

(2010) 03 P&H CK 0062
In the Punjab And Haryana At Chandigarh

Punjab Water Supply and Sewerage Board and Others	APPELLANT
Vs	
Amrinder Singh Sidhu and Others	RESPONDENT

Date of Decision : 08-03-2010

Acts Referred:

Citation : (2010) 158 PLR 768

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Judgement

Mahesh Grover, J.—This common judgment will dispose of the above mentioned two Regular Second Appeals which have been preferred against judgments and decrees dated 2.5.1994 and 5.6.1997 passed respectively by Senior Sub Judge, Bathinda (hereinafter described as "the trial Court") and the District Judge, Bathinda (referred to hereinafter as "the first appellate Court").

2. Amrinder Singh Sidhu and Mohinder Singh Sra had filed two separate suits for damages on the plea that in the year 1988 when heavy rains occurred in Bathinda, water entered their houses due to faulty drainage system which drainage and sewerage system was maintained by Punjab Water Supply & Sewerage Board (for brevity, "the Board") through its officers* The Board and its Superintending Engineer and Executive Engineer posted at Bathinda along with Municipality, Bathinda were impleaded as defendants.

3. The trial Court, after appraisal of the entire evidence on record, decreed the suit of Amrinder Singh Sidhu with costs against all the defendants therein and awarded a sum of Rs. 2,00,000/- as damages, whereas since Mohinder Singh Sra had given up relief against Municipal Committee, Bathinda, his suit against it was dismissed and the same was decreed with costs against the remaining defendants for recovery of Rs. 1,99,445.02.

4. Feeling dissatisfied, the Board and its two officers as well as Municipal Committee, Bathinda filed three separate appeals, whereas the plaintiffs had filed cross objections claiming interest on the decretal amount.

5. At the appellate stage, Amrinder Singh also made a statement that he did not want to claim any relief against Municipal Committee, Bathinda.

6. After hearing the counsel for the parties and as a consequence of the aforementioned statement, the first appellate Court dismissed the appeals of the Board and its officers, whereas allowed the cross objections of the plaintiffs granting them interest at the rate of 12% per annum on the decretal amounts and also allowed the appeal of the Municipal Committee, Bathinda, while dismissing the corresponding objections.

7. This has resulted in the filing of the instant appeals by the Board and its officers.

8. Learned Counsel for the appellants has contended that the appellants had been writing extensively to the Municipal Committee, Bathinda to provide funds for the construction of storm water drainage. He referred to the documents Exhibits D2, D3 and DI/A which shows that the Deputy Commissioner, Bathinda had urgently brought to the notice of the Municipal Committee, Bathinda the need for storm water drainage and the appellants had also been asking it to provide necessary funds by submitting the estimate and proposals, but the Municipal Committee did not respond leading to the situation where the houses of the plaintiffs were flooded. He, thus, contended that the responsibility of maintaining drainage etc., even though, was given to the appellants, yet, the same could not be effectively carried because of the non-cooperation of the Municipality. He further contended that in any eventuality, under the Punjab Municipal Act, 1911 (for short, "the Act"), it was the duty of the Municipality to develop the infrastructure and maintain it so that the civic amenities are provided to the residents of the area. He argued that the entire liability has been fastened upon the appellants without apportioning the same on the Municipality and in fact, no liability should have been fastened upon them because the plaintiffs had themselves admitted that prior thereto, there was no occasion when water had entered into their houses and also that they have admitted that their houses are located in the low-lying area and water could have entered their houses. He further argued that it was an act of God that such heavy rain had fallen and was an unforeseen situation which could not be attributed to the negligence of the appellants.

9. On the other-hand, learned Counsel for the plaintiffs defended the impugned judgments and contended that it was sheer act of negligence on the part of the appellants that the houses of the plaintiffs were damaged on account of flood.

10. Learned Counsel for the Municipal Committee, Bathinda also stated that it was the responsibility of the appellants to maintain the sewerage and drainage pipelines.

