

PUBLIC INTEREST LITIGATION: UNDER SEC 91&92

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ABSTRACT

The current paper continues in three sections. Part I manages the idea of public nuisance as with the idea of section 91 of the Code of Civil Procedure 1908(hereinafter referred as “code”). It talks about in detail the procedural of a case for public nuisance as enshrined in section 91 of the code, bolstered with case laws. Further, it examines different legitimate remedies as guaranteed under the nuisance claim. Part II will further talk about the idea of suit related to Public trust. It will reflect on the legal principle related to how upon an alleged breach of trust be it express or constructive a suit can be instituted under section 92 of the code supported with case laws. Part III plans to enlighten the idea of public interest litigation with unique spotlight on the spate of suit filed under section 91&92 of the code with relevant case laws.

Keywords- *Nuisance in Indian Jurisprudence, Suits Relating to Public Trusts, PIL*

PART -I

THE CONCEPT OF NUISANCE IN INDIAN JURISPRUDENCE

India obtained the idea of public nuisance just like the major different field in civil jurisprudence from Common Law. Prior to the conceptualization of the Code of Civil Procedure in 1908, the liabilities that aroused out of the offences of nuisance exuded from the common law translation of 'civil wrongs' that forced a tortious obligation on the transgressor. This tortious obligation was a competent ground for claiming damages for the injury caused because of the predominance of the reason for nuisance for a significant amount of time. Along these lines, the idea of nuisance isn't legally evolved in the context of Indian Jurisprudence. However, through a spate of adjudicating on the issue with its expansion of criminal interpretation as well as its application in tort law, a distinct dimension has been provided to the concept of nuisance.

There is no generally acknowledged meaning of nuisance. Actually, the term 'nuisance' is unequipped for a precise definition. Halsbury characterizes it as an injury caused to a person with regards to its rights of possession of a property to its uninterrupted enjoyment which is a result from an inappropriate use by another of his own property. As per Blackstone, it is something that "worketh hurt, inconvenience or damage". The act must bring about both threat and injury to cause a claim for nuisance. Acts that genuinely meddle with the wellbeing, security, comfort, or convenience of the public for the most part or which will in general be degrading to the concept of public morality have consistently been viewed as public nuisance and improper acts influencing public. Talking, for the most part, such acts emerge from uncaring and careless attitude for other people welfare and interest.

Nuisance can be broadly classified into two categories. Public Nuisance and Private Nuisance. As for our research part we will stick to public nuisance and talk in depth about it as section 91 of the code is related to that concept only.

PUBLIC NUISANCE IN CPC

Public Nuisance: As per section 268, a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right¹. The code does not completely define Public nuisance and hence it is derived from IPC.

Public Nuisance gets validity from section 91 of CPC that sets out the method for the commencement of a civil suit for the offense of public nuisance. Being absolutely procedural, the area gives the adaptability for equal remedies in criminal purview or harms under the law of torts. The peripheral note of section 91 peruses: "*public nuisance and other wrongful acts affecting the public*"². Considering other wrongful acts besides the one affecting public augments the extent of the area to fuse different circumstances which despite the fact that don't fall under the acknowledged restraint meanings of public nuisance, yet are a reason for distress and bother to people in general. For example, courts have perused butchering of cattle on an open road or infringement upon an open road by the development of structures as

¹ Section 268 in The Indian Penal Code

² Part V, Section 91, The Code of Civil Procedure, 1908

an authentic reason for activity for a case for public nuisance by its temperance being an unjust demonstration against the public at large.

Section 91 of CPC states that

- (1) In the case of a public nuisance the Advocate general or With the leave of the court two or more persons, even though no special damage has been caused, can for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.*
- (2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions³.*

According to the General Clauses Act 1897, the meaning of a nuisance to satisfy the objective of section 91, CPC must be obtained from section 268 IPC. The meaning of nuisance rejects from its ambit the cases of legitimized nuisance. Legitimized nuisance are situations when the disturbance cause is legally endorsed and in light of a legitimate concern for more prominent great and social government assistance. For example, the running of railways or motors, in spite of being a genuine reason for nuisance, isn't culpable under IPC or a legitimate ground for involving Section 91.

