
(2008) 07 MP CK 0067
In the Madhya Pradesh High Court

Dilip Kaushal and Another	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 91
Constitution of India, 1950 — Article 226
Specific Relief Act, 1963 — Section 4, 41

Citation : AIR 2008 MP 324 : (2008) ILR (MP) 2167 : (2008) 3 JLJ 171 : (2008) 4 MPHT 273 : (2008) 4 MPJR 172 : (2008) 3 MPLJ 591

Hon'ble Judges : A.K. Patnaik, C.J;S.K. Seth, J;A.M. Sapre, J

Bench : Full Bench

Judgement

A.K. Patnaik, C.J.

This is a reference made to this Full Bench by order dated 21-8-2007 passed by a Division Bench of this Court in W.P. No. 5807 of 2006.

The two petitioners, a Corporator of the Indore Municipal Corporation and a Mechanical Engineer, have filed this Public Interest Litigation under Art. 226 of the Constitution questioning the lay out sanctioned by the Indore Municipal Corporation for construction of a building of the respondent No. 4. On 21-3-2006, the Division Bench issued notices in the writ petition and directed that the interim prayer shall be considered after service of notices on the respondents. Thereafter, the respondent No. 4 appeared and raised a preliminary objection that an alternative remedy was available to the petitioner under Sub-section (5) of Section 307 of the M.P. Municipal Corporation Act, 1956 (for short "the Act of 1956") to apply to the District Court for an injunction for removal or alteration of the building. The counsel for the petitioners, on the other hand, brought to the notice of the Division Bench that in Radhakishan Sharma v. Pravin Kumar and two Ors. 1996 MPACJ 55, on a reference made by learned single Judge of this Court, a Division Bench has held that under Sub-section (5) of Section 307 of the Act of 1956, the expression "any other person" who has been

conferred with the right to apply to the District Court for injunction for removal or alteration of any building will mean such person who might feel directly affected by the building in regard to his individual right to property and, therefore, the two petitioners in Writ Petition No. 5807 of 2006 may not have an alternative statutory remedy under Sub-section (5) of Section 30 of the Act of 1956.

The Division Bench hearing W.P. No. 5807 of 2006, however, found that in the earlier case of Radhakishan Sharma (supra), the Division Bench had taken the aid of the provisions of the Specific Relief Act, 1963 and the Code of Civil Procedure, 1908 to construe Sub-section (5) of Section 307 of the Act of 1956 and had held that the expression "any other person" in Sub-section (5) of Section 307 of the Act of 1956, who has been conferred with the right to apply to the District Court for an injunction for the removal or alteration of any building, would mean only such person who might feel directly affected by the building in regard to his individual right to property. The Division Bench hearing W. P. No. 5807 of 2006 was, however, of the opinion that Sub-section (5) of Section 307 of the Act of 1956 did not suffer from any ambiguity either in language or in meaning and provides for remedy to "any other person" in addition to the Corporation to apply to the District Court for an injunction for the removal or alteration of any building and the decision of the Division Bench in Radhakishan Sharma (supra) requires reconsideration and accordingly has referred the following question of law for our opinion:

Whether the locus-standi under Sub-section (5) of Section 307 of the Act is restricted to a person affected by the violation complained of or encompasses all persons resident within the area to which the Act applies?

We have heard Mr. Vivek Dalai, learned Counsel for the petitioners, Mr. Ashok Kutumble, learned Additional Advocate General for the State, Mr. Anand Agrawal, learned Counsel for the Indore Municipal Corporation and Mr. A. K. Chitle, learned senior counsel for the respondent No. 4 and in our considered opinion, the view taken by the earlier Division Bench in Radhakishan Sharma (supra) that under Sub-section (5) of Section 307 of the Act of 1956 besides the Corporation, only such person who may feel directly affected by the building in regard to his individual right to property can only file application before the District Court for injunction for removal or alteration of the building, is not correct for the reasons which will now follow.

Sub-section (5) of Section 307 of the Act of 1956, which we are called upon to interpret is quoted below:

Section 307 - Power to require removal or alteration of work not in conformity with byelaws or any scheme or any other requirement.:

(5) Nothing in this section shall affect the right of the Corporation or any other person to apply to the District Court for an injunction for the removal or alteration of any building on the ground that it contravenes any provision of this

Act or the byelaws made thereunder, but if the building is one in respect of which plans have been deposited and the plans have been passed by the Commissioner, or notice that they have been rejected has not been given within the prescribed period after the deposit thereof, and if the work has been executed in accordance with the plans, the District Court on granting an injunction shall have power to order the Corporation to pay to the owner of the work such compensation as the District Court thinks just, but before making any such order the District Court cause the Commissioner if not a party to be joined as a party to the proceeding.

Thus, the language of Sub-section (5) of Section 307 of the Act of 1956 is clear that besides the Corporation, "any" other person can apply to the District Court for injunction for removal or alteration of a building thereunder. In *Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others*, , cited by Mr. Chitle, learned Counsel for respondent No. 4, the Supreme Court has held relying on Black's Law Dictionary:

The word "any" has the following meaning:

Some; one of many; an indefinite number. One indiscriminately of whatever kind or quantity.

Word "any" has a diversity of meaning and may be employed to indicate "all" or "ever" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject-matter of the statute.

