Mrs. Manju Bhatia & Anr vs New Delhi Municipal Council & Anr on 6 May, 1997

Equivalent citations: 1997 (6) SCC 370, AIR 1998 SUPREME COURT 223, 1997 AIR SCW 4190, 1997 (116) PUN LR 698, 1997 ( ) ALL CJ 1324, (1997) 2 PUN LR 698, (1997) 5 JT 574 (SC), 1997 (4) SCALE 350, 1997 ( ) HRR 404, 1997 (2) UJ (SC) 306, (1998) 35 BANKLJ 205, (1997) 2 RECCIVR 368, (1997) 1 SIM LC 431, (1997) 1 ARBILR 646, (1997) 2 CIVILCOURTC 40, (1997) 3 CURCC 17, (1997) 3 MAD LW 226, (1997) 2 RAJ LW 300, (1997) 2 TAC 405, (1997) 5 SUPREME 579, (1997) 3 RECCIVR 302, (1997) 4 ICC 657, (1997) 4 SCALE 350, (1998) 1 ALL WC 32, (1997) 67 DLT 535, (1997) 4 LANDLR 184, (1997) 116 PUN LR 536, (1998) 1 MAD LJ 55, (1997) 43 DRJ 553, (1998) 3 BOM CR 364

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
MRS. MANJU BHATIA & ANR.

Vs.

RESPONDENT:
NEW DELHI MUNICIPAL COUNCIL & ANR.

DATE OF JUDGMENT: 06/05/1997

BENCH:
K. RAMASWAMY, S. SAGHIRAHMAD, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

Wehave heard learned counsel on both sides.

The admitted facts are that thebuilderimpleaded as one of the respondents, after obtaining the requisite sanction, built 8 floors (including ground floor) on November 22,1984 as per the guidelines which permitted 150 F.A.R.with the height restriction of 80 feet. The construction ofthe building known as "White House". Came to be madeand thepossession of the flatswas delivered to the purchasers, the appellant being one of them.At a later stage,it was foundthat the builder constructed the building in violation of the Regulations. Consequently, the flats of the top four floors were demolished. The demolition came to be challengedby wayof thewrit petition in the High Court. The High Court dismissedthe same. Thusthis appeal by special leave.

Before wego intothe controversyinvolve, it would be appropriate and advantageous at this stage to refer and discussthe law of equity and its rolein the field oftort and equity.

InHanbury & Martin's modern Equity (14th Edn.- 1993) by Jill E. Martin, atpage 3it is stated onthe "General Principles of Equity" that "`equity' is a word withmany meanings. In awide sense, itmeans that which is fair and just, moral and ethical, but its legal meaning ismuch narrower." " Developedsystem law has ever been assisted by the introduction of adiscretionary power to do justice in particular cases where the strict rules of law cause hardship. Rules formulated to deal with particular situations may subsequentlywork unfairly as society develops. Equity is the body of rules which evolved to mitigate the severity of the rules of the common law." Principles of justice and conscience are the basis of equity jurisdiction but it must not be thought thatthe contrast betweenlaw and equity is one between a system of strict rules and one of broad discretion. Equity has no monopoly of the pursuit ofjustice. Equitable principles are rather too often bandied about in commonlaw courts as though the Chancellor still had only length of his own foot to measure when coming toa conclusion. " Lord Radcliffe, speaking of commonlaywers, said thatequitylawyers were "both surprised and discomfited by the plentitude ofjurisdiction and theimprecision of rules that are attributed to `equity' by their more enthusiastic colleagues." just as the common law has escaped from its early formalism so over the years equity has establishedstrictrules for the application of its principle.Indeed,at onestage the rules became so fixed that a "rigor aequitatis" developed; equity itself displayed the very defect which it was designed to remedy. We willsee that today some aspects of equity are strict and technical, while othersleave considerable discretion to the court.

> "Hudson'sBuilding and Engineering Contracts [10th Edn.] by I.N. Duncan andWallace defined "building contract' as "an agreement under which a person undertakes for reward to carry out, for another person, variously referred to asthe building owner oremployer, worksof a building or civil engineeringcharacter." Inthe typical case, the work will be carried out uponland ofthe employer or building owner, though in some special cases obligation to build may arise bycontract where that is not so, e.g., under buildingleases and contracts for the sale ofland with ahouse in the course oferection upon it. M.A. Sujan in " Law Relating to buildingContracts" (2NDEdn.) quotes in para 3.3 Keating'sdefinition of 'building contracts"