In spite of the fact that much hasn't been said about the consideration of proviso 1 in section 91 of the code, it is accepted that incorporation of the Advocate General as the initiator of the suit was to go about as a security check course of action to the far reaching and expansive meaning of nuisance and the subjectivity of 'wrongful act against public'. Afterward, by the 1976 amendment, the provision of at least two people initiating a suit for public nuisance with the assent of the advocate general was added to section 91 of the code. Such dynamic contribution of the Advocate General in such suits was to guarantee that suits are not started with vindictive aims, with the sole reason for making obstructions for the party causing nuisance. This standard anyway doesn't stretch out to representative suits when an individual or a member from a community is disturbed by the act of public nuisance files the case. In such suits, the leave of the court isn't fundamental. Indeed, even in situations when certain rights are given to the whole community, yet prompt harm by the nuisance happens to an individual, leave of court isn't compulsory.

Provision 2 of Section 91 grants the presence of an equal suit for a similar reason for activity in criminal jurisdiction through a PIL or as a civil suit for private cases. It likewise permits an individual to file his suit for damages. This is essentially so in light of the fact that

³ Part V, Section 91, The Code of Civil Procedure, 1908

section 91 completely doesn't create any rights or deny anybody of their current rights. It just expresses the procedural rules for initiating a civil suit when cause of action is a public nuisance. Subsequently, it doesn't control delegate suits under Order I, rule 8, or modify the privilege of an individual to sue apart from this section. This implies if a group starts a suit for a specific right, it doesn't fall under the class of suit for public nuisance and subsequently commands the approval of the advocate general. In any case, the presence of such rights is an essential. For example, a suit against a religious procession is viable under Section 91 in particular if the encroachment of some privilege and regardless of whether the resulting harm caused isn't demonstrated.

REMEDIES IN CASE OF PUBLIC NUISANCE

The following remedies are available against public nuisance:

- A person committing any act of public nuisance may be punished under the provision of IPC. Under chapter XIV section 269-291 of IPC, it isn't vital that the nuisance ought to damagingly influence each and every individual from the general population inside the scope of activity, it is adequate that annoyance upsets the individuals living in the region;
- Magistrate under 144 and 133 of crPc in certain cases can exercise his summary power to remove public nuisance;
- Institution of suit by advocate general or by two or more person for the declaration. Injunction or some other appropriate relief

This when section 91 of the code come into play when a suit is filed to sought remedy.

- A suit can also be instituted by a private individual, where some extraordinary damages have been suffered.⁴

Other than civil suits and criminal cases, another method of seeking remedy is through the instrument of PILs. In the last more than two decades, PILs have risen as a striking balance of citizen awareness and legal activism to work for the well-being and assistance of all. The III part of this paper intends to follow the historical backdrop of PILs in India and their utilization to check public nuisance.

⁴ Civil Procedure with Limitation Act, 1963 by C.K. TAKWANI

PART-II

SUITS RELATING TO PUBLIC TRUSTS: SECTION 92

Section 92 of the code accommodates filing of a suit in regard to breach of trust made for the public purpose which is of charitable or religious in nature by the Advocate General or at least two people having an involvement in the trust with the leave of the court for reliefs determined therein⁵

A suit under Section 92 of CPC is a suit of special kind for the security of Public rights in the Public Trusts and Charities. It surmises the presence of a public trust of a charitable or religious character. A suit under Section 92 of the C.P.C., the main reliefs which the offended party can guarantee and the Court can concede are those identified particularly in the various provisos of the section. First and the preeminent necessity for an application under Section 92 is, the offended parties ought to carry the suit to vindicate the privilege of people in general. Leave of the Court once conceded no new consent is required if the first offended party dies. The Suit under Section 92 of CPC is a representative suit. It is filed speaking for general society at large. When leave is allowed and it has accomplished irrevocability, if people who are parties at first died, others are subbed, it isn't essential that every one of those people who are subbed ought to again look for leave of the Court, to arraign the suit. It is on the grounds that, the authorization is allowed to people at large and not to the individual offended parties. In this manner, if the first offended party die and others are subbed in their place, as the consent is conceded for the public, the authorization allowed prior holds great even in regard to them.

The following conditions must be fulfilled before initiating an action under this section:

- The trust so created must be satisfying public purpose and should be of religious or charitable in nature;
- There must be a breach or there must be some necessary directions of the court in organization of such a trust;
- The relief so claimed must be the one specified under section 92.

