Periyammal Vs. Valarmathi

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SooperKanoon Citation : sooperkanoon.com/828810

Court : Chennai

Decided On : Mar-11-1998

Reported in : (1998)2MLJ634

Appellant : Periyammal

Respondent : Valarmathi

Judgement :

S.S. Subramani, J.

1. I will first deal with the Second Appeal.

2. Plaintiff in O.S.No.677 of 1989 on the file of District Munsif's Court, Perambalur, is the appellant in the Second Appeal. She filed the suit for a permanent prohibitory injunction restraining the respondent (defendant) from starting any rice mill or flour mill. According to her, installation of such a mill will cause grave nuisance and also affect her health. It is said that she is residing in Ward No. 1, House No. 103-C, in Vadakkalur Village, Perambalur Taluk, and the defendant is making arrangements to install a flour mill with 25 H.P. within a distance of 25 feet. According to her, if it is allowed, she will be put to serious hardship.

3. In the written statement filed by the defendant, the above allegations were denied. She only said that due to personal animosity, plaintiff has filed the suit. She has also said that the plaintiff is not residing in the address mentioned in the

plaint, and the rice mill is proposed to be installed at a place far away from the plaintiff's property. She has also said that in between the proposed mill and the socalled plaintiff's house, there are two big walls having a width of 1 1/2 feet each. There cannot be any question of sound pollution or any annoyance to the plaintiff. She prayed for dismissal of the suit.

4. The trial court, as per judgment dated 30.7.1990, dismissed the suit. For that purpose, it relied on the evidence, both oral and documentary, adduced, by the parties. Exs.A-1 to A-15 were marked on the side of plaintiff, and Exs.B-1 to B-4 were marked on the side of defendant. Exs.C-1 and C-2 are respectively the report and plan submitted by the Advocate-Commissioner. Plaintiff examined herself as P.W.1 and also another independent witness as P.W.2. Defendant examined herself as D.W.1 and two other witnesses as D.Ws.2 and 3.

5. The trial court came to the conclusion that no legal evidence was adduced by the plaintiff and, therefore, she is not entitled to any relief. It also took into consideration the permissions granted by various authorities, in favour of defendant and held that in view of that it cannot he presumed that there will be any nuisance to any person. Accordingly, the trial court dismissed the suit.

6. Plaintiff filed A.S.No.112 of 1992, on the file of Principal District Judge's Court, Trichy. The lower appellate court also confirmed all the findings of the trial court and dismissed the Appeal. The concurrent judgments of both the courts below are challenged in this Second Appeal.

7. The following substantial question of law was raised for consideration at the time of admission of Second Appeal:

Whether the lower appellate court failed to consider the distance of 25 feet in between the appellant and the respondent's rice mill?

8. On a reading of the substantial question of law mentioned above, I do not think that it is a question of law. The lower appellate court has considered the evidence on record and come to the conclusion that there cannot be any nuisance, and no legal evidence has been let in by plaintiff. According to me, it is not the distance

between the two buildings that requires consideration, but the only question to be considered is, whether the running of a flour mill or rice mill will cause nuisance to the plaintiff, which will amount to an actionable claim. For this, 1 take support from the decision reported in Ram Lal v. Mustafabad Oil and Cotton Ginning Factory , wherein a learned Judge of that High Court has held that a remedy can be sought for only if a nuisance becomes an actionable claim. In paragraph 25 of that judgment (at page 402), it has been held thus:

From the review of authorities, the following principles may be deduced:

(1) In determining whether an actionable nuisance exists, the degree or the extent of the annoyance or the inconvenience is to be considered. For what may amount to a nuisance in one locality may in another place and under different surroundings be deemed unobjectionable.

(2) As the precise degree of annoyance or inconvenience does not admit of exact calculation, each case depends largely on its own facts.

(3) The injury or annoyance which warrants a relief against the nuisance complained of must be of real and substantial character disturbing comfort or impairing enjoyment of property. For slight, trivial or fanciful inconvenience, resulting from delicacy or fastidiousness, no relief can be granted.

(4) As a general rule, but allowing for known exceptions, a nuisance involves the idea of continuity or recurrence. Such a nuisance, if continued indefinitely, will be actionable though, not if indulged in only on one or two occasions.

(5) Actionable nuisance does not admit of enumeration and any operation which causes injury to health, to property, to comfort, to business, or to public morals, would be deemed a nuisance.

