*Before Mr. Justice Bennet and Mr. Justice Verma*

KASHI NATH (PLAINTIFF) *v.* MUNICIPAL BOARD, AGRA (DEFENDANT)* 1938 *December*, 12

*Specific Relief Act (I of 1877), section 55—Mandatory injunction—Refusal of mandatory injunction involving superintendence of extensive constructions and machinery—Municipality—Statutory obligation to supply water to houses up to a certain height—Failure of municipality to do so—Extensive improvements in system of water works necessary for the purpose—Mandatory injunction cannot be granted.*

According to section 228(1)(*c*), and rules made under section 235, of the Municipalities Act the Municipal Board of Agra was under a statutory obligation to supply water to the upper storey of the plaintiff's house in Agra city. Water was supplied to the lower storey, but for want of sufficient pressure of the pumping engine the water did not rise to the upper storey. The plaintiff sued the Municipal Board for damages and for a mandatory injunction to supply water to the upper storey. It was found that for the purpose of securing the supply of water to the upper storey it would be necessary to improve the entire water works plant of the municipality and to put up a new and more powerful engine or to re-condition the existing engine: *Held,* while upholding the award of damages, that a mandatory injunction under section 55 of the Specific Relief Act cannot be granted in such a case, as the court cannot superintend works of construction or of repair. The section lays down that it is only in regard to the performance of certain acts which the court is capable of enforcing that the court will grant a mandatory injunction.

Messrs. *A. P. Pandey* and *Gopal Behari,* for the appellant.

Dr. *N. P. Asthana,* for the respondent.

BENNET and VERMA, JJ.:—This is a second appeal by the plaintiff against a decree of the lower appellate court dismissing his suit for a mandatory injunction which had been decreed by the trial court but maintaining the decree for damages. The plaintiff brought a suit against the Municipal Board of Agra for Rs.30 as

*Second Appeal No. 47 of 1936, from a decree of Girish Prasad, Civil Judge of Agra, dated the 27th of November, 1935, modifying a decree of R. K. Chowdhry, Munsif of Agra, dated the 17th of September, 1934.

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damages for non-supply of water in the second storey of the plaintiff's house during the period May to October, 1933, and for a mandatory injunction to the Board to supply water to the plaintiff during prescribed hours of water supply and at the prescribed altitude with such conditions and reservations as the court deems proper. The plaintiff occupies a double storeyed house in Naiki Mandi, Rekabganj Ward, which is assessed to a water rate of Rs.19-5-6 per annum and he receives a supply of water in the lower storey of his house but he does not get a supply from the water tap in the upper storey of his house. He brought a suit No. 448 of 1932 against the Board for damages and injunction and this was decreed on 10th February, 1933, for damages but not for injunction and the plaintiff had another suit pending in the court of small causes at the time he brought the present suit. One of the grounds on which he sought a mandatory injunction was to avoid a multiplicity of suits. Various grounds of defence were taken and it was denied that the plaintiff was entitled to the relief for injunction. The trial court considered that the Specific Relief Act of 1877, section 54, sub-section (*c*) applied, which provides that injunction may be granted "where the invasion is such that pecuniary compensation would not afford adequate relief." Accordingly the trial court granted Rs.30 damages, and "a mandatory injunction to the defendant to supply water to the tap in the upper storey of his house during the prescribed hours and at the prescribed altitude is decreed. The defendant will for the purpose of carrying out the mandatory injunction effect what improvements be necessary in the system of its water works. If for the supply in question the construction of a cistern in or on the plaintiff's house be necessary, the defendant will construct it at the expense of the plaintiff." The Municipal Board appealed and the lower appellate court held that there was a statutory liability to supply water to the plaintiff in the upper storey, which was

within the altitude of 25 feet prescribed by the Municipal rules, and that the finding of the trial court that the water did not reach the upper storey tap of the plaintiff during the months in suit was correct. The finding of the Munsif that the Board failed to supply a cistern on the application of the plaintiff was also held to be correct by the lower appellate court. The damages of Rs 5 per mensem were calculated at the wages, Rs.5 per mensem, for a man to carry water to the upper storey. On the question of whether the plaintiff was entitled to a mandatory injunction, the court below found: "Now in this case, in order that the appellant Municipal Board may be able to discharge its obligation to supply water in the tap of the upper storey of the plaintiff, it would be necessary to improve the entire water works plant of the Municipal Board, probably by putting up new and powerful engines and possibly by overhauling the present ones. This would certainly require a great deal of engineering skill besides a considerable amount of money to meet the cost. I am definitely of opinion that the court is not capable of undertaking a work of this magnitude which requires a great deal of personal attention and therefore an injunction like this ought not to be granted by the court. I am fortified in this view with the decision in the case of *Attorney-General* v. *Staffordshire County Council* (1), noted at page 882 of Pollock and Mulla's Specific Relief Act (sixth edition) in which it was laid down that an injunction will not be granted directing a person to do repairs, the reason being that the court will not superintend works of building or of repair." The court further found: "I am thus clearly of opinion that a court of law will be not justified in granting a mandatory injunction in a case like this; firstly because the court is not capable of enforcing it and secondly because to award damages is certainly an efficacious remedy."