If any of the given condition is not satisfied then the suit fall outside the ambit of section 92. So as to see if the offended party, in such a suit, is vindicating the privilege of people in general or his own right, what are to be seen are, charges in the plaint. In the

⁵ Civil Procedure with Limitation Act, 1963 by C.K. TAKWANI

principal case, if the charges in the plaint don't show that the offended parties have moved toward the Court to vindicate the privileges of public, on the similarity of Order 7 Rule 11 of CPC, the plaint can be dismissed on the ground that the plaint doesn't reveal a reason for the activity. Further, However, in the event that it isn't dismissed and inquiry is led, the proof is taken and from there on it is discovered that breach of trust claimed has not been made out and that the petition for direction of the Court is obscure and did not depend on any strong establishment in realities or reason, yet is made uniquely with the end goal of bringing the suit under the Section, at that point, the suit indicated to be brought under Section 92 must be dismissed. A suit whose essential object is to provide, the encroachment of an individual right or to vindicate a private right doesn't fall under the Section.⁶

RELIEF

The suit under this section can be instituted for any of the following reliefs:

- (i) For the removal of any of the trustee
- (ii) For the appointment of a new trustee
- (iii) For directing a trustee who either has been ceased to be a trustee or who has been removed from his position, to deliver the entitled property to the rightful owner;
- (iv) For directing accounts and enquires;
- (v) Allocating the trust property to any particular object of the trust;
- (vi) For mortgaging or exchanging the trust property;
- (vii) For settling of a particular scheme;

Doctrine of cy-press

The meaning of cy-press is “as nearly as possible to the testator’s or donor’s intentions when these cannot be precisely followed”⁷.

The doctrine expresses that when there is a gift or trust for a foundation which can be considerable however not actually satisfied it will be effectuated by moulding it so that as close to as practicable the expectation of the promoter might be completed. The doctrine of cy-press in this way makes conceivable the utilization of assets to reason as almost as conceivable to those chose by the donor.

⁶ Shivananda C.R. & Anr; Anr Sri. H.C. Guru Siddappa & Ors

⁷ Concise Oxford English Dictionary

The Supreme court in the case of *Ratilal v. State of Bombay*⁸ gave a detailed analysis of the doctrine while stating that “*when for a particular purpose a trust so created fails or due to certain reason or circumstances the activity of the trust cannot be carried any further and when there is surplus left after exhausting the purposes as specified by the settlor, the court would make sure that there is no failure in the trust but would execute it cypress, that is in some way will try to carry out activity as nearly as possible to the intention of the author*”.

PART-III

PIL UNDER SECTION 91&92 OF THE CODE

PIL cases have to a great extent been benefitting to the more vulnerable segments of the society who were discouraged by common obstructions in moving toward the courts. They have additionally essentially helped the assurance and conservation of nature to support manageability. In any case, the idea of PILs has lately been emerged as a device for people who are bothered by public nuisance or with any case of breach in trust in both cases being provided with remedies. As this paper centres around the utilization of PILs as an instrument for testing public nuisance and different wrongs against people in general, the conversations regarding pros and cons of PILs are characterized out of the extent of this paper. Additionally, the emphasis being just on public nuisance and breach of trust, other regular circles of activity of PILs have been avoided.

PIL or social interest is essentially a case in which an individual, despite the fact that not abused personally, institute an action in the interest of the discouraged masses for the redressal of their complaints. It might be characterized as a prosecution undertaken for public injury, implementing public obligation and guaranteeing public rights. In India, the direction of PILs has been followed in the circle of constitutional and not civil prosecution. This in any case, doesn't avoid its chance being recorded as a civil suit either in the limit of a class action under order 1, rule 8 or a public nuisance suit under section 91 of the CPC or breach of trust under section 92 of the code.

The idea of PILs was spelt out with conviction and lucidity in the *S.P Gupta v Union Of India*⁹ where the Court explained that it was the court's obligation to “*guarantee that the instrument of PIL was not being utilized to clothing private benefit or political inspiration or*

⁸ *Ratilal v. State of Bombay* AIR 1954

⁹ *S.P. Gupta v Union of India* AIR 1982 SC 149

other slanted contemplations other than those in advancement of public welfare”. Be that as it may, it was the Ratlam Municipality¹⁰ case that kicked off something new for utilizing the concept of PIL for public nuisance. The decision of High Court was upheld by Supreme Court stating that *“It is the duty of municipality to provide proper sanitation facilities in term of arranging of drainpipes to abate the contamination. The defence of financial inability cannot be claimed while carrying out the task of public welfare”*

The magistrate has the power to restrain any person who is causing an act of public nuisance. In the case of Ramlal v Mustafabad oil and oil ginning factory¹¹ the court was of the opinion that *“making noise for some legal activity is no defence for public nuisance. Once the court has findings that the noise is above particular level it falls within the ambit of public nuisance and attracts liability”*.

