the provisions of Sub-Section (2) of Section 27.**

It is again necessary to consider Section 37 of this Act at this stage. It is clear that Section 37 of the Act provides for finality of the decision. Thus Section 37 of the Act creates a bar to the jurisdiction of civil court and attaches finality upon the orders passed under Section 15 or Section 27 of the Act.

Hon’ble Allahabad High Court in the matter of **Shyam Sunder Agarwal Vs. State of UP, 2009 ALR (2) 424** laid down that Order passed by Vice Chairman of Development Authority under Section 27(1) of the Act is appealable before Chairman of Development Authority. If

the party still aggrieved, may challenge the order straight away before High Court.

Sec. 37 of the Act creates a bar and attach finality upon the orders passed under Section 15 or 27 of the Act. Not open to challenge the orders directly or indirectly before the Civil Court, which could not entertain the suit against the orders. Unless such orders are not set aside by competent Authority, Civil Court would not be able to grant any permanent or temporary injunction in favour of the plaintiff in the suit. If order is passed under Section 27(1) of Urban Planning & Development Act then its appeal lies before Divisional Commissioner against said order and the suit itself not maintainable before Civil Court.

In the matter of **Surendra Singh vs. Distt. Judge Kanpur, 1999 (37) ALR 591**, Hon'ble High Court of Allahabad while dealing with Section 27(2) (1) (3) & (4) of the said Act laid down that the U.P. Urban Planning and Land Development Act, 1973 is a special statute which create an embargo in respect of jurisdiction of Civil Court relating to an order of the demolition passed under Section 27 of the Act.

In the matter of **Godarshan Lal Chawla vs. Saharanpur Development Authority, 2009 (74) ALR 721**, Hon'ble High Court of Allahabad laid down that the Jurisdiction of Civil Court is barred under the provisions of Section 27(4) of **UP Urban Planning & Development Act, 1973 against a notice under Section 27 thereof. Jurisdiction of the Civil Court cannot be barred after an appeal under section 27(2) has been decided since the procedure provided therein is not an adequate remedy to do what a Civil Court could normally do in a suit.**

If we go through Sub-Section (1) of **Section 28** it provides that where any development in a development area has been commenced or continued in contravention of the Master Plan or Zonal Development Plan or without the permission, approval or sanction referred to in Section 14 or in contravention of any conditions subject to which such permission, approval or sanction has been granted then, without prejudice to the provisions of Sections 26 and 27, the Vice-Chairman of the Authority or any officer of the Authority empowered by him in that behalf, may make an order requiring the development to be discontinued on and from the date of the service of the order, and such order shall be complied with accordingly.

Sub-Section (2) of Section 28 provides that where such development is not discontinued in pursuance of the order under sub-section (1), the Vice-Chairman or the said officer of the Authority may require any police officer to remove the person by whom the development has been commenced and all his assistants and workmen from the place of development within such time as may be specified in the requisition, and such police officer shall comply with the requisition accordingly.

Sub Section (3) of Section 28 provides that after the requisition under Sub-section (2) has been complied with the Vice-Chairman of the Authority may depute by a written order a police officer or an officer or employee of the Authority to watch the place in order to ensure that the development is not continued.

Sub Section (4) of Section 28 provides that any person failing to comply with an order under sub-section (1) shall be punishable with fine which may extend to two hundred rupees for every day during which the non-compliance continues after the service of the order.

Sub Section (5) of Section 28 expressly states that no compensation shall be claimable by any person for any damage which he may sustain in consequence of the removal of any development under Section 27 or the discontinuance of the development under this section.

### **Section 28-A provides the Power to Seal Unauthorised Development:-**

**Power to seal unauthorised Development - Sub Section (1) of Section 28-A** specifies that it shall be lawful for the Vice-Chairman or an officer empowered by him in the behalf, as the case may be, at any time before or after making an order for the removal or discontinuance of any development under Section 27 or Section 28 to make any order directing the sealing of such development in a development area in such manner as may be prescribed for the purposes of carrying out the provisions of this Act.

**Power to remove the seal- Sub Section (2) of Section 28-A** specifies that where any development has been sealed, the Vice-Chairman or the officer empowered by him in this behalf, as the case may be, for the purpose of removing or discontinuing such development order the seal to be removed.

**Sub Section (3) of Section 28-A** states that no person shall remove such seal except under an order made under sub-section (2) by the Vice-Chairman, or the officer empowered by him in this behalf.