according to which they include " any contract where one person agrees for valuable consideration to carry out building or engineering worksfor another". he also quotes Gajria's definition thus" "Building contract is defined as contract containing anexact and minute description of the terms,account or remuneration of particulars for the contract containing anexact and minute description of the terms,account or remuneration of particulars for the construction of a building". he further quotes thus: "A building or engineering contract is a legally binding argument whichhas for its subject matter or principal subject matter, the conditions intended to govern the erection of a proposed buildingor the execution of works of engineering construction; and by which one person or body of persons, undertakes, for a consideration, to erect or construct for another,such works inconformity with the design of the proposed building to beerectedby one party on theland of the other and for the latter'sbenefit. The terms `contract' and `agreement' whenapplied to building and engineeringworks, have thesame legal significance. But in practice, the terms`building contract' and`engineering contracts' areused in reference toworks to be done for the use and benefit of the land-owner, whereas a `building agreement' is one whereby a lease or other interest in the land is to beimmediately granted to the contractor is liable to a third person in this way, the building owner may also be vicariously liable for the builder's acts or omissions, or,perhapsmore correctly, willbe a joint tortfeasor. Atpage 579, under Section 2 dealingwith "Damages", he has stated that "under the complicated provisions of many building contracts the possible breaches of contract by the contractor are numerous, andin eachcase the general principlesset out abovemust be applied in order to determine what, if any, damage is recoverable for the breach in question. Typical breaches of the less common kind are, for example, unauthorised sub-contracting, failure to insure as required, failure to give notices, payment of unauthorised wages, and so on which, depending on the particular circumstances of the case,may or may not cause damage.The commonest breaches causing substatial damage, and hence giving rise to litigaation, may be broadly divided into three categories,namely, those involving abandonment or total failure to complete, those involving delay completion, andthose involvingdefective work.At page580, the learned author has stated thus:" In the case of defective workit should alsobe remembered that the final certificate may, in theabsenceof an over-riding arbitrtion clause,bind the employer andprevent him from alleging defective workaltogether, and manycontracts where no architect is use, particularly private-developer sales(or sales of houses "in the courseof erection") may, depending on their terms, extinguish liability upon the later conveyance under the caveat emptor Principle". The principle has been dealtwith at page 289 stating as under : " The courts,in their desire to escape from the rule of fitness of habitation upon the purchase of a new house from a builderif thehouse is completed at the time of the contract of sale, have been able to justifya refusal to apply the ruleof caveat emptor by finding that at thetime of sale the house was"in the course of erection", and frequently apply the implied term asto habitability to houses which are virtually completed at the time of sale . Furthermore, while it might at first sight seemlogicalthat the warranty of fitness should extend only to thework uncompleted atthe time of sale, this difficulty hasbeen brushedaside,and, once a building has been held to be in the course of erection,the warranty has been applied to the whole building including work already done.

InMcgregor on Damages, the Common Law Library No. 9 (14th Edn. by Harvey Mcgregor at page 683. It is statedthat " (physical damage toor destructionof goods may result from alarge variety of very different torts of which trespass is theoldest and negligence the most prolific, and which

includestorts involving, or borderingupon strict liability, as where the damage or distructionresultsfrom nuisance, by reason of damagerous premises, goods or animals in thedefendant's control, from hisnon-natural user of land under therule in Rylands V. Fletcher [(1868) L.R. 3 H.L. 330], or from breach ofstatutory obligation giving rise to an action in tort. Not only are mostof the cases actionsof negligence but most of those in which questions of the measure of damages have been worked out have involved damage to or destruction of ships generally by collision. The principlesexpounded in these cases are however of universal application."Thereis nospecial measure of damagesapplicable to a ship," said PickfordL.J. in The Kingsway [(1918) p. 344, 356 (C.A.)], different from the measureof damages applicableto anyother chattel. The nature of the thing damaged maygive rise to more difficult questions in the assessment of damages but it does not change the assessment in any way. " The normal measure of damages, stated in para 998 at page 684, is the amount by which the valueof the goods damaged has been diminished.

Inthe Modern Law of Tort by K.M. Stanton [Sweet & Maxwell] (1995Edn.) at pages 4-5,it isstatedthat "(C)ontract and tort are the two mainareas of the English law ofobligations. Contractual duties are based on an agreement whereby one person is to provide benefits for anotherin return for some formof benefit, whether in money or otherwise. Tort duties areimposed by operation of law and may be owned to a wide range ofpersonwho may be affected by actions. A question whichis commonly asked in this context is whether a plaintiff who is ina contactual relationship with the defendant can invoke tort in order to benefithis case whenthere has beena breach order to benefithis case whenthere has been a breachof contract. There are a number of reasons relting todamages and limitation of actions which may makeit advantageous to switch a claim out of contract and intotort". at page 9, it is stated under the heading "breach of trust and other equitable obligations"that "(R)emedies for breach of trust or other equitable obligations, even though they may result in purely financial awards, are excluded from the law of tort. The reason for this isbasically historical:tort derivesfrom the work of commonlaw courts whereas the court of Chancery,developed completely separte equitable principles. " At page 334, it is statedby the author that "

> the issue of the recovery of pure economic loss also raises fundamental questions concerning the relationship Between contract and tort and, in particular, the forms ofloss which ate recoverable in the differentkinds of action. The centralquestion in this debate is whether the tort of negligence has the capacity to provide a remedy for defective quality in the case of buildings and chattels. The traditional view is that it cannot because defects affecting the quality ofan them can only giverise toa negligence action in tort if persons have been injured or other property damaged thereby. Damages can only be climed in the tort of negligence for lossesinflicted on the person or other propertyand not for defectsaffecting theitem itself."