It is often synonymous With "either", "every" or "all". Its generality may be restricted by the context; (Black's Law Dictionary, 5th Edn.).

Similarly in *Lucknow Development Authority Vs. M.K. Gupta*, cited by Mr. Chitle, the Supreme Court again relying on Black's Law Dictionary has held:

In Black's Law Dictionary it is explained thus, "word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the con-text and the subject-matter of the statute". The use of the word "any" in the context it has been used in Clause (o) indicates that it has been used in wider sense extending from one to all.

The word "any" which has diverse meanings, therefore, has to be interpreted depending on the context and the subject-matter of the statute in which it is used.

Sub-section (5) of Section 307 of the Act of 1956 itself makes it clear that the right of the Corporation or any other person to apply to the District Court for injunction for the removal or alteration of any building can be only on the ground that it contravenes any provision of the Act of 1956 or the byelaws made thereunder. Chapter XXIV of the Act of 1956 in which Section 307 is located is titled "Building Control" and contains provisions regulating the construction of buildings within the area of the Municipal Corporation. There are various other

provisions in the Act of 1956 and the byelaws made thereunder relating to buildings within the area of the Corporation which have to be complied with. Legislature has, therefore, to provide for some remedy if the provisions of the Act of 1956 or the byelaws thereunder in respect of a building are" violated. It is only for this reason that under Sub-section (5) of Section 307 of the Act of 1956, a right has been conferred not only on the Corporation but on any other person to apply to the District Court for injunction for removal of a building or alteration of any building on the ground that it contravenes any provisions of the Act or the byelaws made thereunder. Hence, not only the Corporation but every other person has been given the right to apply to the District Court for injunction for the removal or alternation of any building on the ground that it contravenes any provisions of the Act or the byelaws made thereunder. The context and the subject-matter of the statute in which the word "any" has been used is thus wide enough to include all persons other than the Corporation or every other person other than the Corporation or any other person other than the Corporation.

The Division Bench delivering the opinion in Radhakishan Sharma (supra) has lost sight of the context and subject-matter of the Act of 1956 in which the word "any" was to be construed and has taken a narrow view that only a person who might feel aggrieved directly by the building in regard to his individual right to his property relying on Section 41(j) of the Specific Relief Act, 1963 which provides that an injunction cannot be granted when the plaintiff has no personal interest in the matter. The reliefs under the Specific Relief Act, 1963 are granted for the purpose of enforcing individual civil rights as will be clear from Section 4 of the Specific Relief Act, 1963. Accordingly, injunction under Part III of the Specific Relief Act, 1963 is granted to the plaintiff either to prevent a breach of an obligation in favour of the plaintiff, or to compel the performance of an obligation in his favour. Unless, therefore, there is an obligation in favour of the plaintiff which needs to be enforced, the Court cannot grant injunction.

Hence, it is provided in Section 41(j) of the Specific Relief Act, 1963 that an injunction cannot be granted when the plaintiff has no personal interest in the matter. What the Division Bench has failed to appreciate is that the provisions of the Specific Relief Act, 1963 do not apply to the right conferred on the Corporation and any other person under Sub-section (5) of Section 307 of the Act of 1956. Under the provisions of the Act of 1956, every building must comply with the provisions of the Act of 1956 and the byelaws made thereunder and hence if there is any breach of the provisions of the Act of 1956 or the byelaws made thereunder, Sub-section (5) of Section 307 of the Act of 1956 confers a right not only on the Corporation but also any other person to apply to the District Court for an injunction for removal or alteration of a building on the ground that there has been the contravention of the provisions of the Act of 1956 or the bye-laws made thereunder. This remedy under Sub-section (5) of Section 307 of the Act of 1956 is independent of and different from the remedies under the Specific Relief Act, 1963.

We also find from para 16 of the opinion of the Division Bench in Radhakishan Sharma (supra) that the Division Bench has held that in the event of wrongful act affecting the public, recourse to suit in terms of Section 91 of the Code of Civil Procedure, 1908 (for short "the CPC) becomes necessary. Sub-section (1) of Section 91, C.P.C. provides that in case of public nuisance or other wrongful act affecting or likely to affect the public, a suit for declaration and injunction or for such other relief as may be appropriate in the circumstances may be instituted and Sub-section (2) of Section 91 of the C.P.C. states that nothing in the section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

Thus, it is clear that Section 91(1) of the C.P.C. is not exhaustive of the remedies that are available to a party even in case of a public nuisance or other wrongful act affecting or likely to affect the public. The remedy of the Corporation and any other person under Sub-section (5) of Section 307 of the Act of 1956 is independent of the provisions of Section 91 of the C. P. C. and not only the Corporation but any other person can apply to the District Court for injunction for removal or alteration of a building on the ground that the provisions of the Act of 1956 or the byelaws made thereunder have been contravened.

In the result, we are of the opinion mat the locus standi under Sub-section (5) of Section 307 of the Act of 1956 is not restricted to a person affected by the violation complained of but encompasses all persons resident within the area to which the Act of 1956 applies.

The reference is answered accordingly and the decision of the Division Bench in Radhakishan Sharma (supra) to the contrary is overruled. The matter will now be placed before the Division Bench.