(6) In certain circumstances, and under certain conditions, even a natural tendency to cause injury, and a substantial fear or reasonable apprehension of danger, may constitute a nuisance.

(7) Jarring and vibration causal to the plaintiff's premises and noises exceeding a certain norm and interfering with the actual physical discomfort of persons of ordinary sensibilities, are deemed actionable nuisances. They have to be of such an intensity as unreasonably interfered with the comfort and enjoyment of property although no physical injury to the health of the complaining party of his family is shown. But no fixed standard can be set as to quantum of noise that constitutes actionable nuisance and it is a matter which depends upon the circumstances of each case.

(8) Once a noise is considered to be a nuisance of the requisite degree, it is no difference to contend, that it was in consequence of a lawful business or arose from lawful amusements or from places of religious worship.

9. Both the courts below have concurrently held that no evidence has been let in that regard. Merely because there will be sound due to the operation of the motor, it cannot be considered as an actionable nuisance. Defendant is entitled to carry on a business, of course, without causing nuisance, to others. If the statutory authorities consider that the business which the defendant proposes to start will not cause nuisance to the neighboring property owners, that has to be given importance. Courts below have considered the oral evidence, and they have come to the conclusion that the evidence cannot be accepted. In this connection, it may be noted that against the very same defendant, other suits, viz., O.S.Nos.449 of 1990, 677 of 1989, 786 of 1990 and 92 of 1991 were also filed by other property owners. All those suits were dismissed. Against the judgment in O.S.No.449 of 1990, there was an appeal as A.S.No. 113 of 1992, and the same was dismissed on 26.10.1993. Out of the suits instituted against the defendant herein, only the present suit remained. So, it could be seen that no only the plaintiff herein, but also many other neighbours have also taken steps to stall the installation of rice mill, and all of them have failed. Though the decisions in those suits may not operate as res judicata, the decisions rendered therein can be considered as a piece of evidence, when the defendant herein was a party to those suits also. I do not find any ground to interfere with the concurrent findings of the courts below. Consequently, I dismiss the second appeal, however, without any order as to costs.

10. W.P.No.1077 of 1997 : Writ petitioner is the licensee, and respondent No. 4 is the plaintiff in the connected suit from which the Second Appeal has arisen.

11. In the affidavit filed in support of the writ petition, it is said that the petitioner (defendant in the suit) after her school education, proposed to seek self-employment under the Prime Minister's Self-Employment Scheme. Petitioner, therefore, applied to the Department of Industries and Commerce, to issue a certificate for a small scale industrial unit for the purpose of running a flour and oil mill on the land in Survey No. 123/1, Vadakkalur, Kunnam Taluk, Perambalur, and, on verification of all the particulars, the Department granted a provisional registration and subsequently issued a permit to run a flour and oil mill. Thereupon, petitioner applied to the 3rd respondent-Panchayat Union, and it passed a Resolution recommending the running of a flour and oil mill in Survey No,. 123/1. Pursuant to the application dated 3.6.1988, 3rd respondent forwarded the proposed plan to the Deputy Director of Town and Country Planning and recommended for approval. The Plan was approved on 16.8.1988. 3rd respondent forwarded the petitioner's application with the approved plan to the 2nd respondent, for N.O.C. from the Health Department. The Health Officer, on inspection, found that there is no violation of the provisions of the Tamil Nadu Public Health Act, 1939. The Panchayat Union also passed a Resolution permitting the petitioner to install an electric motor with a capacity of 25 H.P., to run the mill. It was stated that a separate licence may be obtained to run the electric motor. The petitioner thereafter constructed the mill and installed the 25 H.P. motor and other necessary machines and approached the Electricity Board and obtained service connection. Thereafter, he applied to the third respondent to issue licence. The licence was also granted on 31.7.1990, and petitioner started running the flour and oil mill from 1.8.1990 onwards. It was thereafter various litigations began. The neighbouring property owners who are not on good terms with the petitioner, filed suits one after another, and those suits were dismissed. In spite of the dismissal of those suits, appellant in the connected Appeal, viz., S.A.No.993 of 1994 filed petitions before the first respondent herein stating that if a rice mill is installed in the property in question, that will affect his health. Taking note of the petitions filed by the fourth respondent herein, the first respondent issued an order on 25.7.1991, directing the third respondent to cancel or revoke