In"Winfield and Jolowiczon Tort" (14th 1994 Edn.) By W.V.H. Rogers, at page 4, it isstated under the "Definition of tortious liability"that "(T)ortious liability arises from the breach of a duty primarily fixed by law; thisduty is towards persons generally and its breach is redressible by an action for unliquidateddamges". It must also be emphasised that the number ofcases in which it will be essential toclassify the plaintiff's claim as tort, contract, trust etc., will becomparatively small. A cause of action in modern law is merely a factual situation the existence of which enables theplaintiff

to obtain a remedy from the courtand he is not required to head his statement of claim with a description of the branch of the law on which he relies, still less with a description of a particular category (e.g., negligence, trespass, sale) within that branch. But statutes andrules of procedure sometimes distinguish between,say, contract and tortwith reference to matters such as limitation of actions, service of process, jurisdiction and costs and the court cannotthen avoid the task of classification. On "contract and tort", it is stated at page 5 that "(I)t is unlikely that any legal systemcan ever cut loose fromgeneral conceptual classifications such as "contract" and "tort" but the studentwill quickly come to recognise that the boundary must sometimesbe crossed in the solution of a problem. It has long been trite law thata defendant maybe liable on the same facts in contract to Aand in tort to B (notwithstanding privity of contract); it isalso clearly established (though with qualifications the boundaries of which are rather uncertain that there may be concurrent contractual and tortious liability tothe same plaintiff, though he may not of course,recoverdamages twice over. Winfield, therefore, considered that tortious liability could for thisreasonbe distinguished from contractual liability and from liability on bailment, neither of which can exist independently of the parties' or atleast of the defendant's agreement or consent. The liability of the occupier of premises to his visitor, for example, which is now governed bythe occupiers' Liability Act, 1957, is based upon breach ofa dutyof care ownedby theoccupier to personswhom he has permittedto enter upon his premises. The duty ownedto trespassers, i.e., persons who enter withouthis consent, isnot thesame.

Inthe "words and Phrases" (Permanent Edition),Vol. 5A, atpage 309, "breach of trust" is stated to be, "violation by trustee of any duty which as trustee he ownes to beneficiary". The disclosure by an employee of trade secretsand other confidential information obained by him in the course of his employment is a "breach of trust". A "breachof trust" is aviolation by the trustee of anyduty which as trustee he owes to the beneficiary. In JarvisV/s. Moy. Davies, Smith, Vanbdervell & Company [(1936) 1 OB 399 at 404], thefacts were that theplaintiff sued the defendants, a firm ofstockbrokers, claimingdamages for breach of his instructions asto thepurchase of certain shares whereby he sustained loss. At the trial,judgment was given in favour of the plaintiff andit was held by Greer L.J. that where the breach of duty complained of arises out of theobligations undertakenby a contract, the action is foundedon contract: but where that which is complained of arises out of a liability independently of the personal obligation undertaken by a contract, and action brought in respectof this is founded on tort and thisis soeven though there may be a contract between the parties.

Inthis backdrop,it would be seen that thetort liability arising out of contract and tort, equity steps in and tort takes over andimposesliability upon the defendant for unquantified damages for the breachof the duty owned by the defendant to the plaintiff.Equity steps inand relieves the hardships of the plaintiff in a common law action for damagesand enjoins upon the defendant to make the damages suffered by the plaintiff on accountof the negligence in the case ofthe duties or breach of the obligation undertaken or failure to truthfully inform the warranty of title and other allied circumstances.In this case, it is found that four floors were unauthorisedly constructed and came tobe demolished by the New Delhi Municipal Council. It dows not appear that the owners of the flats were informed of thedefective or illegal construction and they were not given notice of caveatemptor.Resultantly, they are put to loss oflacs ofrupees they have invested and The question arising for consideration is: whether the appellants should be re-compensated forthe loss suffered by them? The HighCourt in the impugned judgmenthas directed the return of the amount plus the

escalation charges. We are informed that the escalated price as on the date is around 1.5 crores per flat. In this situation,takinginto consideration the totality ofthe facts and circumstances, we think that the builder-respondent should pay Rs. 60lacs including the amount paid by the allottees, within a period of six months from today. In case thereis any difficulty in making the said payment within the said period to each of the flat owners, the builder-respondentis given another six monthsper-emptorilyfor which, however, the builder- respondent willhave topay interest @ 21 per cent per annum on thesaid amount from the expiry of first six monthstill the date of payment.

The builder implead, suo motu, asone of the respondents, is also directedto obtain the certifiedcopy of thetitle deeds and secure the loan, if he so desires. After the payment is somade, the appellants are directed to deliverthe original title deeds taken custody of on March 1,1994.It appears that with regard to the payment ofRs.1 crore as the price of the flats, property and money arekept under attachment. The attachment will continue till thesaid amount is paid over.

The appeal is accordinglydisposed of. Nocosts.