
(1946) 03 AHC CK 0006
In the Allahabad High Court
Case No : Second Appeal No. 2589 of 1944

Gauri Shanker

APPELLANT

Vs

District Board of Farrukhabad

RESPONDENT

Date of Decision : 15-03-1946

Acts Referred:

Citation : (1946) 03 AHC CK 0006

Final Decision : Dismissed

Judgement

Mathur, J.—This is a plaintiff's second appeal and it arises under the following circumstances :

It appears that the plaintiff was running a kiln somewhere near Mauza Mahrauli in the district of Farrukhabad for about 35 years before the institution of the suit and was using it for burning bricks. In the year 1935, the District Board of Farrukhabad framed certain bye-laws restricting the construction and burning of the kilns within the jurisdiction of the Board. One of the bye-laws which is applicable to the facts of this case was no person shall be allowed to construct and burn such kilns or make excavation within a distance of 300 feet from a public road.

It is not disputed that this brick kiln was within a distance of 300 feet from a public road. The plaintiff obtained a license for the working of this kiln up to the year 1941, but in April 1941, the District Board called upon the appellant to close the kiln by the 15th of March 1942. It is in evidence that subsequent to this notice a prosecution was launched by the District Board.

2. On 25th of July 1942, the suit out of which this appeal arises was brought by the plaintiff appellant praying that the defendant be restrained by a perpetual injunction from closing the Bhatta of the plaintiff, or in any way interfering with the plaintiff's carrying on of his legitimate trade of Bhatta on the site in dispute. The defence was that the civil Court had no jurisdiction to entertain the suit, that the suit was barred by S. 192, clause (3) of the District Boards Act, and that it

was also defective because no notice under S. 192 was served on the Board. The learned Munsif who tried the suit dismissed the claim and that order was confirmed by the learned District Judge. The findings of the learned District Judge are that the suit was barred by time and that as no notice was given as required under S. 192 of the District Boards Act the suit was liable to be thrown out. The learned District Judge however held that the Board was not competent to serve the plaintiff with a notice, but he dismissed the suit on the legal grounds. I have heard the learned counsel for the parties and in my opinion, this appeal must fail, although I do not agree with all the reasons given by the learned Judge. I am satisfied that according to the recital given in the plaint the suit was not barred by time. The plaintiff has stated that a notice was served on him and he was asked to close the Bhatta by the 15th of July (March?) 1942. The suit having been brought on 25-7-1942, was well within six months from that date. I also do not agree with the learned Judge that in a suit for injunction a notice is necessary. If the allegations were true that the Board was going to close the Bhatta and to demolish it, I think the object of the suit would certainly have been defeated by giving of a notice and waiting for two months.

3. But having said all that I think that the suit was certainly misconceived. Under S. 181, District Boards Act the District Board is entitled to serve a person with a notice requiring him to execute a work in respect of any property, movable, or immovable public or private, or to provide or do or refrain from doing anything within the time specified in the notice. Under the same section, if the person fails to comply in executing the work or providing or doing anything, the Board could cause such work to be executed or such thing to be provided or done and to recover the expenses from that person. But in the case of a negative order asking him to refrain from doing anything as the case here appears to be, the Board could only launch a prosecution against that person. I do not think it was ever the intention of the Board to demolish and to remove the kiln bodily and physically. They only issued an order asking the plaintiff not to work the kiln and that order could only be enforced by launching a prosecution and forcing the will of the plaintiff by a recurring fine. This was the course obviously adopted by the Board when they launched the prosecution.

4. The question then arises whether it is open to the civil Court to prevent a lawfully constituted body from pursuing a prosecution. It will be for the criminal Courts to say whether the prosecution could be sustained or not. I do not think a civil Court can go into that question. In this view of the matter the plaintiff was not entitled to succeed. Under S. 56 clauses (a) and (e) of the Specific Relief Act it is provided :

An injunction cannot be granted?

(a) to stay a judicial proceeding at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity, of proceedings.

(e) to stay proceedings in any criminal matter.

This specifically bars the jurisdiction of a civil Court. In this view of the matter the suit was rightly dismissed. The appeal fails and is dismissed with costs. Leave to appeal under the Letters Patent is refused.