Supreme Court of India
Kuldip Singh vs Subhash Chander Jain & Ors on 28 March, 2000
Author: R Lahoti
Bench: A.P.Misra, R.C.Lahoti

PETITIONER:
KULDIP SINGH

Vs.

RESPONDENT:
SUBHASH CHANDER JAIN & ORS.

DATE OF JUDGMENT: 28/03/2000

BENCH:
A.P.Misra, R.C.Lahoti

JUDGMENT:

R.C. Lahoti, J.

Plaintiff/respondents no. 1 to 3 and defendant no.1/appellant are neighbours having their properties in the city of Ludhiana. Sometime in the month of August, 1978, the appellant constructed a bhatti (baking oven) in his premises. He also moved an application to the Municipal Corporation of Ludhiana seeking grant of licence to run the bakery. The plaintiffs raised a protest and then filed a suit seeking an injunction against the appellant restraining him from running/operating the bhatti, and also an injunction against the Municipal Corporation restraining it from issuing the licence sought for by the appellant. During the pendency of the suit the licence under Section 342 of the Punjab Municipal Corporation Act, 1976 was granted by the Municipal Corporation to the appellant. By its judgment and decree dated 3-3-1981 the Trial Court dismissed the suit against the Municipal Corporation forming an opinion that in as much as the licence had already been issued the prayer for the grant of preventive injunction in that regard was rendered infructuous, also that the Municipal Corporation could not be restrained by the Civil Court from exercising a statutory power by issuing an injunction. The Trial Court also observed that if the operation of bhatti by the defendant no.1 was a source of nuisance to the neighbours or any other persons, an objection could be raised before the Municipal Commissioner who could either cancel the licence already granted or could refuse to renew the same further. So far as the relief sought for against the defendant No.1/appellant is concerned, the Trial Court was of the opinion that the bhatti was proposed to be run in a locality which was purely residential having been so ear-marked in the town planning scheme also and further the operation of bhatti would result in emitting smell and generating heat and smoke which taken together would amount to nuisance and so the plaintiffs were entitled to issuance of an injunction restraining the defendant No.1/appellant from running the bhatti for manufacturing bakery products in his house. Accordingly, the suit was decreed against the defendant no.1/appellant injuncting him from running the bhatti.

The defendant no.1 preferred an appeal before the Additional District Judge who formed an opinion that the locality was not purely a residential one as a few other commercial activities were also being carried on in the vicinity of the premises belonging to the parties. The learned Additional District Judge himself carried out an inspection of the bhatti constructed by the defendant No.1. He found that there was a chimney installed in the bhatti which was about 12 feet in height. The designing of the bhatti revealed that the fire-wood would burn in between two parallel brick-linings and the heat generated by burning of the fire- wood would not travel much beyond the bhatti so as to cause any inconvenience to others. In the opinion of the learned Additional District Judge the operation of the bhatti was not likely to cause any such nuisance which could be termed actionable. On such findings the appeal was allowed setting aside the decree passed by the Trial Court.

The plaintiffs preferred second appeal before the High Court. The learned Single Judge who heard the second appeal felt not happy about the learned Additional District Judge having disposed of the appeal basing the judgment mostly on the opinion formed by carrying out an inspection of the defendant no.1s premises. Without discussing the evidence in details, the High Court made an observation that the plaintiff Subhash Chander, PW-1, and other witnesses produced by him had stated that the bhatti would emit smoke, heat & smell which were nuisance to the residents of the locality. The High Court also referred to certain correspondence exchanged between the district health authorities and the Municipal Corporation. The High Court observed :- . I find that the statements of Subhash Chander, plaintiff (P.W.1) and other witnesses produced by him, are reliable. They have clearly stated that the Bhathi emits smoke, heat and smell which are nuisance to the residents of the locality. Even the Municipal/Health Authorities as also the District Health Authorities, Ludhiana have reported that the residential locality cannot be used for industrial installations from the health point of view and had informed Kuldip Singh not to run the bakery in the locality in dispute. Taking all this evidence into consideration, I am of the considered view that the trial Court was perfectly justified in coming to the conclusion that the setting up of the Bhathi had caused nuisance to the residents of the locality.

The evidence led by Kuldip Singh defendant shows that the fire place and furnace have been made of such bricks and material that it would not emit or spread heat. Assuming that heat would not be nuisance of that degree to the residents of the locality, but the smoke, gases and ash etc., which would be emitted from the furnace, would certainly be a nuisance to the residents of the locality and if that is so, no burning of fire-wood etc. would be permitted in the bhatti.

The High Court set aside the judgment and decree passed by the first appellate Court and restored those passed by the Trial Court. The aggrieved defendant No.1 has come up in appeal by special leave to this Court.

We have heard the learned Counsel for the parties. Shri Jaspal Singh, learned Senior Counsel for the appellant has submitted that in the suit filed by the plaintiff/respondents they were seeking an injunction against an apprehended injury likely to be caused by nuisance not in existence on the date of the suit which injunction could not have been granted in the facts & circumstances of the case. In his submission the action initiated by the plaintiff/respondents was quia timet action which, on the settled legal principles, was premature on the date of initiation and hence ought not to have

been entertained. The learned Counsel for the appellant has invited our attention to Fletcher v. Bealey 28 Ch.D.698 which in his submission is the leading authority on the point. Shri V.R. Reddy, learned Senior Counsel for the plaintiff/respondents has, on the other hand, supported the judgment of the High Court.

