
(1979) 08 DEL CK 0004

In the Delhi High Court

Case No : Regular First Appeal No. 141D of 1966

Municipal Corporation of Delhi

APPELLANT

Vs

Ramesh Chander and Another

RESPONDENT

Date of Decision : 22-08-1979

Acts Referred:

Citation : (1979) ILR Delhi 499

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : T.C.B.M. Lal, Arun Jaitley and Ashok Kashyap, for the Appellant;

Judgement

Avadh Behari Rohatgi, J.

(1) On September 28, 1963, a house bearing No. 1349 situated in Gali Khan Khannawali, Phatak Habash Khan, Delhi collapsed. The adjoining property was house No. 1334. Some of the debris of house No. 1349 fell on property No. 1334. As a result the ceiling and some portions of property No. 1334 also caved in. The wife of the plaintiff-respondent Ramesh Chander was buried in the malba of property No. 1349 and 1334. She was a young women of 24. The fire brigade was immediately called. After great efforts the dead body of the plaintiff's wife was taken out.

(2) The plaintiff was tenant in house No. 1334. As a result of this catastrophe he sustained great loss. His wife died. His movables were damaged.

(3) On January 14, 1964, after serving notice on the Union of India and the Municipal Corporation of Delhi Ramesh Chander brought a suit against them in forma pauperis to recover Rs. 25,000 for the damage he had suffered. Both the defendants contested the suit. They denied their liability. After evidence and arguments the trial judge decreed the suit in the sum of Rs. 5,000 in favor of Ramesh Chander against both the defendants. This was the decree he made on February 25, 1966. From this decree the Municipal Corporation of Delhi has brought the present appeal.

(4) The findings of the learned trial judge may be summarised as follows :

1.That properties 1334 and 1349 were transferred to the Municipal Corporation of Delhi by the Union of India with effect from September 1, 1961 in pursuance of a slum clearance scheme.

2.That the Union of India was the owner of both the properties.

3.That the said properties were transferred to the Municipal Corporation of Delhi for the purpose of management.

4.That the Municipal Corporation of Delhi as well as the Union of India were guilty of negligence inasmuch as no care was taken in the maintenance and upkeep of building No. 1349.

5.That Ramesh Chander's wife was residing in property No. 1334 and she died as a result of building No. 1349 falling down on her.

6.That Ramesh Chander was entitled to damages. He awarded for the loss of wife damages of Rs. 3,000 and for the loss of moveables he awarded Rs. 2,000.

7.That both the defendants, Union of India as well as the Municipal Corporation of Delhi were liable in damages to the plaintiff.

8.That the suit was within time.

9.That notice under s. 80 was served on the Union of India. Notice under s. 478 of the Municipal Corporation was duly served on the Municipal Corporation of Delhi before bringing the suit.

(5) The central question in the case is: Did the property fall down on account of negligence of the Union of India and the Municipal Corporation of Delhi ? On this issue the Municipal Corporation produced a witness. He stated that he inspected the property on August 30, 1963 and September 13, 1963 and on both occasions he found it in good condition. He did not notice any cracks in it. Nor did he find it dangerous. But this witness, though he admitted that the Municipal Corporation, makes periodical inspection of the buildings committed to their charge, did not produce any record of such inspections. He brought a register of Inspection The Judge did not allow him to produce it. The reason was that the plaintiff Ramesh Chander had served a notice on the Corporation calling upon them to produce the inspection reports but the Municipal Corporation had refused to produce them. The learned judge, Therefore, disallowed the production of this document at the instance of the Corporation at the stage of evidence. He upheld the objection of the plaintiff raised under s. 164 of the Evidence Act. The sum total of the evidence is that there is no written record regarding inspection made by the Municipal Corporation of Delhi.

(6) A report of the executive engineer prepared as an inquest after disaster was produced in evidence by the Corporation. This report was considered as a material piece of evidence by the judge. He relied on it. On its basis he came to

the conclusion that the Municipal Corporation and the Union of India were guilty of negligence, the said this : " No proper inspection was made by the stall of the Municipal Corporation of Delhi and they merely had a glance of that and upon that they were rest content in saying that the building was in a sound condition. When the building admittedly was old one, and this being so it had outlived its utility, then more onerous duty was cast upon the employees of the defendant No. 2 (the Corporation) to see that it had no cracks and was in a sound condition."

(7) The report of the executive engineer says that the ground floor of building No. 1349 was 60 or 70 years old. Subsequent floors were later on added to it. They were built about 20 years back. The report concludes that the, "safe-bearing capacity of the soil underneath this building was very poor and that the wall in question have been, sinking gradually resulting in this tragedy."

(8) This report refers to another important fact. The ground floor was in the occupation of a tenant who was using it as a godown. In the godown he had stored glassware crates right up to the ceiling and, Therefore, the inspection officer could not notice defects as the entire wall was covered up with crates. This clearly shows that those who were in charge of inspection did not perform their duty. They merely entered the godown and went away after casting a glance around. Merely casting glance around is not inspection. The inspectors never asked the godown keeper to remove the crates. If that had been done the cracks would have been visible because the report of the executive engineer shows that the building was slowly sinking and the tragedy was "as natural as the death of a man due to old age sure but unpredictable", as the report put it. In the upshot there was no effective examination by the officers of the Corporation which would have disclosed the defect in the house foundations and provided a reasonable opportunity for its remedy.