As regards the statutory duty of the defendant the Municipalities Act of 1916, section 228, sub-section

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(1)(*c*) provides as follows: "to supply, within every twenty-four hours, to every owner or occupier entitled to a house connection under clause (*b*) whose land or building is provided therewith, such amount of water as is prescribed with reference to the water tax payable by him and his estimated requirements for domestic purposes, into a storage cistern erected in or on the building or land, of a capacity not less than such amount and of a prescribed pattern and at an altitude not exceeding the maximum prescribed for the same." Sub-section (2) states: "The word 'prescribed' in sub-section (1) means prescribed by rule under section 235." Section 235(1)(*a*) states that the following matters shall be regulated and governed by rules, namely, "any matter in respect of which this Act declares that provision shall be made by rule". Accordingly therefore the rules laid down statutory duty. In the Agra Municipality Rules, Regulations and Bye-laws of 1931 it is shown on page 125, rule 10 of the Agra Water Supply Rules under section 235, that the plaintiff paying between Rs.12 and Rs.24 should receive 200 gallons of water per day delivered into a storage cistern. Rule 11 states that no storage cistern shall be erected at an altitude exceeding 25 feet in the high zone and it is found that the tap in question of the plaintiff is not above this height. Rule 3 on page 123 lays down: "The pressure at which water shall be laid on for the high zone shall be sufficient to raise it to the top level of the high service reservoir near St. John's Church at the normal rate of pumping, the calculated pressure for this service being 130 feet at the Engine House." It is to be noted that this rule provides for water being maintained at a pressure of 130 feet at the Engine House for being laid on the high zone in which the house of the plaintiff stands. The rules do not provide for the total quantity which the municipal engines are bound to supply per day. It is not alleged or found in the present case that the municipality have been negligent

in working their engines and therefore the question is whether, as the lower court says, the engine power requires to be increased either by new additional engines or by re-conditioning the present engines. It is for a mandatory injunction which would involve such work on the part of the municipality that the plaintiff asks, and the question is should such injunction be granted? We consider that the trial court was wrong in applying section 54 of the Specific Relief Act, sub-section (*c*), to the present case, a matter which has been pressed upon us by learned counsel for the appellant. Section 54 deals with an injunction to prevent the breach of an obligation existing in favour of the applicant and the sub-sections deal with a particular case when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property. Now the Municipal Board has not invaded or threatened to invade the enjoyment by the plaintiff of his house. Learned counsel argued that the enjoyment of the water supply was the enjoyment of his house, but we do not accept that argument. In our view, section 55 of the Specific Relief Act is the section concerned in the present suit. That section provides as follows: "When to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts." Now this section lays down that it is only in regard to the performance of certain acts which the court is capable of enforcing that the court will grant a mandatory injunction. The illustrations all deal with cases where some construction has been made by a defendant and the court requires that that construction should be demolished, or to cases where there is a question of publication of letters and the defendant is restrained in regard to these matters. Learned counsel has not been able to show any example

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either from English law or Indian rulings of a case where a mandatory injunction has been granted in circumstances at all similar to the present, that is where the court has required that a municipal authority should undertake works of a considerable extent and expense. We may note that the remedy of injunction as part of the decree is not referred to in the Civil Procedure Code other than by way of execution under order XXI, rule 32. The granting of decrees for injunction is under the jurisdiction of the Specific Relief Act and the conditions under which mandatory injunctions are granted are those of section 55 of that Act. In *Pasmore* v. *Oswaldtwistle Urban Council* (1) it was laid down that the duty of a local authority, under section 15 of the English Public Health Act, 1875, to make such sewers as may be necessary for effectually draining their district for the purposes of that Act, cannot be enforced by an action for mandamus brought by a private person; the only remedy for neglect of the duty is that given by section 299 of the Act, a complaint to the Local Government Board. The EARL OF HALSBURY on page 394 states: "The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law." In *Attorney-General* v. *Staffordshire County Council* (2) it is laid down that an injunction will not be granted directing a person to do repairs, the reason being that the court will not superintend works of building or of repair. On page 342 it is stated: "Now a mandatory order, as I understand the practice of the court, will not be made to direct a person to repair. As we all know, the court will not superintend works of building or of repair." That was a case where the plaintiff desired an injunction against the County Council to repair

(1) [1898] A.C. 387. (2) [1905] 1 Ch. 336.

