
(1968) 03 BOM CK 0002
In the Bombay High Court
Case No : F.A. No. 102 of 1966

M/s. Kailas Sizing Works

APPELLANT

Vs

Municipality of Bhivandi and Nizampur

RESPONDENT

Date of Decision : 18-03-1968

Acts Referred:

Bombay General Clauses Act, 1904 — Section 3(20)
General Clauses Act, 1897 — Section 3(22)
Penal Code, 1860 (IPC) — Section 52

Citation : (1968) MhLj 916

Hon'ble Judges : M.G. Chitale, J;J.L. Nain, J

Bench : Division Bench

Advocate : P.P. Khambata, S.D. Parikh and S.P. Modi, for the Appellant; Y.B. Rege and V.B. Rege, for the Respondent

Judgement

J.L. Nain, J.—This is a plaintiffs' appeal against the judgment and decree of the learned Civil Judge, Senior Division, Thana, dismissing their suit for recovery of Rs. 1,00,012 as damages for loss caused to their property on July 5, 1963, by flood water, filed against the Municipality of Bhivandi and Nizampur. The plaintiffs allege that they have suffered the loss on account of the negligence of the defendants.

2. The plaintiff occupy a permanent structure on Yacoob Road at Bhivandi wherein they carry on the business of sizing yarn. They had machinery, raw-materials and other goods stored in the premises at all material times prior to and during the month of July 1963. There is a gutter about 1 1/2 feet wide running alongside Yacoob Road between the said Yacoob Road and their factory premises. On the other side of the road, there is an open nullah running parallel to the road. This nullah is about 40 to 45 feet wide and provides a passage for dirty water and rain water passing to the creek. The plaintiffs alleged that the defendants covered the said nullah with a slab after narrowing it to a width of 15 feet where the slab was put without providing adequate passage for rain water and during the monsoon of 1963 for water from the catchments area constituting

Varala Tank. The Government of Maharashtra at the instance of the defendants demolished a portion of Varala Tank in April 1983. In consequence, the rain water falling in the catchments area of the lake was expected to pass along with, the rain water falling in the catchments area of the nullah through this nullah on to the creek. The plaintiffs say that in spite of the partial demolition of the Varala Tank, over a height of six feet from the ground level, the defendants commenced the work of laying the cement slab across the nullah after the demolition of the said part of the said tank and completed the work of the laying of the slab in the second week of June 1933. They further alleged that the centering work to support and settle the slab continued to remain un-removed till about the first week of July 1963. This centering work obstructed the passage of bushes and debris and together they prevented the water from passing. The defendants failed to keep the nullah free of centering bushes and debris for the flow of the water in July 1963. The plaintiffs further alleged that their machinery and goods in the said premises at Yacoob Road were damaged by heavy water entering the premises as a result of heavy rains on July 5, 1963. According to them, the nullah overflowed because of the obstruction to the passage of water caused by the narrowing of the nullah, slab, centering and garbage. According to them, the damage sustained by their goods was the direct result of the action of the defendants by reason of their negligence and the defendants were, therefore, liable to make good to the plaintiffs the loss caused by the damage. The defence of the defendants was that there was no negligence on their part in narrowing or stabbing the nullah or in not removing the centering or allowing garbage to collect. They contended that the damage was due to heavy rain which was an act of God. Their principal defence, however, was that a suit of this nature was barred by the provisions of section 167 of the Bombay District Municipal Act, 1901.

3. One of the reasons, and in fact the principal reason, for the dismissal of the plaintiffs' suit was that the suit was barred by the provisions of section 167 of the Bombay District Municipal Act, 1901. Sections 167 and 167-A (1) read as under:

167. No suit shall lie in respect of anything in good faith done or intended to be done under this Act against any municipality or against any committee constituted under this Act or against any officer or servant of a municipality or against any person acting under and in accordance with the direction of any such municipality, committee officer or servant or of a Magistrate.

167-4. (1) No suit shall lie against a municipality or against any officer or servant of a municipality in respect of any act done in pursuance or execution or intended execution of this Act....