(9) On this material the trial judge came to the conclusion that the Corporation and the Union of India were guilty of negligence. He followed a decision of the Punjab High Court : where the Clock Tower in Chandni Chowk had fallen down and the court held that it was a case of negligence. Applying the principle of that case the judge found here, as there, that no record of inspection was kept by the Municipal Corporation of Delhi. If the inspection notes had been kept than it could have been seen in what respect the inspection of the building was made and what was the condition of the building. In agreement with the trial judge I hold that the property No. 1349 collapsed on account of the negligence of the Corporation. They failed to do their duty in maintaining the building in a reasonably safe state of repair.

(10) The building collapsed owing to inadequate supports. It was dangerous. As a dwelling house it was not fit for habitation. The structure was old. It had outlived its usefulness. The house foundations were insecure. The habitability of the premises was by all standards unsafe. Those whose duty is to maintain buildings in safe conditions cannot escape the onerous obligations of care

postulated by the general law of negligence. This is in response to an expanding view of social responsibility and the need for increased accountability of public authorities charged with safety supervision. [J. G. Fleming The Law of torts (5th ed.) p. 145].

(11) The Municipal Corporation of Delhi is a statutory body constituted under the Delhi Municipal Corporation Act 1957 (the Act). It is a public body. There is a positive public duty on the Corporation "to prevent all cause of danger" from buildings which are "in a ruinous condition, or likely to fall or in any way dangerous to any person occupying, resorting to or passing by such building or any other building or place in the neighborhood of such building." (S. 348). To this end the public authority is clothed with statutory powers contained in ss. 348 and 349. The Commissioner is a public authority armed with statutory powers. This means that there is a public duty imposed upon him by law. If there is a duty arising from the statute those who act negligently in the performance of that public duty cannot be relieved of their liability in damages.

(12) An action for damages for breach of a statutory duty cannot be accurately described as statutory negligence. An action for breach of a statutory duty which involve the notion of taking care not to injure is for the purposes of action for damages equivalent to negligence. As Lord Wright tersely put it :

" THE particular remedy of action for damages is given by the common law in order to make effective, for the benefit of the injured plaintiff, his right to the performance by the defendant of the defendant's statutory duty. It is an effective sanction."

(13) That there is a statutory duty to maintain buildings and repair them is also clear from s. 461 which provides for punishment for contravention of the provisions of the Act or for failure to comply with the order or direction lawfully given. The penalties are set out in the twelfth schedule to the Act. For the contravention of ss. 348 and 349 fine and daily fines are both prescribed. This is a criminal sanction for any disobedience, whether or not it causes any injury to anyone. The common law provides a remedy in damages for non-compliance with the statutory rule. A modern authority has said :

" FOR whenever a penal statute lays down a standard of conduct for the purpose of preventing injury or loss, non-compliance is at least admissible as evidence of negligence (breach of the common law duty to take care)."

(J. G.Fleming p. 123).

(14) This case, the instant one, well illustrates the breach of statutory duty. The scope, purview and structure of ss. 348 and 349 clearly show the intention of the legislature to provide a civil remedy for breach of statutory duties. Fleming says at p. 124 :

" ANY recovery of damages for injury due to its violation must, Therefore, rest on common law principles. But though the penal statute does not create civil

liability, the court may think it proper to adopt the legislative formulation of a specific standard in place of the unformulated standard of reasonable conduct, in much the same manner as when it rules peremptorily that certain act's or omissions constitute negligence as a matter of law. By accepting the legislative standard it rules in effect that the defendant's conduct fell below that of the reasonable man as the court conceives it ; for, once it has been officially determined that certain risks must be avoided by taking a prescribed precaution on pain of criminal penalties, non-compliance cannot be regarded as other than sub-standard in the absence of some cogent counter availing reason."

(15) I have carried the theme beyond what was said in 1960 in *Municipal Committe v. Sobhagwanti*, supra. This is because the law has given us new angles of vision and new hooks of apprehension in recent times. With a sharp gesture of impatience the legislature has increasingly made public authorities accountable. It has shown a wide awareness to social responsibility. I have founded my view on the statute. The statute makes both the Corporation and the Union of India liable the Union of India as the owner of the building and the Corporation as the occupier for it was committed to its care for maintenance and repair. The Corporation owed a duty of care to keep the premises in a reasonably safe state of repair. This duty they owed to the inmates of house No. 1349 as also to 1340 for the latter house was a "place in the neighborhood" of a building "likely to fall", the danger from which was "imminent". The legislative safety standard is contained in the statutory command to take all reasonable care in, respect of dangerous buildings and "to prevent all cause of danger there from". Failure to perform the public duty is negligence. There is liability for damage caused by negligently performing the act authorised.

(16) In the present case the damage would not have occurred but for the Corporation's negligence. Ss. 348 and 349 are a legislative recognition of the civilised demand of the modern age for a general duty of care. The common law duty has been formulated into a statutory regulation. Now it has the formidable effect of subjecting those who infringe it to penal consequences. " Once it has been officially determined that certain risks must be avoided by taking a prescribed precaution on pain of criminal penalties, non-compliance cannot be regarded as other than sub-standard in the absence of some countervailing reason". The injured plaintiff has the right to the performance by the defendant of the defendant's statutory duty. How will he enforce it against the infringer ? What is the effective section ? The answer is the remedy of an action for damages.

(17) On quantum of damages counsel for the Corporation has not been able to show me that in this case the award of damages is in any way erroneous or excessive.

(18) For these reasons the appeal is dismissed with costs.