In the infamous Bhopal Gas tragedy Case¹² the union government sued the union carbide for the evening of December 2, 1984, compound, methyl isocyanate (MIC) spilt out from Union Carbide India Ltd's (UCIL's) pesticide manufacturing plant transformed the city of Bhopal into a goliath gas chamber. It was India's first major mechanical fiasco. In any event 30 tons of methyl isocyanate gas slaughtered in excess of 15,000 individuals and influenced more than 600,000 specialists. However, the matter was settled outside the purview of court.

In the case of M.C. Mehta v Kamal Nath¹³ the court was of the opinion *“that the purpose of levying heavy damages on the party was to send out a message for all the other that is to act as a deterrent to other not to cause pollution or to degrade the environment”* The facts were that the privately owned business “Span Motels Pvt. Ltd.” had fabricated an inn on the bank of the River Beas ashore rented by the Indian Government in 1981.

Span Motels had likewise infringed upon an extra region of land connecting this leasehold zone, and this zone was later rented out to Span Motels. The inn had utilized earthmovers and pieces of machinery to turn the course of the River Beas, make another channel and occupy the stream. The course of the stream was redirected to spare the inn from future floods. The case was filed for quantum of pollution fine.

In the case of Municipal Board, Manglaur¹⁴ the region needed to raise a sculpture of the Father of the Nation Mahatma Gandhi on an open pathway. The planned activity was

¹⁰ Municipal Council, Ratlam v Vardichan, AIR 1980 SC 622 1628

¹¹ Ramlal v Mustafabad oil and oil ginning factory, AIR 1968

¹² Union Carbide Corporation vs Union of India Etc on 4 May, 1989

Equivalent citations: 1990 AIR 273, 1989 SCC (2) 540

¹³ M.C. Mehta vs Kamal Nath & Ors on 13 December, 1996

looked to be restrained by the plaintiff. Subba Rao, J, held that *“the vesting of the open pathway in the municipality doesn't make it the proprietor of the soil. there was no nexus between the maintaining or utilization of the pathway and the erection of the sculpture. Hence, the planned demonstration of the region to raise the sculpture was held to be unapproved. The offended party was allowed injunction. In this manner, places reserved for specific purposes must be used for those reasons as it were”*.

In the case of Arthanareshwarar Temple¹⁵, where the inquiry emerged whether a specific proceeding could be permitted to be pulled back by a suitor when matters identifying with public religious trust were included, the Supreme Court replied in the negative. The judgment of the high court permitting withdrawal of the proceedings was set aside and the issue was transmitted for fresh disposal. It is currently settled that there is no unhindered right of withdrawal in a suit for public interest proceedings. Similarly, as private interest matters can't be arbitrated under shade of public interest, also, a public interest once propelled can't be left or pulled back at the volition of a person.

In the case of Biswanath v Sri Thakur Radha Ballabhji¹⁶ the court laid down the three points essential for instituting a suit under sec 92 of the code. (i) the trust so created should be for public purposes which is of a charitable or religious nature; (ii) there was a breach of trust or a direction of the court is required in administering such trust; and (iii) the relief claimed is one which is enumerated. All three conditions are necessary and if any of them is not fulfilled the suit is outside the ambit.

CONCLUSION

In spite of accessibility of remedies in common, criminal as well as constitutional law, public nuisance and the breach in case of public trust, garbed behind the requirement for improvement, has become a bad habit which our general public has neglected to battle effectively. In spite of the spate of laws regarding the matter of condition, we wind up in a circumstance where we are remaining near the very edge of the cliff of manageability in our condition. More than new laws, what is required is the viable usage of the current ones. The State should assume up the liability to guarantee that businesses and other advancement

¹⁴ Municipal Board, Manglaur vs Sri Mahadeoji Maharaj on 24 November, 1964

¹⁵ Executive Officer, Arthanareshwarar Temple v R. Sathya Moorthy (1999)
3 SCC 115'

¹⁶ Biswanath v. Thakur Radha Ballabhji, AIR 1967

exercises with potential to make unsalvageable harm condition or discourage a significant public right by being a reason for nuisance, are kept in legal check.

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