A quia timet action is a bill in equity. It is an action preventive in nature and a specie of precautionary justice intended to prevent apprehended wrong or anticipated mischief and not to undo a wrong or mischief when it has already been done. In such an action the Court, if convinced, may interfere by appointment of receiver or by directing security to be furnished or by issuing an injunction or any other remedial process. In Fletcher v. Bealey, Mr. Justice Pearson explained the law as to actions quia timet as follows :-

There are at least two necessary ingredients for a Quia timet action. There must, if no actual damage is proved, be proof of imminent danger, and there must also be proof that the apprehended damage will, if it comes, be very substantial. I should almost say it must be proved that it will be irreparable, because, if the danger is not proved to be so imminent that no one can doubt that, if the remedy is delayed the damage will be suffered, I think it must be shown that, if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a Quia timet action.

Kerr on Injunctions (Sixth Edition, 1999) states the law on threatened injury as under :- The Court will not in general interfere until an actual nuisance has been committed; but it may, by virtue of its jurisdiction to restrain acts which, when completed, will result in a ground of action, interfere before any actual nuisance has been committed, where it is satisfied that the act complained of will inevitably result in a nuisance. The plaintiff, however, must show a strong case of probability that the apprehended mischief will in fact arise in order to induce the Court to interfere. If there is no reason for supposing that there is any danger of mischief of a serious character being done before the interference of the Court can be invoked, an injunction will not be granted.

In our opinion a nuisance actually in existence stands on a different footing than a possibility of nuisance or a future nuisance. An actually existing nuisance is capable of being assessed in terms of its quantum and the relief which will protect or compensate the plaintiff consistently with the injury caused to his rights is also capable of being formulated. In case of a future nuisance, a mere possibility of injury will not provide the plaintiff with a cause of action unless the threat be so certain or imminent that an injury actionable in law will arise unless prevented by an injunction. The Court may not require proof of absolute certainty or a proof beyond reasonable doubt before it may interfere; but a strong case of probability that the apprehended mischief will in fact arise must be shown by the plaintiff. In other words, a future nuisance to be actionable must be either imminent or likely to cause such damage as would be irreparable once it is allowed to occur. There may be yet another category of actionable future nuisance when the likely act of the defendant is inherently dangerous or injurious such as digging a ditch across a highway or in the vicinity of a childrens school or opening a shop dealing with highly inflammable products in the midst of a residential locality.

The nuisance complained of by the plaintiffs and which was yet to accrue was to fall in the category of private nuisance. The remedies for private nuisance are (1) Abatement, (2) Damages, and (3) Injunction. In order to obtain an injunction it must be shown that the injury complained of as present or impending is such as by reason of its gravity, or its permanent character, or both, cannot be adequately compensated in damages. If the injury is continuous the Court will not refuse an injunction because the actual damage arising from it is slight (Ratanlal & Dhirajlals Law of Torts, edited by Justice G.P. Singh, Twenty-Second edition, pp. 522-524).

In the case at hand, it is not disputed that the bhatti was not operational on the date of filing of the suit. A bhatti (baking oven) is not an activity which by itself is illegal or inherently dangerous or injurious. It cannot also be said that the bhatti merely because it has been constructed or become operational would pose such an injury as would be irreparable or would be incapable of being taken care of by a process known to law. The pleadings raised by the plaintiffs do not and could not have set out the nature and extent of injury, if any, caused or likely to be caused to the plaintiffs. The High Court has at one place observed that the bhatti would emit smoke, heat and smell which would be nuisance to the residents of the locality. At another place it has stated that smoke, gases and ash etc. which were emitted from the furnace would certainly be a nuisance to the residents of the locality. The findings so recorded are oscillating and are not clear and specific. They are a guess work. A clear finding as to nuisance could not have been recorded by basing it on generalised statements of certain witnesses stating that bhatti emits smoke, heat and smell which statements would be mere ipse dixit of the witnesses. There is no foundation either in pleadings or in evidence for observation made by the High Court as to gases, ash etc. emitting from the furnace. In our opinion, no case for quia timet action was made out. The suit filed by the plaintiffs was premature. No relief, much less by way of preventive injunction, could have been allowed to the plaintiffs. In our opinion, the suit as filed by the plaintiffs should be dismissed with liberty to file an appropriate suit on proof of cause of action having accrued to the plaintiffs consistently with the observations made herein above.

In so far as Municipal Corporation is concerned, the dismissal of the suit against it by by the Trial Court was not challenged by the plaintiffs by filing an appeal. Grant of licence is a statutory function to be discharged by the Municipal Corporation. The licence having already been issued by the Municipal Corporation to the defendant no.1/appellant, the Trial Court rightly observed that the plaintiffs were at liberty to approach the Municipal Corporation and seek cancellation of licence or pray for withholding the renewal thereof by making out a case for the grant of such relief within the framework of the legal provisions governing the grant and renewal of such licence. Needless to say, in the event of the plaintiffs being illegally or unreasonably denied relief by the Municipal Corporation, they would be at liberty to pursue the remedy of appeal or approach the superior authorities within the framework of Punjab Municipal Corporation Act or such other remedy as may be available to them in accordance with law.

The appeal is allowed. The judgment and decree passed by the Trial Court and restored by the High Court against defendant No.1/appellant are set aside. The suit filed by the plaintiffs/respondents against the defendant no.1/appellant is directed to be dismissed. However, such dismissal shall not prejudice the right of the plaintiffs/respondents to bring another action and seek an appropriate relief by making out a case of actual injury or imminent danger. No order as to the costs.