

Ratna Paul and ors. Vs. Subhash Ranjan Paul and anr.

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Court : Guwahati

Decided On : Feb-16-2001

Reported in : AIR2001Gau133

Judge : A.H. Saikia, J.

Acts : [Assam Town and Country Planning Act, 1959](#) - Section 63;; Assam Town and Country Planning Rules, 1959;; Specific Relief Act - Section 41

Appeal No. : MFA No. 60 of 2000

Appellant : Ratna Paul and ors.

Respondent : Subhash Ranjan Paul and anr.

Advocate for Def. : Mr. N.M. Lahri and ;Mr. N. Choudhury, Advs.

Advocate for Pet/Ap. : Mr. B.K. Das and ;Mr. P.K. Roy Choudhury, Advs.

Disposition : Appeal allowed

Judgement :

1. The granting of temporary injunction in favour of the Respondent/Plaintiff vide impugned order dated 26.9.2000 passed by the learned Civil Judge (Sr. Division) No. 2 at Cachar, Silchar in Misc. Case No. 29/2000 arising out of T. S. No. 43/2000 is the sole subject-matter of this Miscellaneous First Appeal.

2. Needless to remind that injunction is a form of equitable relief and has to be adjusted in the aid of equity and justice to the facts and circumstances of each individual case. Granting of injunction being itself a discretionary matter, there is no straight jacket formula in the matter of granting or refusing temporary injunction. Depending on each case on its own facts, three cardinal principles governing grant of temporary injunction have been accepted, namely (i) a strong prima-facie case, (ii) the balance of convenience and (iii) irreparable loss and injury. Ordinarily in deciding a case for seeking temporary injunction the Court must be satisfied that (a) whether a strong prima-facie case, (b) the balance of convenience is in his favour i.e. it would cause greater inconvenience to him if the injunction is not granted than the inconvenience which the opposite party or the persons claiming through the Opposite Party would be put to if temporary injunction is granted and (c) whether the petitioner would suffer irreparable loss and injury. With the first condition as sine-qua-non, the petitioner must satisfy atleast two conditions conjunctively.

3. Situated with such propositions, Woodroffe has correctly observed in his book 'Law relating to injunction' (12th Edn page 101) 'the power which the Court possesses of granting injunctions whether interlocutory or perpetual (however salutary) should be very cautiously exercised and only upon clear and satisfactory grounds, otherwise it may work the greater injury'.

4. Taking into consideration of this proposition as regards to grant temporary injunction, the case in hand has been taken up for final disposal.

5. I have heard Mr. B.K. Das, learned Sr. Advocate assisted by Sri P.K. Roy Choudhury, learned counsel appearing on behalf of the appellants as well as Mr. N.M. Lahiri, learned Sr. Advocate assisted by Mr. N. Choudhury, learned counsel representing the respondent.

6. I have perused the impugned order dated 26.9.2000 and entire materials available on record including the Plaint, application for temporary injunction and written objections of the Opposite Parties.

7. Having gone through the aforesaid materials on record, the facts of the case appear as follows :-

8. The respondent as plaintiff has filed a T.S. No. 43/2000 before the learned Civil Judge (Sr. Division) No. 2 Cachar at Silchar against the appellants/O.Ps praying inter alia, for :-

(a) a decree declaring that the appellant/defendant Nos. 1 to 3 do not have the right to construct any structure/building or portion thereof by way of construction/cantilever etc. over the land described in Schedule II below and thereby to infringe/ construction the right of the plaintiff to get uninterrupted free light, air and other liberties ;

(b) a decree declaring that all buildings/structures and/or extension/cantilever etc. of the defendant Nos. 1 to 3 are illegal, unauthorised structure and liable to be removed by demolition ;

(c) a decree that the construction permission issued by the defendant No. 4 vide No. SDA-22/BP/2000-2001/2 dated 24.3.2000 is illegal, void arbitrary, mala fide, not according to the building bye-laws of the defendant No. 4 and liable to be cancelled/set aside.

(d) For permanent injunction restraining the defendant Nos. 1 to 3 from proceeding with any construction work over the land described in the Schedule II of the land.

