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Equivalent Citation: AIR1981Raj121

IN THE HIGH COURT OF RAJASTHAN

Civil Writ Petn. No. 1604 of 1979

Decided On: 04.09.1980

Appellants: **Rampal and Ors.**

Vs.

Respondent: **State of Rajasthan and Ors.**

Hon'ble Judges:

Dwarka Prasad, J.

Counsels:

For Appellant/Petitioner/Plaintiff: M.M. Singhvi, Adv.

For Respondents/Defendant: M.C. Bhandari, Adv. and H.N. Calla, Addl. Govt. Adv.

Subject: Civil

Catch Words

Mentioned IN

Acts/Rules/Orders:

Rajasthan Municipalities Act, 1959 - Sections 98, 174 to 187; Constitution of India - Article 226

Cases Referred:

Municipal Corporation v. Advance Builders (P.) Ltd, (1971) 3 SCC 381, AIR 1972 SC 793

Disposition:

Petition allowed

ORDER

Dwarka Prasad, J.

1. The petitioners are residents of Mundara Mohalla, situated in the town of Mandal in Bhilwara District. Their case is that in Mundara Mohalla, there is a blind lane and a common Chowk in the centre, which is surrounded by the houses of the petitioners and others. The petitioners' grievance is that water of domestic use, including dirty water from the houses of the Mohalla, as also rain water has collected in the chowk and because there is no drain for the discharge of the accumulated water, there is growth of moss and insects and there is possibility of spread of epidemics. The petitioners have relied upon a letter written in this connection by the Medical and Health Officer, Government Hospital, Bhilwara, on June 18, 1979, to the Executive Officer of the Municipal Board, Mandal inviting his attention to the fact that stagnant water, which has collected in the common chowk of the Mimdara Mohalla, has become the breeding place of mosquitoes and

insects and may cause spread of diseases. The Medical and Health Officer in his aforesaid letter expressed the view that immediate steps should be taken for making a permanent arrangement for the disposal of such water as has collected in the chowk and which has caused a nuisance, for the residents of the area. As the Municipal Board has not cared to take any action in the matter, the petitioners have filed a writ of Mandamus praying for a direction to the Municipal Board for removal and discharge of filthy and dirty water and the construction of proper drainage or sewers for the discharge of such water.

2. Section 98 of the Rajasthan Municipalities Act, 1959 (hereinafter called 'the Act') falls under Chapter VI which deals with the primary and secondary functions of the Municipal Boards. Amongst the primary duties enumerated in Section 98 of the Act, it has been provided that the Municipal Board should make reasonable provisions for cleaning public streets, places and sewers and all spaces not being private property and removing noxious vegetation and removing of public nuisances; removing filth, rubbish or other noxious and offensive matter and constructing drains, sewers, drainage works etc. The relevant provisions of Section 98 are as under :--

"98. Duties of boards-- It shall be the duty of every board to make reasonable provision for the following matters within the municipality under its authority namely :-

-

xxx xxx xxx xxx x

(c) cleaning public streets, places and sewers, and all spaces, not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the board or not removing noxious vegetation and obtaining all public nuisances.

(d) removing filth, rubbish, night-soil, odour, or any other noxious or offensive matter from privies, latrines, Urinals, cess-pools or other common receptacles for such matter in or pertaining to a building or buildings:

xxx xxx xxx xxx x

(i) constructing, altering and maintaining public streets, culverts, municipal boundary marks, market, slaughterhouses, drains, sewers, drainage-works, sewerage-works, baths, washing places, drinking fountains, tanks, wells, dams and the like:

.....".

3. For the proper performance of the duties imposed upon the Municipal Boards under Section 98 of the Act, all sewers, drains, privies, water closets, house-gullies and cess-pools within the municipality have been placed under the survey and control of the Municipal Boards by the provisions of Section 174 of the Act and under Section 175 of the Act the Boards have been authorised to construct covered sewers and drains and make other constructions in order to carry out any drainage scheme. The Boards are also authorised to control the drainage system in respect of private houses under Section 176 and the owners of houses and empty buildings and land within the municipality are enjoined to connect their sewers and drains with the municipal drains. Thus, under Ss. 174 to 187, extensive powers have been given to the Municipal Boards for the purpose of maintaining cleanliness within the municipal area by repairing the existing drains, directing the construction of new drains and controlling the drainage system. The Municipal Boards are thus primarily responsible for maintaining sanitation and for taking proper steps for creating and maintaining healthy conditions within the municipal area.

4. The Municipal Board Mandal has not filed any reply and it has not been contended by its learned

counsel that it is not the duty of the Municipal Board to remove or discharge the accumulated water and construct proper drainage system for the discharge of water accumulated in the chowk in Mundara Mohalla.

5. The only question, therefore, which arises for consideration in this writ petition is as to whether this Court should issue a Mandamus to the Municipal Board to construct the sewers and drains for the discharge of domestic including dirty water, as well as rain water. In *Municipal Corporation v. Advance Builders (P.) Ltd* (1971) 3 SCC 381 : (AIR 1972 SC 793), it was held by their Lordships of the Supreme Court that since development and planning is primarily for the benefit of the public, the local body was under an obligation to perform its duty in accordance with the provisions of the Act. In the present case also, the statute imposes a duty upon the Municipal Boards and they are under a statutory obligation to perform such duties enumerated in Section 98 of the Act in accordance with the provisions in Chapter IX of the Act relating to drainage. It may be pointed out that the Municipal Board has no discretion in the matter and it cannot refuse to discharge the obligations, duties and functions, which have been imposed upon it and are enumerated in Section 98 as primary functions. When the statute imposes a duty, "the performance and non-performance of which is not a matter of discretion, then thus Court has a power to issue a mandamus directing the local body to do what the statute requires to be done. The Municipal Board is under a statutory obligation to construct sewers and drains for the discharge of water, both domestic as well as rain, which is likely to cause public nuisance, if allowed to accumulate for a long time. There can be no doubt that if the water and fifth is allowed to accumulate for a long time the place would become the breeding ground for mosquitoes, insects and is liable to become cause for spread of diseases. In these circumstances, it would be proper and reasonable in the present case if the Municipal Board is directed to perform its statutory duties in this respect.

6. The writ petition is, accordingly, allowed and the Municipal Board, Mandal is directed to remove the water and fifth collected in the chowk in Mundara Mohalla, Mandal by the construction of proper sewers and drains, so as to remove the cause of possible nuisance in the locality, within a period of three months. As the Municipal Board has not opposed the writ petition, the parties are left to bear their own costs.

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