4. Mr. Rege appearing for the defendants contended that section 167 of the Bombay District Municipal Act, 1901, read with section 3 (20) of the Bombay General Clauses Act, 1904, gave absolute immunity to the defendants in respect of acts done under the Bombay District Municipal Act even if they were done

negligently. He contended that all suits for damages for loss caused by negligence of the defendants were barred, provided that such acts were done in the discharge of duties enjoined or authorised by the said Act. Section 3 (20) of the Bombay General Clauses Act, 1904, is a verbatim reproduction of section 3 (22) of the Indian General Clauses Act, X of 1897, and reads as under:

a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;

5. The argument of Mr. Rege was that section 167 of the Bombay District Municipal Act barred all suits in respect of acts done in "good faith" in discharge of duties enjoined or authorised by the said Act. The expression "done in good faith" has been defined in the Bombay General Clauses Act to mean "done honestly whether done negligently or not". He, therefore, argued that all suits for recovery of damages for loss caused by the defendants' negligence were barred, and negligence of a District Municipality could never be actionable.

6. We pointed out to Mr. Rege the provisions of section 167-A (I) of the Bombay District Municipal Act which provided that no suit would lie against a municipality in respect of an alleged neglect or default in the execution of the Act, unless the suit was brought after the expiry of the period of statutory notice and within six months of the accrual of the cause of action. We suggested that this contemplated suits against a municipality in respect of acts of negligence, and did not appear to create an absolute bar against such suits. We pointed out that the interpretation suggested by Mr. Rege would be contrary to and do violence to the provisions of section 167-A (1), and would render the words "or in respect of any alleged neglect or default in the execution of this Act" superfluous and meaningless. Therefore, sections 167 and 167-A must be read together and reconciled and the correct interpretation must not discard or render meaningless any part of either section, but must give meaning to and be consistent with both the sections if such an interpretation is possible.

7. In our view, these two provisions read together give no absolute immunity to the defendants in respect of acts done negligently. The emphasis is on "good faith" i.e. honesty, and not on negligence. If a municipality acts in discharge of statutory duties, whether enjoined or authorised (permitted), as long as it acts honestly, no action would lie against it even if it acted negligently. But if it did not act honestly, the negligence would be actionable. The plaintiff must in such action establish want of "good faith" or honesty in addition to the negligence. This interpretation gives meaning to all the parts of sections 167 and 167-A and is consistent with all the parts. This appears to us to be the correct interpretation.

8. In order to act in good faith, a person must act honestly. A person cannot be said to act honestly unless he acts with fairness and uprightness, A person who acts in a particular manner in the discharge of his duties in spite of the knowledge and consciousness that injury to someone or group of persons is likely to result from his act or omission or acts with wanton or willful negligence

in spite of such knowledge or consciousness cannot be said to act with fairness or uprightness and, therefore, he cannot be said to act with honesty or in good faith. Whether in a particular case a person acted with honesty or not will depend on the facts of each case. If, for example, with a view to construct a road a municipality wishes to blast a rock with dynamite near a town and acts against expert opinion that the town is within the range of harm, and the rock should be removed by quarrying, it cannot be said to act honestly if it proceeds to blast the rock. It can also not be said to act honestly if it proceeds to blast the rock without taking expert advice. If it refuses to see light and hides its face from the light it would be acting with wanton and willful negligence and its negligence coupled with want of honesty and good faith would be actionable. In the matter before us it is common ground that in laying the slab complained of, the defendants were carrying out a duty authorised by section 54 (1) (i) of the Act. But if they carried out the said duty with the knowledge of demolition of Varala dam up to a height of six feet and with such knowledge narrowed the nullah or allowed the centering to remain and to obstruct the passage of bushes and debris, they would not be said to act honestly. In such case, they knew and ought to have known that the constricted water passage would not be sufficient to carry the water coming from- the additional catchments area and the centering would obstruct the passage of bushes and debris brought by the increased velocity of water.

9. The definition of "good faith" in the Indian General Clauses Act, X of 1897, section 3 (22), would naturally not apply to Acts prior to the passing of the said Act, such as the Indian Contract Act or the Transfer of Property Act;. To these provisions, the definition of "good faith." as understood generally in civil law would apply, viz., that nothing is said to be done in "good faith" which is done without due care and attention, that is the care and attention expected of a man of ordinary prudence. Nor would the definition of "good faith" in the Indian Penal Code or the Limitation Act apply, because those definitions are differently defined by the local General Clauses Acts in their application to the State Legislation and the interpretations put on the local definitions would only be a guide if the expression is similarly defined. Sections 167 and 167-A were substituted for the original section 167 by the Bombay Act LII of 1949, and any interpretation of the previous provisions by our own High Court would have no direct application though it may be of some help. Mr. Rege has drawn our attention to the Statement of Objects and Reasons in introducing the amending Bill which became Act LII of 1949. This statement is published in the Bombay Government Gazette dated August 20, 1949, Part V, page 287, and clause 33 of the Statement pertains to sections 167 and 167-A, This Statement can, however, not be used for arriving at the correct interpretation. After we have arrived at our own interpretations of these sections, clause 33 of the Statement has not helped us to change our mind, because we have to interpret the sections as we find them, and not by the Statement of Objects which reads as under:

Clause 33.-K is considered desirable to give the municipalities and their officers

and servants protection from suits in respect of the acts done or intended to be done by them in good faith in exercise of the powers conferred on them by the Municipal Acts or in respect of any alleged neglect or default in the execution of these Acts. The Bombay District Municipal Act, 1901, is being amended suitably for the purpose.

10. Mr. Rege has invited our attention to the observations of Chagla C. J. in the case of Govind Sadashiv Pathak Vs. Sadashiv Shivrao Nisal, , where the expression "good faith" in section 14 (2) of the Indian Limitation Act, 1908, came up for interpretation. These observations are:-

Therefore, while the Bombay General Clauses Act emphasises "honesty" and ignores the factor of negligence, the Limitation Act emphasises not honesty but the fact that due care and attention has been given to the prosecution of the earlier application.

11. We have already stated that in section 3 (20) of the Bombay General Clauses Act, the emphasis is on acting honestly and if a municipality acts honestly mere negligence would not be actionable.

12. Mr. Rege has cited before us the case of Emperor Vs. R.K. Naik, , which interprets a section of the District Local Boards Act restricting the right to sue a local board. This section is differently worded and is not of any help. Mr. Rege has also cited the case of Kedarnath Vs. State, , which interprets "good faith" in the Indian Penal Code, where also the definition is differently worded and is in context of criminal law. Mr. Rege also cited the case of Babulal Agarwalla v. Province of Orissa AIR 1954 Ori 226, wherein in interpreting section 3 (22) of the General Clauses Act in relation to the Defence of India Act, 1939, section 17 (1), it is observed at page 231 that:

Hence, if from the proved facts of this litigation it can be inferred that the public officials acted honestly even though they might have acted negligently it must be held that they acted in good faith within the meaning of section 17 (1), Defence of India Act.

13. A more instructive case cited by Mr. Rege is the case of Harbhajan Singh Vs. The State of Punjab and Another, , wherein Mr. Justice Tek Chand after comparing the definitions of "good faith" in section 52 of the Indian Penal Code and section 3 (22) of the Indian General Clauses Act, observes as follows (pp. 222-

The definition of "good faith" in the Penal Code is a negative one. The term "good faith" is not attempted to be defined there but all that 18 stated is that if an act is not done with due care and attention it would not be said to be done in "good faith". This definition comes into conflict with the definition in the General Clauses Act to this extent only that if a thing has been done negligently, though honestly, it would not be deemed to have been done in "good faith". The definition of the term In the General Clauses Act lays stress on one aspect only,

but, that in the Penal Code places emphasis on two aspects, namely the honesty of intention along with due care and attention.

Thus section 52 excludes the element of negligence from the purview of "good faith". Both the definitions retain the real essence of "good faith", which is that a thing is done "honestly". This is a feature common to both definitions without which the term "good faith" will lose its real meaning. "Good faith" therefore implies, not only an upright mental attitude, and clear conscience of a person, but also the doing of an act, showing that ordinary prudence has been exercised according to the standards of a reasonable person. "Good faith" contemplates an honest effort to ascertain the facts upon which exercise of the powers must rest. It must, therefore, be summed (up) as "an honest determination from ascertained facts". "Good faith" precludes pretence or deceit and also negligence and recklessness. A lack of diligence, which an honest man of ordinary prudence is accustomed to exercise, is, in (sic) a want of good faith. Once this is shown, good faith does not require a sound judgment.

13.1 With these observations we are in respectful agreement. The definition of the term in the General Clauses Act lays stress on the one aspect of honesty only, irrespective of negligence, but that in the Indian Penal Code lays stress on two aspects, viz., honesty of intention along with due care and attention. Both the definitions retain the real essence of good faith, which is honesty. This is a feature common to both the definitions. Good faith implies upright mental attitude and clear conscience. It contemplates an honest effort to ascertain the facts upon which the exercise of the power must rest. It is an honest determination from ascertained facts. Good faith precludes pretence, deceit or lack of fairness and uprightness and also precludes wanton or willful negligence. We must, therefore, see by application of these principles whether the defendants acted honestly.

