

favour of the plaintiffs and we restore the decree of the lower appellate court with costs of both the proceedings in this Court to the defendants 1 and 2.

*Before Justice Sir Edward Bennet and Mr. Justice Collister*

MOIN UDDIN (DEFENDANT) *v.* ABDUS SAMAD  
(PLAINTIFF)\*

1939  
April, 12

*Municipalities Act (Local Act II of 1916), section 321—Municipal Board sanctioning construction of a flour mill—Appeal by owner of neighbouring house against the sanction dismissed—Finality of the appellate order—Subsequent civil suit by the neighbour on the ground of a private nuisance—Maintainability—Jurisdiction.*

Sanction was granted, on certain conditions, under section 245 of the Municipalities Act to the defendant to instal a flour mill in a certain building. The plaintiff, who was the owner of an adjoining house, appealed under section 318 of the Municipalities Act against the order granting sanction, but his appeal was dismissed. Then he brought a suit against the defendant on the allegations that his walls had cracked by the vibrations caused by the mill and his house had become unhealthy and uninhabitable on account of the smoke and noise attendant on the working of the mill. The question was whether the suit was maintainable in view of section 321 of the Act: *Held*, that the suit was not barred by section 321.

Section 245 of the Municipalities Act is concerned with public nuisances and not with private nuisances. When the Municipal Board grants sanction and imposes conditions under section 245, what it has to consider is the interests of the public; it is not concerned with the rights or interests of any individual as such. There is nothing whatsoever in the Municipalities Act which gives jurisdiction to the Municipal Board to adjudicate in matters of controversy between private individuals, and there is nothing in the Act which could be held to prevent the plaintiff from coming to court and pleading that the defendant was working his flour mill in such a way as to cause a nuisance to him personally as a resident of an adjoining house.

The order of the appellate authority dismissing the plaintiff's appeal under section 318 of the Act, and upholding the sanction which had been granted by the Municipal Board to the

\*Appeal No. 42 of 1936, under section 10 of the Letters Patent.

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defendant to have a flour mill in his building, may be final so far as it goes; but this would in no way interfere with the plaintiff's right to bring an action on the ground that the working of the flour mill was causing nuisance or damage to him or his house.

Mr. *Ishaq Ahmad*, for the appellant.

Mr. *Panna Lal*, for the respondent.

BENNET and COLLISTER, JJ.:—This is a defendant's appeal arising out of a suit for injunction.

It appears that the defendant applied to the Municipal Board for permission to instal a flour mill in a certain building, and permission was granted on certain conditions. The building in question adjoins the plaintiff's house, and the latter appealed against the order of the Municipal Board but his appeal was disallowed. Thereafter he instituted the suit out of which this appeal arises. The plaintiff's case was that his house had been cracked by the vibrations from the mill and had become uninhabitable on this account and also on account of the smoke and noise attendant on the working of the mill, and the plaintiff's health had been adversely affected. One of the pleas in defence was that the civil court had no jurisdiction to entertain the suit.

The trial court found in favour of the defendant and dismissed the suit on the ground that it was barred by section 321 of the U. P. Municipal Act. On appeal the decree of the trial court was reversed and the suit was remanded for decision on merits. A second appeal was preferred to this Court and was dismissed by a learned Judge. From that decree the present appeal has been filed under the Letters Patent.

The only point for decision before us is whether the suit is or is not barred. Learned counsel for the defendant appellant relies on sections 245, 318 and 321 of the Municipalities Act, and he pleads that the suit is barred by reason of section 321. Section 245 authorises a Municipal Board to direct any person who is using a

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building or place within the limits of the municipality as a factory etc., to desist or refrain from so using it or to use it under certain conditions if a public nuisance is being occasioned or is likely to be occasioned. Section 318 gives a right of appeal to a certain authority to any person aggrieved by an order of the Board passed under section 245 and certain other sections of the Act; and section 321 provides: "(1) No order or direction referred to in section 318 shall be questioned in any other manner or by any other authority than is provided therein. (2) The order of the appellate authority confirming, setting aside or modifying any such order or direction shall be final."

There are two answers to learned counsel's plea that the suit is barred under section 321 of the Act. In the first place, section 245 of the Act is concerned with public nuisances, whereas upon the facts alleged the nuisance complained of in the case with which we are now dealing is essentially of a private character. The plaintiff prayed for an injunction on the ground that the working of the defendant's flour mill was causing a nuisance to him personally as an individual living next door to the defendant. There is no suggestion in the plaint that any other members of the public, apart from the plaintiff, were in any way being adversely affected by the working of the flour mill. In the second place, there is nothing whatsoever in the Municipalities Act which gives jurisdiction to the Municipal Board to adjudicate in matters of controversy between private individuals, and there is nothing in the Act which can be held to prevent the plaintiff from coming to court and pleading that the defendant was working his flour mill in such a way as to cause a nuisance to himself. When the Municipal Board grants sanction and imposes conditions under section 245 of the Act, what it has to consider is the interests of the public; it is not concerned with the rights or interests of individuals as such. Learned counsel has referred us

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to certain authorities, but only one of them need be mentioned. This is the case of *Sheo Ram v. Sone Lal* (1). In that case the plaintiff had obtained the sanction of the Municipal Board to build a platform. After he had begun to build it, a third person, a man named Sheo Ram, appealed to the District Magistrate under section 318 of the Act on the ground that the construction would narrow the street and would interfere with the right of way of the public of which he was a member; and in the result the appeal was allowed and an order was passed for demolition of the platform. Thereafter the plaintiff instituted a suit in the civil court impleading the Municipal Board and Sheo Ram as defendants, and he prayed for an injunction to restrain the defendants from interfering with his right to construct the platform. It was held by a Bench of this Court that the order of the appellate authority passed under section 321 of the Municipalities Act was final and the civil court was not competent to entertain the suit. In that case what the plaintiff was in effect seeking was to have the order of the appellate authority directing demolition of his platform set aside, and it is obvious that a suit for such a relief would be barred by section 321 of the Municipalities Act.

In the present case the order of the appellate authority upholding the sanction which the Municipal Board accorded to the defendant to have a flour mill in his own building at this site may be final so far as it goes; but this will in no way interfere with the plaintiff's right to bring an action on the ground that the mill is being worked in such a way as to cause nuisance or damage to him or his property.

In our opinion the civil court was competent to entertain the suit out of which this appeal arises. We agree with the view taken by the learned Judge of this Court, and we accordingly dismiss this appeal with costs.