9. The respondent/plaintiff in Misc. Case No. 29/2000 seeking for temporary injunction has stated that he is the owner of the land and building covered by holding No. 146 Ward No. 22 of Silchar Municipality, wherein petitioner his family members and other tenants are residing. The O.P-defendant Nos. 1 and 2 the owner of the holding No. 145 Ward No. 22 and the O.P-defendant No. 3 is the owner of holding No. 146 of Ward Nos. 22 under Silchar Municipality and the said land of O.P Nos. 1 to 3 is situated on the contiguous east of the land and building of the petitioner. The O.P. Nos. 1 and 2 are the wife and own brother of the defendant No. 3 and as such they started construction of multi-storied building on their land jointly obtaining joint permission for construction from the O.P. No. 4 on

their land with rear side of the building and the west towards the holding of the petitioner, as described in Schedule - I of the petition. In the first week of May, 2000, the O.P. Nos. 1 and 3 started construction in the rear side i.e. western side to the contiguous east of plaintiffs holding when the petitioner could notice that the construction was being carried on in contravention of the building bye-laws of the defendant while the petitioner submitted a complaint in writing to the defendant No. 4 informing the violation of building bye-laws by the O.Ps. On the basis of the aforesaid complaint the O.P. No. 4 caused inspection of the construction work of the O.P. Nos. 1 and 3 and ascertain the violation but surprisingly issuing any stop work order the O.P. No. 4 simply fixed the hearing of the complaint fixing 17.6.2000 by issuing notice upon the petitioner. But the hearing could not take place on that day, and next date has not been fixed or communicated to the petitioner. Thereafter the petitioner obtained a certified copy of the constructed permission of the O.P. Nos. 1 to 3 and then the petitioner could come to know that the O.P. No. 4 has illegally granted set back for the western boundary i.e. the rear side of the petitioner's building as follows :-

Ground floor - 1.26m/0.90m First floor 75m/0.90m Second floor 0.75m/0.90m Third floor 0.75m/0.90m

But as per the building bye-laws of the O.P. No. 4 it should have been 9ft. i.e. 2.7m. Beside this the petitioner could come to know that the percentage of coverage allowed to the defendant - O.P. Nos. 1 to 3 is 65.37% whereas as per the building bye-laws maximum allowable percentage on coverage is 50%. Thus, the permission granted by the O.P. No. 4 is illegal, mala fide and bad in law. The petitioner mentioned that the O.P. Nos. 1 to 3 continued the construction in violation of the provision of law knowing fully well its serious implication on the valuable right of the petitioner and his family members and other occupant to have free light, air and other member and as such the said construction permission issued by the O.P. No. 4 is illegal, void, mala fide and not according to building bye-laws of O.P. No. 4.

10. The present appellants/O.Ps and Silchar Development Authority O.P. No. 4 have appeared and contested the case by filing their respective written objections

raising objection inter alia - that the case is not maintainable in law ; that the petition does not make out any prima facie case ; that there is no balance of convenience in favour of the petitioner and no irreparable loss would be caused to the respondent/petitioner if injunction is not granted. Further, the locus-standi of the petitioner to file the suit against the O.P. No. 4. Silchar Development Authority is also questioned, by O.P. No. 4.

11. Upon hearing the learned counsel for the parties, the trial Court vide its impugned order dated 26.6.2000 granted temporary injunction against the appellants/O.Ps Nos. 1 to 3 restraining them from proceeding with any construction work over the land described in Schedule II of the Plaint/Petition till disposal of the suit.

12. Challenging the impugned order dated 26.9.2000 Mr. B.K. Das, learned Sr. counsel appearing on behalf of the appellants strenuously argued that the learned Civil Judge (Sr. Division) No. 2, Cachar at Silchar while deciding the application for temporary injunction has totally failed to consider the three golden principles of law for granting temporary injunction. Advancing his arguments Mr. Das has contended that the appellants had started construction of R.C.C. building in their own land in Schedule II to the Plaint by obtaining due permission from the defendant/O.P. No. 4, Silchar Development Authorities, which is the competent authority to grant such permission for construction of building under the [Assam Town and Country Planning Act, 1959](#) (hereinafter referred to as the Act). Construction has been done as per the existing provisions of law laid down under the Act and Bye-laws framed thereunder as well as per Muster Plan and Zoning Regulation for Silchar.

13. A reference is made to the permission dated 24.3.2000 granted by the Respondent No. 4 annexed to the Memo of Appeal which shows that the Defendant No. 4, Silchar Development Authority allowed the appellants to construct R.C.C. Building up to third floor as per approved Drawing design with the set back with the conditions that :-

(1) Rainwater should fall in their own land ;

(2) S.D.A. will not be liable if the building be affected by any public complaint or any other reason ;

(3) Drainage system etc. to be maintained properly.

As per the said permission the appellants have been constructions the R.C.C. building within the approved set back and the Respondent/plaintiff has no legal right to question the said permission to enable him to obtain temporary injunction against the said constructions.