14. Mr. Khambatta on behalf of the plaintiffs contended that section 167 must be strictly construed as it takes away a citizen's right to redress against a municipality in respect of injury done by negligence. This question would arise only if we were faced with a choice of interpretations. The interpretation we have put appears to us to be the only possible interpretation. He has next contended that the definition in section 3 (20) of the Bombay General Clauses Act would not apply to section 167 of the Bombay District Municipal Act, because the words in section 167-A "or in respect of any alleged neglect or default in the execution of this Act" indicate that neglect and default are made actionable by section 167A and this clearly indicates "something repugnant in the subject or context"- words occurring in the preamble part of section 3 of the General Clauses Act-so as to exclude the application of section 3 (20) to section 167 of the Bombay District Municipal Act. We have, however, stated above that we have put an interpretation that reconciles this so-called repugnance. There is nothing repugnant in section 167 of the Bombay District Municipal Act to the definition of "good faith" in section 3 (20) of the Bombay General Clauses Act, and the said

definition applies to section 167.

15. Mr. Khambatta attempted an extreme definition of section 167 in submitting that section 167 is restricted only to such cases as do not arise out of or in respect of any alleged neglect or default in execution of the Act. He contended that for this type of suit, there is no immunity in section 167 and the only protection or safeguard given to the defendants is u/s 167A, viz,, the statutory notice and special period of limitation. We are unable to accept this submission and are of the opinion that only honest; acts are protected even if they be negligent. Acts or negligence coupled with dishonesty would, how-ever, not be protected. Mr. Khambatta also referred us to the provisions of English common law making a distinction between acts enjoined and acts permitted by statute and that permissive acts must be performed in conformity with private rights and such statutory powers must be exercised in a manner that is not harmful to the public. All these are very healthy principles, but. we are here concerned with the interpretation of statutory provisions which must be interpreted not in light of principles of English common law, but in light of the express words used in the statute and it may well be the intention of the Legislature to make a departure from these principles.

16. We must now proceed to consider whether the defendants acted honestly in exercise of their statutory powers and so in good faith so as to be entitled to the immunity provided in section 167 of the Bombay District Municipal Act, 1901.

17. Mr. Mohanlal Parsharam Karwa the President of the Bhivandi Municipality from 1961 has given evidence in the lower Court on behalf of the defendants. He stated in his examination-in-chief that the Varala dam was not within Bhivandi municipal limits and that the staff working at the dam is paid and controlled by the Health Department of the Government of Maharashtra and that the contract for the reconstruction was also given by that department. Be has, however, admitted that the expenses incurred for the reconstruction are borne by the municipality. He has also admitted that even before the contract for construction was given by the Government, the estimate of cost was submitted to the municipality as the municipality had to pay the amount although it had no control over the reconstruction work. He also admitted that before the monsoon of 1963, about 16 feet in length of the dam above 6 feet from the ground level had in fact been demolished although he stated that no information about the actual demolition work had been received by the defendants. In his cross-examination, he denied that Varala dam vested in the municipality although at the time of the inauguration of the dam a sign-plate had been put on the dam reading, "Bhivandi-Nisampur Nagarpalika Varala. Talao". He also stated that the Municipality had paid Rs. 4,50,000 to the State Government for the reconstruction of the dam. He admitted that water of the Varala dam was the source of the water supply of the town of Bhivandi, except that in April-May in each year this source is dried up and water has to be taken from the Bombay Municipal Corporation. He admitted that the road from Bhivandi to Varala dam

had been constructed by the defendants and that the defendants paid the electricity bill for lighting the road. He, however, did not remember to pay the electricity charges in respect of the pump at the dam for lifting water. He did not know whether staff quarters on the dam belonged to the defendants or whether the defendants paid electricity charges for these quarters. He stated that the dam was not owned by the municipality. He stated that Manerikar the Chief Engineer to the Government of Maharashtra had not informed him that the dam would be demolished before the monsoon of 1963 and reconstructed before April 1964. He admitted that Manerikar had visited the defendants in 1962 and thereafter there had been correspondence between the defendants and Irrigation Department of the Government of Maharashtra. He however, did not remember whether the defendants had written to the Government about the urgency of the demolition of the dam.

