

The Municipality of Bhiwandi and Nizampur

Vs

M/S. Kailash Sizing Works

Civil Appeal No. 2154 of 1968

(CJI A. N. Ray, K. K. Mathew, V. R. Krishna Iyer JJ)

20.09.1974

JUDGMENT

Ray, C.J. -

1. This appeal is by certificate from the judgment dated March 18, 1968 of the High Court of Bombay.
2. The respondent filed the suit against the appellant Municipality for the recovery of Rs. 1,00,012 as damages suffered to the respondent's property on account of flood caused by acts of gross negligence on the part of the appellant. The High Court passed a decree in favour of the respondent for Rs. 54,560 with interest at 6 percent per annum.
3. The respondent has a structure abutting on the Yacoob Road. The width of Yacoob Road is about 12 feet. On the other side of the road is an open nallah running parallel to the road. The nallah is about 45 feet in width. The nallah provides for passage of dirty water, rain water to the creek during the months of November to May.
4. The Government of Maharashtra demolished a portion of Varala Dam in the month of May, 1963. In consequence the water stored in the lake was bound to pass through the nallah to the creek. The appellant commenced the work of laying cement slab across the nallah in about the second week of June, 1963. The centering work to support and settle the slab continued to remain in its position in the nallah till about the first week of July, 1963.
5. The allegations against the appellant were these.
6. First, the appellant prepared a plan for narrowing the nallah in front of the respondent's shop without making any provision for the passage of additional rain water from the Varala lake catchment area.
7. Second, the existence of the centring work of the cement slab across the nallah constituted a grave obstruction against the passage of rain water through the nallah.
8. Third, the appellant neglected and failed to see that the passage of the nallah was kept free and unobstructed by work of construction and debris for providing a safe passage of the rain water which was likely to pass at the commencement of the monsoon season.
9. Fourth, in the normal course of the monsoon season, there was heavy rain at Bhiwandi on the 5th, 6th and the 7th days of July, 1963. Because of the existence of centring work in the nallah, the slab,

wild shrubs and debris, the water course was completely blocked and the rain water which collected in the catchment area beyond the dam and in the Bhiwandi and Nizampur area accumulated at the month of the slab work to dangerous heights. This resulted in the whole of the area adjoining and surrounding the nallah being flooded.

10. The High Court found these facts.

11. The appellant had knowledge in the month of April, 1963 of the demolition of the Varala Dam above a height of six feet above ground level. The appellant completed the laying of the slab between Teen Batti bridge and Habsanali bridge after April, 1963 with the knowledge of the demolition of the Varala Dam. The appellant narrowed the water-way near Teen Batti bridge to an extent that it was insufficient for discharge of water from the increased catchment area because of the demolition. The appellant with full knowledge of the consequences narrowed the water passage, put a slab on it and did not remove the centring at Landi bridge. The appellant allowed accumulation of garbage and debris so as to obstruct the passage of water.

12. The further findings are these.

13. The nallah runs from south to north. The water carried by it flows on to the creek at the northern end of the nallah. There are five bridges over the nallah. The portion of the nallah, which lies between Habsanali bridge and Landi bridge was covered with concrete slab in 1963. Because of heavy rain on the 4th, 5th and 6th days of July, 1963 water accumulated at the southern end of Habsanali bridge and entered to surrounding area. Water was two feet deep in the factory of the respondent. This state of affairs continued for three days. The narrowing of the water-way and putting a slab on it at Habsanali bridge was ill-timed. This work should have been commenced after the Varala Dam was re-constructed. If the appellant wanted to proceed with this work before the re-construction of the Dam sufficient water-way should have been provided a passage of water from a catchment area of 0.9 sq. miles providing for a rain fall of 3" per hour. The centring work should have been removed before the monsoon. In any case no trees, bushes, Serbs or garbage should have been allowed to be collected at the centring of the slab so as to obstruct the free passage of water. The retention of the centring and the negligence in not clearing the passage of debris was the principal cause of the flood.

14. Section 167 of the Bombay District Municipal Act confers protection on the Municipality in respect of anything in good faith done or intended to be done. The expression "done in good faith" has been defined in the Bombay general Clauses Act, 1904 and in the general Clauses Act, to mean done honestly whether done negligently or not. The question therefore is whether the Municipality, in the present case, can be said to have acted honestly.

15. In *Jones v. Gordon* (2 App Cas 616) Lord Blackburn pointed out the distinction between the case of a person who was honestly blundering and careless, and the case of a person who has acted not honestly. An authority is not acting honestly where an authority has a suspicion that there is something wrong and does not make further enquiries. Being aware of possible harm to others and acting in spite thereof, is acting with reckless disregard of consequences. It is worse than negligence, for negligent action is that the consequences of which, the law presumes to be present in the mind of the negligent person, whether actually it was there or not. This legal presumption is drawn through the well known hypothetical reasonable man. Reckless disregard of consequences and mala fides stand equal, where the actual state of mind of the actor is relevant. This is so in the eye of law even if there might be variations in the degree of moral reproach deserved by

recklessness and mala fides.

16. The Bombay, as also, the Central General Clauses Acts, help only in so far as they lay down that negligence does not necessarily mean mala fides. Something more than negligence is necessary. But these Acts say "honestly" and so far the interpretation of that word, we have explained the legal meaning above.

17. On the facts of this case we hold that the defendant was aware of possible harm and yet cared to do nothing about it. The action was, therefore, reckless, and therefore in the eye of law mala fide and therefore unprotected by Section 167 of the Act.

18. For these reasons the appeal fails and is dismissed. The appellant will pay costs.

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