11. I have thoughtfully considered the rival contentions and have gone through the impugned judgments, as also the record.

12. There is no denying the fact that the Municipal Committee has a bounden duty to develop infrastructure and to maintain it in such a manner so that the civic amenities are not disrupted in the event of rain. If the testimony of witnesses and evidence on record are to be seen, then the appellants were, indeed, representing to the Municipal Committee, Bathinda to provide necessary funds and to grant approval to maintain such sewerage lines so as to enable the water to drain out effectively. The statement of DW2 Shri Chaman Lal Gupta, a witness of the appellants, shows that he admitted that the Board maintains the sewerage system on behalf of the Municipal Committee as "deposit work". He further testified that the Board was constituted in the year 1977 while the Public Health Department had laid sewerage system between the period from 1961 to 1965; that during the year 1977, the water table rose and existing sewerage system due to this was damaged. He also stated that the entire sewerage system has to be replaced. In his cross-examination, he admitted that whenever there is rain, the water enters the main sewerage system through open drains. It is also in his testimony that the water level due to rains had come up to the plinth of Courts complex and had also entered the rooms of the Courts; that the water collected in the Court complex was flushed out through the houses of the plaintiffs and also through Shant Nagar Power House read; that due to stagnation of water for weeks together, the life of the building/ houses of the plaintiffs was decreased.

13. If the entire statement of DW2 is to be read, then it shows the complete apathy of the appellants in the existing working of sewerage system of the area. After the incident, the appellants had used pumps to drain out the water, but surprisingly the water was flushed out via the houses of the plaintiffs. This reveals extreme lack of sensitivity towards the plight of the residents, as also reflecting the gross negligence.

14. The findings of the Courts below regarding the negligent attitude of the appellants, therefore, cannot be faulted with. However, at the same time, it is to be seen that the appellants were maintaining the sewerage lines on behalf of the Municipal Committee, Bathinda, which cannot wash off its hands of the entire incident. In my considered opinion, the appellants and the Municipality both are to be held negligent which negligence led to the damaging of the houses of the plaintiffs. But, the plaintiffs themselves gave up their claim against the Municipal Committee, Bathinda.

15. I am, thus, of the view that the question of law which arises for consideration of this Court is as to "whether Municipal Committee, Bathinda was vicariously liable for the acts and omissions of the appellants?"

16. It is to be seen that concededly, the appellants were acting as an agent of the Municipal Committee, Bathinda which is the principal body required to maintain and provide civic amenities to the residents. According to the provisions of the Act, the duty to maintain and provide civic amenities by infrastructure etc. is definitely that of the Municipal Committee and if for the said purpose, it

delegates its powers to its agent, then it cannot be said that if the agent fails to perform his part of the duty satisfactorily, the Municipality which is the principal, can evade its liability. Thus, both the appellants and the Municipal Committee, Bathinda are held guilty of negligence and the question of law is answered as above.

17. In such an eventuality, the liability as fastened by the Courts below shall be apportioned between the appellants and the Municipal Committee, Bathinda in equal shares.

18. It is also to be stated here that the compensation has been satisfactorily awarded in view of the testimony of PW1- M.S. Viridi, who had carried out the inspection regarding the damages caused to the properties of the plaintiffs. The same need not to be interfered with.

19. However, the interest awarded by the first appellate Court is slightly exorbitant " and in the given set of circumstances, I am of the opinion that interest at the rate of 9% per annum on the amount of damages awarded to the plaintiffs would meet the ends of justice.

20. The appeals are, accordingly, allowed partly and the impugned judgments are modified to the extent that the plaintiffs shall be entitled to damages as awarded by the trial Court and affirmed by the first appellate Court with interest at the rate of 9% per annum from the date of filing of the suits till the date of realisation and they shall be entitled to recover the same from the appellants and the Municipal Committee, Bathinda in equal shares. However, the Executing Court shall take into consideration the impact of the statements made by the plaintiffs by which they have relinquished their claim against Municipal Committee, Bathinda.