14. It is further submitted that the learned counsel for the appellants that the respondent/plaintiff did not put any objection at the time of initial stage of construction of ground floor, 1st floor and 2nd floor. But without any cogent and valid reason the respondent/plaintiff has filed the petition for temporary injunction when third floor is on the way of completion by casting roof. It is also submitted that the appellants/O.Ps had already constructed R.C.C. building by obtaining permission from the Silchar Development Authority spending more than 10,00,000 and by this impugned order they are suffering great financial loss in as much as they have to pay huge interest to the Bank from which they obtained loan for such construction. In support of his submission, the learned counsel for the appellants has referred to paragraphs 9 and 15 of the written objection filed by them, which is quoted below :-

'9. That the construction of the building in question was started about five months back and the process of construction of the ground floor, 1st floor, 2nd floor there is no objection and the plaintiff/petitioner without any cause and reason whatsoever when the 3rd story was on way of completion by casting of roof, the plaintiff/petitioner came forward with the petition in order to harass the O.Ps and to make them financially looser.

Already several Lakhs of Rupees have been spent in construction and house building materials worth more than the Lakh of Rupees are collected and stored and the Misc. case is started with a mala fide intention. Had the plaintiff/petitioner got reason to be affected adversely by the building, he could have come earlier with such petition of interim injunction. The delay in filing of the petition depicts

mala fide in conduct.

15. That the building was taken up for construction in March, 2000. Prior to which the building materials like Cement, sand, rod and the materials spending lakhs of Rupees was stored and the materials are going to be damaged particularly the cement bags are going to be cloated causing loss to the O.P. and the petitioner who is the next door neighbour-of the O.P. residing in a four storied building at a distance of 2/1/2' from the western boundary wall of the homestead of O.Ps observed and watched such things and he was a silent spectator as the construction proceeded on completion of ground floor, 1st. floor and the 2nd floor. He managed to get the status quo ante order on misrepresentations of facts. The O.Ps have in the meantime spent more than 10 Lakhs of rupees in construction. Without any valid and sufficient reason in order to cause harass and financial loss to the O.Ps, the order has been obtained ex-parte, without any bona fide in the matter.'

15. Adverting to the pleading including written objections of the appellants, the learned Sr. counsel has forcefully contended that the respondent/plaintiff, being a neighbour and having his multistoried R.C.C. building adjacent to the building of the appellants, had not come to Court with clear hand to seek equitable relief. The respondent/plaintiff himself, having violated the permission for construction of building has obstructed free light and air to the appellants by constructing his four storied building and as such he is not entitled to obtain temporary injunction against appellants construction on the plea that he is deprived of this right to free air and light.

16. Mr. Das, learned Sr. Counsel has further submitted that the trial Court had arrived at a decision to grant temporary injunction entirely on the basis of misinterpretation of a decision of Delhi High Court in 'Onkar Nath v. Ram Prasad Gupta', reported in AIR 1985, Delhi 293. He has stated that the ratio of the said case is not absolutely inapplicable in the case in hand in as much as the facts of the said case is posted at a different footing unlike the present one. In the said case it was held that a neighbour was vested with a right for injunction against the unauthorised construction i.e. without any permission from the competent

authority. Since there is a valid permission granted by the competent authority in the instant case, the Respondent is not entitled to get the benefit of the said rulings.

17. Countering to the contention of the learned counsel for the appellants, Mr. Lahiri, learned Sr. Counsel appearing for the respondent/plaintiff has strongly defended the impugned order dated 26.9.2000 stating that the learned Court below is absolutely justified and acted legally in passing the same inasmuch as, the entire constructions made by the appellants is in clear violation of the permission granted by the respondent No. 4, Silchar Development Authority and which is evident from the persual of Annexure B, C and D appended to the affidavit-in-opposition filed by the respondent in this Miscellaneous First Appeal.

18. Mr. Lahiri further submits that the respondent/plaintiff has not filed the case only for free light and air but his main thrust is on the illegal construction, started on the basis of illegal construction permission granted by defendant/O.P No. 4, vide order dated 24.3.2000. In order to support the contention, Mr. Lahiri the learned Sr. Counsel for the Respondent, has referred to Paragraph 9 of the injunction petition which reads as follows :-

'9. On 19.6 2000, the plaintiff-petitioner was furnished the certified copy of the construction permission issued by the defendant No. 4 in favour of the defendant - O.P. Nos. 1 to 3 Vide No. SDA-22/BP/2000-2001/2 dated 24.3.2000. On receipt of the same, the plaintiff could come to know that the defendant O.P. No. 4 has illegally granted set back for the western boundary i.e., rear side in favour of the defendant - O.P. Nos. 1 to 3 which is as follows :-

Ground floor - 1.26m/0.90m First floor 0.75m/0.90m Second floor 0.75m/0.90m Third floor 0.75m/0.90m But as per the Building Bye-laws of the defendant- O.P. No. 4 it should have been 9 feet (i.e. 2.7 meters approx). Beside the above, the plaintiff-petitioner could come to know that the percentage of coverage allowed to the defendant - O.P. Nos. 1 to 3 is 65.37 per cent whereas as per the Building Bye-laws maximum allowable percentage on coverage is 50 per cent'.