**Remedy to aggrieved person against Sub Section (1) or Sub Section (2) of Section 28-A is by way of filing Appeal before Chairman.**

**Sub Section (4) of Section 28-A** provides that any person aggrieved by an order made under sub-section (1) or sub-section (2) may appeal to the Chairman against that order within thirty days from the date thereof and the Chairman may after hearing the parties to the appeal, either allow or dismiss the appeal.

**FINALITY ATTACHED TO THE DECISION OF THE CHAIRMAN:-**

**Sub-section (5) of Section 28-A of the Act** provides that the decision of the Chairman shall be final.

Here again it may be noticed that the Act is itself a self contained code, and provides a remedy to the aggrieved person. A person who would be aggrieved by an order of Seal passed under Section 28-A of the Act has remedy provided under the Act itself by way of appeal to the Chairman under the provisions of Sub-Section (4) of Section 28-A. Therefore, with regard to the orders passed under section 28A(1), it can safely be drawn that an adequate and complete remedy is provided under the Act under the provisions of Section 28-A(4) of the Act and in view of this and by operation of Section 9 of Civil Procedure Code, the jurisdiction of Civil court is barred by necessary implication.

**If we go through Section 41 of the Act it provides the Control of State Government :-**

**Sub Section (1) of Section 41 of the Act** states that the Authority, the Chairman or the Vice-Chairman shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

**Sub Section (2) of Section 41 of the Act** states that if in, or in connection with the exercise of its powers and discharge of its functions by the Authority the Chairman or the Vice Chairman under this Act any dispute arises between the Authority, the Chairman or the Vice-Chairman

and the State Government the decision of the State Government on such dispute shall be final.

**Sub Section (3) of Section 41 of the Act** provides that the State Government may, at any time, either on its own motion or an application made to it in this behalf, call for the records of any case disposed of or order passed by the Authority or the Chairman for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit.

**Proviso to this sub section** states that the State Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.

**Sub-section (4) of Section 41 of the Act** provides that every order of the State Government made in exercise of the powers conferred by this Act shall be final and shall not be called in question in any court.

**Thus Sub-Sec. (4) of Sec.41 of the Act attaches finality to order passed in Revision under Sub-Sec (3) of Section 41.**

The law laid down by Superior Court in this regard are very clear. Hon'ble Allahabad High Court in the matter of **Ram Baboo Gupta Vs. Agra Development Authority, 1997 ALR (3) 169**, laid down that

*It is apparent that the State Government may look into the legality or propriety of any order passed or call for the records of any case disposed of by the Authority or the Chairman and may pass such order or issue such direction in relation thereto as it may think fit. Expression used is very wide to encompass the whole of the order even to the legality or propriety of the composition or otherwise. Even if no appeal lies against an order of composition still then the legality or propriety of the order of composition can very well be looked into under Section 41(3) of the Act. Section 41(3) does not make any distinction as between the composition and demolition as was sought to be made out by reason of the fact that the composition is made under Section 32 of the Act and appeal against demolition is provided under Section 27(2) of the Act, in the absence of any provision for appeal provided in Section 32 of the Act, since Section 41(3) of the Act encompass the question of satisfaction of*

*the Government with regard to the legality or propriety of any order passed by the Authority or Chairman, therefore, the entire order is open to revision.*

It is a self contained code, and provides a complete mechanism for the redressal of the dispute arising therein. The orders passed under the provisions of this Act are appealable and revisable. The Act provides remedy to the aggrieved person by way of Appeal as well as by way of Revision.

The Act gives a right and provides a forum for adjudication of rights, It creates a rights and obligation and enforces the performance thereof in a specified manner.

The Act have ancillary as well as special powers enacted therein in order to carry out effectively the statutory duties cast upon it.

Sec. 37 of the Act creates a bar to the jurisdiction of civil court and attach finality upon the orders passed under section 15 or section 27 of the Act.

**With regard to the orders passed under section 28-A(1), it can safely be drawn that an adequate and complete remedy is provided under the Act under the provisions of Section 28-A(4) of the Act and in view of this and by operation of Section 9 of Civil procedure Code, the jurisdiction of Civil Court is barred by necessary implication.**

Sub Section (3) of Section 41 of the Act provides that the State Government may, at any time, either on its own motion or an application made to it in this behalf, call for the records of any case disposed of or order passed by the Authority or the Chairman for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as ii may think fit.