the licence already granted. The same was challenged before this Court in W.P.No.11713 of 1991. Interim direction was also given. The order dated 25.7.1991 was quashed, and certain directions were given by the learned Judge. Against the order of the learned Judge, a writ appeal was filed by respondents 4 and 5, which was also dismissed. It was declared that the remand is open remand, and not limited. The reason for filing the writ petition is, after the disposal of the writ appeal, first respondent herein has issued the impugned order wherein number of deficiencies have been pointed out, and a direction has also been given to the third respondent to issue necessary notice to the owner of the rice mill as to why the licence cannot be cancelled, and also to proceed further as per the provisions of the Tamil Nadu Panchayats Act, 1958 and Tamil Nadu Public Health Act, 1939. In the various grounds raised in the writ petition, it is said that the various defects noticed by the first respondent were pointed out without notice to the petitioner. A reading of the order makes it clear that it is not really a show cause notice, but a finding regarding certain facts which the first respondent has already determined and, therefore, the same is violative of the principles of natural justice. The notice was also issued only at the instance of the fourth respondent, whose suit was dismissed. First respondent also should have taken note of the fact that in and around 5 kms. There is no rice mill or flour mill, and, therefore, installation of such a mill is in the interest of public. The direction issued to the third respondent is one without jurisdiction. He cannot take into consideration any allegation regarding violation of Building Rules, and at the same time, he has not taken into consideration the Inspection Report of the Deputy Director of Public Health which says that it is not going to cause any annoyance to anyone. For the above reasons, petitioner seeks the quashing of the order issued by the first respondent on 2.7.1996.

12. When the matter came for admission, the learned Judge, while ordering notice of motion, granted interim stay also.

13. The respondents 4 and 5 filed an application along with an affidavit, to vacate the stay granted by this Court. In the counter-affidavit, they have mentioned about the pendency of various litigations and also about the pendency of the second appeal. Thereafter, it is said that the petitioner has purchased the property from

one Bangarammal, who is entitled only to a half right in Survey No. 123/1 of Vadakkalur Village. The other half belongs to the fourth respondent. It is said that the property is in a residential locality, and while getting the licence, the petitioner has suppressed the existence of public buildings, Temples, etc., and the licence was obtained illegally and unlawfully. They prayed for dismissal of the writ petition.

14. After having considered the rival submissions, I feel that the impugned notice dated 2.7.1996 is really a finding entered by the first respondent without notice to the petitioner. It is also doubtful whether the personal inspection was made with notice to the petitioner. The Authorities insisted on getting N.O.C. from respondents 4 and 5 in this case. The suit filed by them has been dismissed, and the second appeal preferred therefrom has also been dismissed by me in this judgment. When the parties are at loggerheads, there cannot be any question of getting a N.O.C. from them, and the Authorities have also failed to take into consideration the other circumstances. The finding of the civil court is that there is no cause of action for respondents 4 and 5, and there is no actionable nuisance. That finding will be sufficient, and the Authorities cannot insist on a N.O.C. The manner of construction, how far it may affect the neighbouring owner, and whether Building Rules have been violated, have been considered by the Authorities in detail. I do not think that the same is within the jurisdiction of the first respondent. From the impugned order, it is further seen that the authorities have no other option tout to cancel the licence. It is a finding by the first respondent that the installations are against the approved plan, and even some of them are unauthorised. The effect of a direction given by a higher Officer to a Commissioner of a local Panchayat, though he is not a subordinate, is well-known. The first respondent wanted immediate implementation of his direction. I find that the first respondent has entered a finding against the petitioner without hearing her, and, on that basis, directed the authorities to issue a show cause, and that too, only for cancellation of the licence. The said order cannot legally stand. The authorities under the Panchayat are now without any option except to implement it. Their discretion and power under the Act also seem to have been taken away.

15. In this connection, it may also be noted that before entering such a finding, the petitioner is also entitled to get notice. Either the first respondent or the Joint

Director has not issued any notice to the petitioner, and prior intimation was not given before entering a finding as stated in the impugned proceedings. The petitioner was given licence after he complied with all the statutory formalities. Law presumes that the Authorities have acted in accordance with law. Before initiating any proceedings, petitioner is entitled to be heard. The direction to the authorities to issue show cause notice for cancellation of the licence is really not a show cause, but a direction to cancel the licence. According to me, the same cannot be sustained as valid. Therefore, the same is quashed. The writ petition is allowed as indicated above. No costs. W.M.Ps. are closed.