19. I have seen the written objections, as available on records, filed on behalf of the O.P. No. 4, the Silchar Development Authority. Having perused the same, it clearly shows that the O.P. No. 4 being the Competent Authority has granted permission as a special case, for construction of R.C.C. building up to third floor as per the provisions of the Act, Rules, Bye-Laws framed thereunder. It is stated therein that the case is not maintainable in view of the provisions of Section 63 of the Act which prohibits to question any order passed on good faith in any court except the appellate authority. Further in the said written objections it is stated that on 17.6.2000 was the date fixed for hearing of both the parties on a complaint received from the respondent/petitioner regarding the illegal construction of the appellants/O.Ps but the respondent/ petitioner instead of appearing before the Authority on that day, had instituted the present suit along with the Misc. Case, Further, it is contended that the respondent/petitioner is not entitled to get any relief by way of order of injunction in terms of Section 41(h) of the Specific Relief Act.

20. Relevant contentions made in paragraphs 8, 9 and 10 of the written objection of O.P. No. 4 is quoted below :-

'8. That the construction permission in question was granted by the answering O.P. as per Provision of Assam Town & Country Planning Act, Rules and Bye-Laws framed thereunder on good faith and the same was granted in exercise of power conferred by the said Act, such order cannot be in question in any Court except the appellate authority as provided U/S 63 of the said Act.

9. That when there is a equally efficacious alternative remedies available under the Assam Town & Country Planning Act before the Development Authority and without exhausting such relief legally there cannot be any order of injunction as provided U/S 41(h) of the Specific Relief Act.

10. That it is pertinent to mention here that on receiving the complaint from the petitioner/plaintiff regarding alleged illegal construction of the other opposite parties the answering O.P. conducted local inspection and the Building Inspector after due inquiry submitted his report on 12.6.2000 and accordingly date has been fixed on 17.6.2000 for hearing in the matter by the answering defendant. Both the

parties duly received notice of hearing and parties could not be heard as the present petitioner was absent. Later on the petitioner/plaintiff appeared through his learned Advocate at 4.10 P.M. on 17.6.2000 and in the meantime hearing was adjourned and next date was fixed on 5.7.2000 at 3.30 P.M. for hearing. But the petitioner/plaintiff in the meantime instituted the suit as well as the Misc. Case while the matter was pending for disposal of the answering O.P. No. 4. The petitioner/Plaintiff filed the suit and the Misc. Case without exhausting such remedies and hence the suit of the plaintiff is prematured and the same is liable to be dismissed.'

21. I have bestowed my earnest consideration to the rival contentions advanced by the learned counsel appearing for the parties. I am unable to persuade myself to agree with the submissions made by the learned Senior counsel for the respondent. On the otherhand, I unhesitantly approve the submissions advanced by the learned Sr. Counsel for the appellants.

22. Having regard to the entirety of the facts and circumstances of the case and upon careful scrutiny of the impugned order dated 26.9.2000 I am of the clear view that the learned Civil Judge (Sr. Division) No. 2 Cachar has, in arriving at a decision, failed to address himself with proper application of judicial mind towards the three well accepted principles governing grant to temporary injunction. The Court below has committed illegality in holding that there is a prima-facie case of the petitioner/respondent and . balance of convenience lies in his favour solely on the ground that respondent/petitioner along with his family members apprehend infringement of their valuable right to enjoy free air, light etc. if appellants/O.Ps continue their construction of 4 storied building.

23. Admittedly, both the appellants and the defendant being neighbour, are having their multistoried R.C.C. building, being constructed at the Urban area of Silchar Town upon obtaining respective permission from the Silchar Development Authority, O.P. No. 4. The respondent along with his family members and his tenants have been residing in his building and enjoying free air and light continuously and without any disruption since past. Since the appellants have been making construction of 4 storied building adjacent respondent's building, the

respondent apprehends deprivation of his such right to free air and light though he cannot claim the easement right in the State of Assam.