18. At this stage we must mention that during the pendency of the suit on April 5, 1965, the plaintiffs' advocate served on the defendants as well as their advocate a notice to produce the document (exh. 74) asking them to produce in Court on April 7, 1965, inter alia, correspondence with the Government of Maharashtra regarding the demolition and reconstruction of Varala dam. The defendants replied on April 28, 1965 (exh. 77) stating that the demand was vague and that the defendants would consider the matter if specific letters with sufficient description with dates were asked for. It is pertinent to note that the subject-matter of the correspondence was clearly stated in the plaintiff's notice as well as the parties to the correspondence. Dates of letters could only be known to the defendants. The reply obviously was evasive. The defendants did not produce correspondence in Court in spite of the notice.

19. In cross-examination Karwa the defendants' President was put several questions about the correspondence and about its contents, but still the defendants chose not to produce the correspondence. He stated that the defendants had been pressing the Government of Maharashtra to reconstruct the dam soon. He admitted that the defendants had been asking for reconstruction due to leakage in the dam. When pressed to answer why the correspondence was not being produced, he replied "I cannot state why the correspondence that took place between us and the Irrigation Department was not produced by us". Needless to say that the correspondence was not produced in the lower Court and has not been produced at all. We would, therefore be justified in drawing an adverse inference against the defendants that they were aware that the Varala dam had been demolished in April 1963 from its height over 6 feet from the ground level and that had the correspondence been produced, it would have established the negligence of the defendants. It has been observed by the Supreme Court in the case of State of Punjab Vs. Modern Cultivators, Ladwa, an under:

The sole ground upon which the liability of the State could be established in this case would be negligence of the State in properly maintaining the banks of the

cans". For this purpose it would be relevant to consider whether there were periodical inspections, whether any breaches or the development of cracks were noticed along the banks of the canal and in particular at the place where the breach ultimately occurred or whether any erosion of the banks particularly at place where one of the banks had been plugged had been noticed and no action or timely action had been taken thereon. There is evidence to show that the canals were being regularly inspected. That, however, is not the end of the matter. Immediately after the breach occurred some reports were made and as pointed out by my brethren in their judgments they were not placed before the Court despite its order requiring their production. When the matter went up before the High Court it was said that the records had been destroyed in the year 1958 or so and therefore they could not be furnished. This action on the part of the State is manifestly unreasonable and the legitimate inference that could be drawn from it is that if the documents had been produced they would have gone against the State and would establish its negligence. In these circumstances I would hold that though the plaintiffs have been enabled to adduce positive evidence of negligence it could legitimately be presumed that the State was negligent inasmuch as it had deliberately suppressed evidence in its possession which could have established negligence. In the circumstances of this case I do not think it appropriate to refer to the rule of evidence *res ipsa loquitur*.

20. As regards the ownership of the Varala dam, the plaintiffs produced an extract from the Village Register showing that Varala lake was situated within the municipal limits of Bhivandi. This was produced with an application dated August 19, 1965, after the arguments were over. Its production was objected to by the defendants. By an order dated September 2, 1965, the day on which the judgment was delivered, the lower Court admitted the extract in evidence. The lower Court has observed that this being an extract from a public document, its genuineness could not be doubted, and "in the interest of justice" its production was allowed. We, however, think that this was admitted at too late a stage and the defendants had no opportunity to cross-examine or examine any witness on the extract. We have, therefore not relied on this piece of evidence.

21. After the floods of July 5, 1963, on the very day, Karwa the President of the defendants sent a telegram to the Government (Exh. 228) stating that due to breakage of Varala Talao water had rushed in the town, followed by the letter of July 6, 1963 (Exh. 231), stating that before commencing the work of dismantling the old darn, no precautionary steps for the flow of water had been taken by the contractor and the result was that the capacity of the nullah was not sufficient to meet with the flow of water coming from the Talao and it would appear that the position would continue to remain the same till the monsoon was over.

22. But even apart from this extract, taking into consideration that (a) the Varala dam was the principal source of water supply of Bhivandi, (b) due to the leakage in the dam the defendants themselves had asked the Government for its reconstruction, (c) pursuant to the request of the defendants, Manerikar, the

Government Chief Engineer, had visited the defendants in this connection in 1962, (d) there had been correspondence regarding demolition and reconstruction "between the defendants and the Government thereafter, (e) even before the contract was given before the demolition an estimate of cost was submitted to the defendants, (f) the defendants paid Rs. 4,50,000 as cost of demolition and reconstruction, (g) immediately after the floods on July 5 and 6, 1963, the defendants showed knowledge of the dam having been demolished (Exhs. 228 and 331), (h) Varala dam bore the sign-plate of the defendants, (i) the road to Varala dam had been built by and lit at the cost of the defendants, (j) the defendants had to make arrangement with the Bombay Municipal Corporation for water-supply from the time of the demolition of the dam in April 1963 to April 1964 and they could not have done so unless they had known about demolition, (k) that the defendants who are a public body have suppressed the correspondence between them and the Government on the subject of demolition and reconstruction leading to the presumption that they knew about the demolition of the dam in April 1963, and taking into consideration the cumulative effect of all these and all other circumstances, we hold that the defendants had knowledge in April 1963 of the demolition of the Varala dam above a height of 6 feet above ground level.