Sub-Sec. (4) of Sec. 41 of the Act attaches finality to order passed in Revision under Sub-Sec (3) of Section 41.

**Thus the legal position which finally comes out is that when a statute gives a right and provide a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act.**

**When an act creates a right or obligation and enforces the performance thereof in a specified manner, “that performance cannot be enforced in any other manner.” Thus for enforcement of a right /obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of right under the said Act.**

**Thus it is clear that only where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, the jurisdiction of civil court cannot be excluded. The jurisdiction of the civil Court would not be taken away at least where the action of the authorities is wholly outside the law and is not a mere error in the exercise of jurisdiction.**

Hon’ble Allahabad High Court in the matter of **Allahabad Development Authority Vs. Ram Prakash Pandey, 2002 (1) ALR 725**, laid down that:-

*Section 27 provide for service of notice for the demolition of the building. However, it is contended by the respondent that no notice was served. No procedure has been prescribed nor there is any provision for producing evidence. Therefore, the remedy provided under Section 27 of the Act cannot be said to be an adequate remedy so as to infer that the jurisdiction of the Civil Court is barred.*

**It is pertinent to mention here that the said ruling Allahabad Development Authority Vs. Ram Prakash Pandey, 2002 (1) ALR 725, has been elaborately discussed and distinguished by Hon’ble High Court of Allahabad in the matter of Godarshan Lal Chawla Vs. Saharanpur Development Authority, 2009 (74) ALR 721.**

**In the matter of Godarshan Lal Chawla Vs. Saharanpur Development Authority, 2009 (74) ALR 721 Hon’ble High Court of Allahabad while discussing and distinguishing the law laid down under Allahabad Development Authority Vs. Ram Prakash Pandey 2002 (1) ALR 725 has clearly held that :-**

*While the law is settled that where adequate remedy is not provided in the statute to do what a Civil Court would normally do in a suit the jurisdiction of the Civil Court is not barred. Therefore when an appeal is provided under section 27(2) and the procedure provided*

*under the various sub-sections of section 27 is not an adequate remedy the bar sought to be created, of the jurisdiction of the Civil Court, under section 27(4) of the Act cannot prevent a party from invoking the jurisdiction of the Civil Court against an order passed in appeal maintained under section 27(2) of the Act. The bar to jurisdiction of the Courts is provided in section 27(4) of the Act against the decision in an appeal and when there is no adequate remedy provided under the provisions to do what could normally be done by a Civil Court then a suit under section 9 of CPC is maintainable. While applying the law laid down by the Hon'ble Apex Court in the matter of **Dhulabhai v State of Madhya Pradesh, AIR 1969 SC 78**, Section 27(4) can only be read in relation to section 27(2) and cannot be applied to the proceedings of section 27(1) where against if a civil suit is held to be maintainable then the statutory provision of appeal becomes redundant. Harmonious interpretation is to be made of the statute and it cannot be read so as to make the very provisions unworthy of enforceability or worthy of being ignored.*

**Hon'ble Apex Court in the matter of Kanwar Singh Saini Vs. High Court of Delhi, 2012 SCCR (Supreme Court) 255 has clearly held that :-**

**The Apex court in Kanwar Singh Saini (supra) has further held that:-**

*There can be no dispute regarding the settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes order/ decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause. Such an issue can be raised at any belated stage of the proceedings including in appeal or execution. The finding of a Court or tribunal becomes irrelevant and unenforceable/ inexecutable once the forum is found to have no jurisdiction. Acquiescence of a party equally should not be permitted to defeat the legislative animation. The Court cannot derive jurisdiction apart from the statute.*

**When a statute gives a right and provide a forum for adjudication of rights, remedy has to be sought only under the**

*provisions of that Act. When an act creates a right or obligation and enforces the performance thereof in a specified manner, “that performance cannot be enforced in any other manner.” Thus for enforcement of a right /obligation under a statute, the only remedy available to the person aggrieved is to get adjudication of right under the said Act.*

The legal position that emerges from the discussion may be summarized. If a statute imposes a liability and creates an effective machinery for deciding questions of law or fact arising in regard to that liability, it may, by necessary implication, bar the maintainability of a civil suit in respect of the said liability.

The UP Urban Planning & Development Act, 1973 is a Statutory Act and it imposes a liability and creates an effective machinery for deciding questions of law or fact arising in regard to that liability, it may, by necessary implication, bar the maintainability of a civil suit in respect of the said liability.

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