

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL No. 414 OF 2013
WITH
CIVIL APPLICATION No. 1624 OF 2013
IN
SECOND APPEAL No. 414 OF 2013

Thane Municipal Corporation ... Appellant/Applicant
Vs.
Federation of Organisation for
Community Upliftment Services & Ors. ... Respondents

Mr. P.K. Dhakephalkar, Senior Advocate i/b. Mr. N.R. Bubna, for the appellant.

Mr. H.G. Misar, Advocate for respondent No. 1.

Mr. Uday G. Badadare, Advocate for respondent nos. 2 and 3.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 27th April, 2018.

P.C.

This Second Appeal is directed against the judgment and order dated 20th November, 2012 passed by the learned District Judge-6 & Addl. Sessions Judge, Thane thereby dismissing the Regular Civil Appeal No. 62 of 2011 and confirming the order dated 15th November, 2010 passed by the 8th Joint Civil Judge Senior Division, Thane of decreeing Regular Civil Suit No. 694 of 2003. The respondent No. 1 is the Federation of Organization for Community Upliftment Services, a registered NGO and respondent nos. 2 and 3 are the private persons who have filed the suit for perpetual and

mandatory injunction that the defendant/Corporation not to dump garbage at the suit site and are to be directed to remove the said solid waste/garbage from the suit plot. The suit site is a plot owned by the private person other than the defendants. After recording the evidence of both the parties, the trial Court has held that the plaintiffs have proved that the defendant/Corporation is disposing solid waste in CRZ or in contravention of the rules of solid waste handling and disposal, hence the suit was decreed with cost. It also restrained the defendants from dumping garbage on the suit plot and also directed the defendant/Corporation to remove dumping of garbage from the suit site by following due process of law within two months from the date of decree. Being aggrieved, the Corporation filed Regular Civil Appeal No. 62 of 2011. It was contested and Civil Appeal was dismissed. Being aggrieved by the judgment and order of First Appellate Court, Second Appeal is filed.

2. On the substantial question of law, the grounds pleaded by the appellant were mainly in respect of non-issuance of notice under section 487 of Maharashtra Municipal Corporation Act so also challenging the locus of the respondents especially under section 91 of Code of Civil Procedure.

3. After hearing the learned counsel for the Corporation and after going through the record of this case, it was found that a letter of intimation in lieu of notice under section 487 of the Maharashtra Municipal Corporation Act was given by the respondents to the Corporation before filing of the suit. Moreover, this Appeal involves the issue of cleanliness and hygiene in the locality, it demands different perspective. Three queries were made by this Court and Commissioner of Thane Municipal Corporation was directed to answer those queries so that Second Appeal can be concluded on those line, on compliance of the orders passed by the trial Court so also the First Appellate Court, by order dated 9th April, 2018. The Deputy Municipal Commissioner Mr. Manish Joshi filed affidavit dated 21st April, 2018(Exhibit 1) answering the queries. Thereafter, Municipal Commissioner Mr. Sanjeev Jaiswal also filed affidavit dated 26th April, 2018 to that effect, which is taken on record and marked as Exhibit 2.

4. It is to be noted that NGO and citizens of Thane have filed this suit in respect of place of dumping of solid waste by Thane Municipal Corporation. Such injunctive relief can be sought by the citizens by approaching the Court if at all they are personally affected, so also

under torts, if there is nuisance. The suit can be filed under section 91 and also under Order 1 Rule 8 of the Code of Civil Procedure. When the citizens are taking concrete steps by pointing out nuisance in such litigation, the Corporation or public bodies should not be hostile and behave like a private litigant, but should adopt citizen friendly service oriented approach. The peoples participation in the local administration and judicial process is necessary in the democracy. It is expected that the Corporation to handle such issues with wider perspective and to sort out at its level.

5. Its time again to remind ourselves and rely on the golden words of the Hon'ble Supreme Court in the case of **Municipal Council Ratlam vs. Vardichan & Ors., reported in (1980) 4 SCC 162.**

“If the centre of gravity of justice is to shift, as the Preamble to the Constitution mandates, from the traditional individualism of locus standi to the community orientation of public interest litigation, these issues must be considered. In that sense, the case before us between the Ratlam Municipality and the citizens of a ward, is a path-finder in the field of people's involvement in the justicing process, sans which as Prof. Sikes points out,(1) the

system may `crumble under the burden of its own insensitivity”.

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Why drive common people to public interest action? Where Directive Principles have found statutory expression in Do's and Dont's the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice. The dynamics of the judicial process has a new 'enforcement' dimension not merely through some of the provisions of the Criminal Procedure Code (as here), but also through activated tort consciousness.”

6. In the present case, NGO and two citizens have filed the suit. After leading evidence though it was resisted by the Corporation, the trial Court decreed the suit and gave specific orders. The First Appellate Court also upheld the judgment and order passed by the trial Court and against this concurrent finding, Second Appeal is filed. After going through the affidavits of Deputy Commissioner and the

Commissioner of Thane Municipal Corporation, it is found that the Corporation has stopped using the suit plot as dumping ground since 2003. The learned senior counsel Mr. Dhakephalkar has explained that the Corporation is using the new methods and techniques to culture the waste, as it is biodegradable waste. Now the garbage and solid waste in the suit plot is decomposed and has become part of the soil. The suit plot and waste is disinfected by using chemicals, thus the foul smell and flies can be controlled.

7. Similar issue is pending before the Division Bench of this Court in Writ Petition No. 1740 of 1998 filed by the Municipal Corporation, City of Thane. However, in Writ Petition No. 1740 of 1998, this Court by order dated 16th March, 2018 while dealing with similar issue has directed the Corporation about the solid waste management and time is extended to comply with the order of this Court till 31st December, 2019. This recurring issue can be put to an end by taking concrete and positive steps by the Corporation. It is to be noted that such matters need not be contested by the Public bodies by filing First or Second Appeals unless there is substantial and very grave cause. The citizens are compelled to take such steps to approach the Court mostly out of frustration as a last resort when their repeated requests

are heard with deaf ears and their problems are not solved by the Public bodies. The present matter and other such issues can be sorted out by mediation taking recourse of Section 89 of the Code of Civil Procedure by giving direction by the Commissioner to the authority.

8. No substantial question of law is made out, hence Second Appeal is dismissed.

9. In view of dismissal of Second Appeal, Civil Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)