23. In support of his contention that the defendants had no knowledge of the demolition of the dam before the laying of this slab complained about, Mr. Rege took us through the resolution of the defendants-municipality on November 28, 1960, for putting slab between Teen Batti bridge and Habsanali bridge on the south (the slab complained about) and between Teen Batti bridge and Lend i bridge on the north (sketch Exh. 148). He also took us through notices to contractors dated April 6, 1961 (Exhs. 222 and 223), sanctioning of the work on February 1, 1962 (Exh. 224), and the agreements with the contractors for the execution of the work on March 17, 1963 (Exhs. 235 and 236). About these facts there is no dispute. They only indicate that the work had been planned much earlier and there was no want of good faith in planning it. The time and manner of execution however stand on a different footing.

24. The real dispute is about the date of the laying of the slab between Teen Batti bridge and Habsanali bridge which caused the damage. Pherwani, a partner of the plaintiffs who gave evidence in the lower Court, stated that the defendants constructed a wall on either side on the nullah and put a slab over it, that the slab was completed in the middle of June 1963 and that till the time of the flood on July 5, 1963, the centering material was not removed from the nullah and that due to the putting of the slab, the width of the slab was narrowed from 40 feet to about 15 feet. This shows that while the dam was demolished in April 1963, the slab was completed in the middle of June 1963, It may have been commenced 15 to 20 days earlier, as it is the evidence of the defendants that it took about 25 days to complete this slab. It is also a matter of common knowledge that once ECC slabs are started, work goes on continuously and without a break to avoid gaps and cracks.

25. As against this, the defendants relied on a letter (Exh.. 226) alleged. to have been addressed by the contractor Madbhavi to the defendants on May 9, 1963, stating that the slabs between Lendi bridge and Teen Batti bridge and between Teen Batti bridge and Habsanali bridge were complete and possession may be taken and payment made. This letter has been produced through this defendants" witness Madbhavi. He states that he delivered this letter personally to the President at his private shop on May 9, 1963. In cross-examination, he was unable to produce either his office copy of this letter or any acknowledgement for its delivery. He admits that he neither informed the architects of the completion, nor obtained or even applied for their certificate of completion to entitle him to payment. He denied the suggestion that this letter was not written by him on May 9, 1963. The defendants" President Karwa was cross-examined on this letter and had to admit that he had no knowledge about the completion of the work, that the letter was not initialed by him or by any other officer of the defendants and that it had not been entered in the inward, register. In view of these facts, we have no hesitation in rejecting the letter (Exh. 226) as unreliable. Kini the defendants" architect has in his evidence not referred to this letter or alleged that the work was completed by May 9, 1963.

26. Coming to the question whether the defendants are guilty of negligence or not, we must first observe that if things authorised to be done by a statute are carelessly or negligently done, an action is maintainable. Such a breach is known as statutory negligence. The word "negligence" in such cases means adopting a method which in fact results in damage to a third person, except in a case where there is no other way of performing the statutory duty,, So that it is negligent to carry out work in a manner which results in damage unless it can be shown that that, and that only, was the way in which the duty could be performed. Powers given by a statute must be exercised reasonably,, and not to the prejudice of the public.

27. We hold that on July 6, 1963, flood water entered the premises of the plaintiffs. The execution of the work by constructing the nullah and by putting a slab on it, was carried out with willful and wanton negligence without good faith causing damage to the plaintiffs" property. The said damage has been proved at Rs. 54,560. The suit is not barred by section 167 of the Bombay District Municipal Act. In the result, we set aside the decree of the lower Court dismissing the plaintiffs" suit and pass a decree in favour of the plaintiff-I against the defendants for Rs. 54,560 with interest thereon at 6 per cent, per annum from the date of the decree of the trial Court till payment. The defendants will also pay the plaintiffs" proportionate costs throughout. Defendant- 2 will bear their own costs in both the Courts.