roads and the court refused to grant a mandamus. For the appellant it was argued that this ruling had not been followed in *Kennard* v. *Cory Brothers and Company* (1). That, however, was a different case because the defendant company had placed refuse on the side of a mountain on land belonging to the plaintiffs which eventually caused a landslide and injured the building of the plaintiffs. The plaintiffs sued and by consent certain drainage works were undertaken to prevent a further landslide. Liberty was also granted to the plaintiffs to apply in case of apprehended damage for a mandatory injunction to compel the defendant company to execute such remedial works as might be necessary to keep open remedial works. In the proceedings in question, as part of the remedial works was out of order the plaintiffs moved in the action for a mandatory injunction to compel the defendants to restore the works to order. In that case, therefore, there had been an invasion of the rights of the plaintiffs by the defendants and the mandatory injunction was desired to restore the condition of things which would prevent further invasion of the rights of the plaintiffs. The case therefore was very different from the earlier ruling and different from the present case. On page 12 Lord STERNDALE observed: "It is, I think, pretty clear that as a general rule the court will not grant a mandatory injunction in general terms to repair or to maintain, . . ." and he quotes KAY, L. J. in *Ryan* v. *Mutual Tontine Westminster Chambers Association* (2) as follows:—"Ordinarily the court will not enforce specific performance of works, such as building works, the prosecution of which the court cannot superintend; not only on the ground that damages are generally in such cases an adequate remedy, but also on the ground of the inability of the court to see that the work is carried out." Learned counsel for the appellant referred to the case of

(1) [1922] 2 Ch. 1. (2) [1893] 1 Ch. 116(128).

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*Municipal Commissioners, Madras* v. *Branson* (1). In that case the injunction was disallowed by the appellate court. The injunction had been granted under a specific provision in the City of Madras Municipal Act of 1878, section 433, as is shown on page 208, where it was provided that the court "may direct the immediate performance of such duty or the execution of such work." Now an injunction granted under a special Act has no bearing on the question which we are considering, namely, whether a mandatory injunction should be granted under section 55 of the Specific Relief Act, 1877. Learned counsel relied on *Strachey* v. *Municipal Board of Cawnpore* (2), where an injunction was granted under Act XV of 1873 to prevent the Municipal Board of Cawnpore from levying or recovering any assessment on the plaintiff by virtue of resolution and notice. This, however, was an injunction of a negative kind and not a mandatory injunction. No one disputes that injunctions of the kind in section 54 are frequently granted by the courts and this point has no bearing on whether the present injunction should be granted under section 55. Reference is also made to *Mannua* v. *Emperor* (3). That, however, was a ruling of a learned Judge in criminal revision and he merely observed: "But it is by no means clear that a suit does not lie for an injunction to compel the Board to grant a license to carry on a particular trade." For the reasons we have given, we consider that the court below was right in refusing to grant a mandatory injunction in the present case and we dismiss this appeal with costs.

The respondent has filed a cross-objection in which he objects to the grant of Rs.30 damages, firstly on the ground that the plaintiff was not entitled to any damages, which is a question of fact and cannot be reconsidered; and secondly on the ground that the

(1) (1887) I.L.R. 3 Mad. 201. (2) (1899) I.L.R. 21 All. 348.
(3) (1919) 17 A.L.J. 976.

suit was barred under section 231 of the Municipalities Act. No doubt a pleading was made under that section but the municipality did not verify the further particulars and the Munsif struck off the plea and no point can be raised now. The remaining ground was that because the injunction was refused, damages should not have been awarded. This point has no bearing. We dismiss the cross-objection with costs.

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*Before Sir John Thom, Chief Justice and Mr. Justice Ganga Nath*

MUNICIPAL BOARD, BENARES (DEFENDANT) *v.* JOKHUN (PLAINTIFF)*

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*Municipalities Act (Local Act II of 1916), section 164(1)—"Assessment" means one in accordance with the procedure prescribed by the Act—Civil suit in respect of a so-called assessment—Maintainability—Municipalities Act, sections 143, 144, 160—Assessment to water tax—Objections not heard and decided under section 143(3)—Assessee thereby deprived of remedy by appeal—Only possible remedy by suit—Municipalities Act, section 165—Applies only to formal defects and irregularities in assessment—Does not apply where assessment made by ignoring prescribed procedure—Damages for wrongful attachment—Attachment for two sums, only one of which is legally due—Civil Procedure Code, section 9—"Civil suit" includes suits between a subject and the Government or a branch of Local Self-Government.*

The plaintiff was assessed to water tax in respect of his house, although under the law the house was exempt as it was beyond the prescribed radius of the nearest standpipe and had no water connection. The plaintiff filed an objection to that effect under section 143 of the Municipalities Act, but it was not considered or decided by the Municipal Board and the plaintiff's name was included in the final assessment list. Subsequently the plaintiff's house was attached for non-payment of arrears of house tax and water tax, whereupon the plaintiff paid both the amounts, the latter under protest, and then filed a suit against the Municipal Board for refund of the alleged water tax and for damages for illegal attachment:

*Held*, that the suit was not barred by section 164(1) of the Municipalities Act. The word "assessment" in that section

*Appeal No. 92 of 1937, under section 10 of the Letters Patent.