
(1974) 07 AHC CK 0010
In the Allahabad High Court
Case No : Second Appeal No. 4297 of 1965

Town Area Committee and Others	Vs	APPELLANT
Prabhu Dayal and Another		RESPONDENT

Date of Decision : 12-07-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 9
Provincial Small Cause Courts Act, 1887 — Article 35

Citation : AIR 1975 All 132

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Advocate : S.K. Tewari, for the Appellant; R.R. Agarwal and Bhartji Agarwal, for the Respondent

Final Decision : Allowed

Judgement

Hari Swarup, J.—This is a defendant's appeal arising out of a suit for recovery of compensation for damages suffered by the plaintiff by an act of defendants. Plaintiff's case was that he had made constructions of 16 shoos on the old foundations of the building known as Garhi and the defendant Town Area Committee act-ins through its Chairman and Vice-Chairman, who are defendants 2 and 3 illegally demolished, these constructions. By this demolition plaintiff suffered a loss of Rs. 1,000. According to him the notice u/s 186 of the U. P. Municipalities Act was bad as it gave to the plaintiff only two hours' time to demolish the constructions and not a reasonable time as contemplated in Section 302 of the Act. It was also asserted that demolition after this notice was bad as the notice was served at a time when the plaintiff was out of station. The action was said to be mala fide.

2. The plea of the defendants was that the constructions had been made by the plaintiff without giving the notice of intention to erect the building u/s 178 and without obtaining the necessary sanction u/s 180 of the Act. It was denied that the action was mala fide and it was asserted that the notice to demolish the

constructions had been given earlier on 18th December requiring the stoppage of further construction and removal of constructions already made and when it was not complied with, an order had been passed by the District Magistrate directing the Town Area Committee to take action u/s 186. Thereafter another notice was given on December 21 which also was not complied with and only then the building was demolished in accordance with law. On these grounds it was alleged that the plaintiff was not entitled to claim any damages.

3. The trial Court held that the plaintiff had made constructions without complying with the requirements of Section 178 and obtaining sanction as required u/s 180 of the Act. It also found that the provisions had been made applicable to the town area and in the absence of necessary sanction the Board had a right to demolish the constructions. The trial Court further found that notice had given reasonable time because the earlier notice had not been complied with. On these findings the trial Court dismissed the suit.

4. Plaintiff went up in appeal. The appeal was allowed by the first appellate Court and suit was decreed against defendants. Nos. 1 to 3. The claim was however, dismissed as against defendant No, 4, i. e. the State of U. P. The first appellate Court held that the Chairman and Vice-Chairman had acted with malicious intention in ordering the demolition of the building. It held that the order of the District Magistrate could not legalise the demolition because the notice had not given reasonable time to the plaintiff to demolish the constructions. On the finding that the defendants' action was high handed the lower appellate Court awarded plaintiff a decree for damages. Defendants Nos. 1, 2 and. 3 -have now come UD in appeal.

5. A preliminary objection has been, raised on behalf of the respondents to the effect that no appeal lies. The contention is that as the damages claimed were to the extent of Rs. 1,000/- and the suit was one of the nature cognisable by the Court of Small Causes, no second appeal would lie in view of Section 102, Civil P. C, I am unable to agree with this contention. Section 15 of the Provincial Small Cause Courts Act makes all suits cognizable by the Court of Small Causes except those which are specified in the second schedule. Clause 35 (j) of the second schedule is relevant for purposes of this case. It exempts a suit for compensation "for illegal, improper or excessive distress, attachment or search, or for trespass, committed in or damage caused by, the illegal or improper execution of any distress, search or legal process". The present is a suit according to the plaintiff, for compensation for damage caused by illegal execution of a legal process.

According to learned counsel in the present case as the legal process itself was challenged to be invalid this provision will not apply. According to him this exception applies only to such cases where the process is legal but the execution alone is illegal. This contention cannot be accepted as no such distinction can be read in Clause (j) of exception 35 of the second schedule. It is not understandable that the legislature will exclude a case where the process is legal and the execution alone is illegal from the cognizance of a Court of Small Causes,

but will let a case where both the process and the execution are illegal cognizable by summary Court. The actual, damage in both such cases is suffered not by the issue of the legal process, but only by its execution. The suit in either case is of a similar nature and will be excluded from the cognizance of the Court of Small Causes. In the present case the plaintiff had claimed compensation on the allegation that the plaintiff had suffered damage because of illegal execution of the legal process. Such a suit was not cognizable by the Court of Small Causes and it was rightly instituted by the plaintiff in the Court of the Munsif. The second appeal will therefore lie. The preliminary objection is overruled.