24. What I find is that mere apprehended personal discomfort like, deprivation of free air and light by the respondent and the members of his family by such construction, admittedly of the third floor of the appellants' building, would not give rise to the existence of a strong prima facie case of the respondent unless (i) an injury or immediate threat of injury to the person or property of the respondent by such construction or (ii) any spiteful or malicious motive is proved against the appellants/defendant. Accordingly, I am disinclined to accept those free air and light theory for holding a prima facie case in favour of the defendant.

25. As regards to the submissions of illegal construction on the basis of illegal construction permission dated 23.6.2000 issued by the respondent No. 4, Silchar Development Authority, it clearly appears from Annexure-D appended to the affidavit-in-opposition filed by the respondent in this appeal, that permission was granted by the Respondent no. 4, Silchar Development Authority in the present case as a special case with certain conditions as already noted above and as such, it cannot be said that the appellants had been constructing building without any permission or in violation of permission granted by the competent authority. Therefore, I feel such construction by the appellants would not vest any actionable right on the respondent to make out a prima facie case in his favour.

26. The Court below also held that the balance of convenience is in favour of the respondent observing as follows :-

'From the above discussions, it appears that the petitioner along with his family members and tenant have been residing in his own building and enjoying free air and light continuously and without any disruption since past and if the O.Ps continued their construction and building the alleged 4 storied building the apprehension of the petitioner for suffering injuries to their valuable right of air and light cannot be rules out. On the other hand, the contention of the O.Ps side as to the loss due to damage of their building materials can be compensated in terms of money and since they have yet completed the alleged construction, it is crystal clear that the balance of convenience is in favour of the petitioner. In this

connection learned counsel for the petitioner has drawn my attention to the ruling held in the case reported in AIR 1985, Delhi-293, wherein it was decided that in case of raising construction against Municipal Bye-laws, the neighbour has right to get injunction restraining party proceeding with the construction from further raising his unauthorised construction.'

27. I safely agree to disapprove the said findings and I hold that balance of convenience appears to be leaning in favour of the appellants in as much as from the pleadings it appears, the plaintiff have been constructing R.C.C. building investing huge amount. The respondent is not authorised to raise such objection and if any violation as contended is committed the same can be raised only by the competent authority concerned.

The apprehension of the respondent for suffering injuries to the valuable right of air and light cannot give rise to balance of convenience in his favour.

28. In arriving at the aforesaid findings the Court below has relied on the decision of 'Onkar Nath' (supra). With due respect, I am not inclined to accept the ratio of the said decision in the case in hand. I fully agree with the submission of Mr. B.K. Das, learned Sr. Counsel for the appellants made in this context as noted earlier.

29. Here is a case where permission has been granted by the competent authority-Respondent No. 4. However, the respondent has challenged also the legality and veracity of the said permission to be violative of provisions of building Bye-Laws etc. But I am disinclined to dwell upon the same in this present appeal being related to granting of temporary injunction and have left it to be decided by the Trial Court.

30. Further it is seen that it is the appellants who have been suffering irreparable loss and injury by granting temporary injunction restraining them, as they have already invested several Lakhs of Rupees for constructing the building. It can be safely said that an interlocutory injunction should normally be granted to restrain apprehended or threatened injury where the injury is certain and imminent or where the mischief likely to be done is of an overwhelming nature for instance demolition or destruction of property. In the instant case, no such certain and

imminent circumstances occurred which warrant granting of temporary injunction. With repid urbanisation taking place, hardly there is any scope for restraining construction of multistoried building on the plea that same will prevent from air and light unless there is clear proof of health hazard and environmental pollution.

31. Referring to the observation of Woodroffe's (supra) 1 may say with respect that the Court below ought to have opted cautiously in exercising its discretionary power of granting interlocutory injunction and as such, I am of the clear opinion that the impugned order is not in conformity with the established principles governing the law of injunction.

32. For the reason and discussions indicated above, I am of the considered view of the Court below had committed illegality and exceeded his jurisdiction in granting temporary injunction against the appellants restraining them from proceeding with any construction work.

33. Accordingly, the impugned order dated 26-9.2000 is hereby set aside.

34. However, considering the urgency of the matter, I feel that the main suit be decided by the trial Court expeditiously. Therefore, I direct the trial Court to dispose of the suit on merit in accordance with law without being influenced by any observation made in this order as expeditiously as possible at any rate within 4 (four) months from today.

35. Registry is directed to transmit the Lower Court's records immediately.

36. In the result, appeal is allowed. However, there will be no order as to costs.