6. Coming to the merits of the case, it appears that the lower appellate Court has completely misdirected itself. The claim was on the basis of damages caused to the plaintiff by an act of the defendants. The plaintiff can get compensation only if he proves to have suffered injury because of an illegal act of the defendant and not otherwise. Malice does not enter the scene at all. A legal act, though motivated by malice, will not make the actor liable to pay damages. This proposition finds support from Salmond's observations "So too a landlord who serves a valid notice to quit cannot be held liable in tort because his motive was the vindictive one of punishing the tenant for having given evidence against him in other proceedings." (Salmond on the Law of Torts, Fifteenth Edition, p. 18) Merely because some officer has malice against a citizen who has committed a wrong will not render the action of the authority invalid if it is otherwise in accordance with law. Mere, malice cannot disentitle a person from taking recourse to law for getting the wrong undone. It is, therefore, not necessary to investigate, whether the action was motivated by malice or not.

7. Before the plaintiff can get any damages he must prove that he had suffered an injury. Law does not take into account all harms suffered by a person which caused no legal injury. Damage so done is called *damnum sine injuria*. Such a damage does not give the sufferer any right to get compensation. The term "injuria" is to be understood in its original and proper sense of wrong (in jus. contrary to law Salmond on the Law of Torts, p. 17). In the present case there is no doubt that the plaintiff was himself guilty of committing the wrong. As found by the trial Court, the plaintiff had not given any notice u/s 178 of the U. P. Municipalities Act and had not obtained the sanction contemplated by Section 180. According to the finding of the trial Court the building abuts a public street and prior notice and sanction were necessary. These findings have not been reversed by the appellate Court. Section 185 of the Act says:

"Whoever begins, continues or completes the erection or re-erection of, or any material alteration in a building or part of building or construction or enlargement of a well, without giving the notice required by Section 178, or in contravention of the provisions of Section 180, subsection (5) or, of any order of the Board refusing sanction or any written directions made by the Board u/s 180 or any bye-law, shall be liable upon conviction to a fine which may extend to one thousand rupees but which, in the absence of special and adequate reasons to

the contrary to be mentioned in the judgment of the Court, shall not be less than two hundred and fifty rupees."

Section 186 of the Act gives the Board a power to demolish a construction the making of which amounts to an offence u/s 185.

8. According to learned counsel for the plaintiff, the demolition was not done in accordance with law as the notice did not give reasonable time, and hence the Municipal Board will be liable to pay damages. The notice though of an earlier date, was served on the 18th and it required demolition before the 18th. Of course such a notice could not be complied with in its terms, but that would not authorise the plaintiff to maintain the constructions illegally made. The plaintiff did not appear before the authority to show cause why the building should not be demolished. Again after three days another notice was given and the building was thereafter demolished. There was no objection made that the two hours' time given in the notice of the 21st was insufficient. Had the plaintiff made a complaint that he had suffered a loss because the demolition was done the same day and he would not have suffered loss if greater time had been granted for demolishing the illegal constructions, that would have been a different matter. The case of the plaintiff, however, was that he had a right to maintain the building and the action of Board was bad because it was mala fide. In this plea the time factor ceases to be of any importance. The notice cannot in these circumstances be said to be such as to make the consequential action illegal.

9. There is also no merit in the contention of the learned counsel that the plaintiff had suffered injuria by the act of the demolition of the building because he had a fundamental right to hold and enjoy the property even though it was constructed without prior sanction from the Municipal authorities. There is no right to enjoy property not legally obtained or constructed. A person has been given by law a right to construct a building, but that right is restricted by various enactments, one of which is the U. P. Municipalities Act. If a person constructs a building illegally, the demolition of such building by the municipal authorities would not amount to causing "injuria" to the owner of the property. No person has the right to enjoy the fruits of an act which is an offence under law.

10. As the plaintiff has failed to prove that he had suffered injuria in the legal sense, he is not entitled to set any compensation. The decree of the Court below cannot even though the plaintiff may have suffered damages, be sustained.

11. In the result, the appeal is allowed, the decree of the lower appellate Court is set aside and that of the trial Court restored. In the circumstances of the case parties will bear their own costs.