

Section 91 CPC- Manifestation of PIL

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Abstract: Whether it is the noise of the loudspeakers or the dug up roads, the occurrences of public nuisance are numerous. Unnecessary and incessant honking of horns to blocking the sun in a public park, the concept of nuisance is spanned in a vast sphere of our lives. While earlier, nuisance claims were generally instituted by individuals for damages, public nuisance claims through class litigation and public interest litigations are a relatively new addition in the Indian context. It has to be realized that Environment protection is not a pre-occupation of the educated and the affluent and the disposal and control of toxic waste and governmental regulation of polluting industries is public interest oriented. It is nothing but immense insensitivity of the Indian society that the biggest issue of public nuisance, environment-deterioration, goes unnoticed by most of the people, save a few public spirited people, who take up this responsibility of preserving the environment upon themselves. Public interest litigations (hereinafter PILs) have emerged as an instrument to set the wheels into action and work towards a sustainable environment.

Keywords: Section 91 CPC, PIL.

I. LEGAL PROVISIONS

Section 91, Code of Civil Procedure, 1908

(1) In the case of a public nuisance or other wrongful act affecting or likely to affect the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,

(a) By the Advocate-General, or

(b) With the leave of the court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

Section 91 (1) of the Code prior to its amendment by the Amendment Act, 1976, authorised the Advocate-General or two or more persons having obtained his consent in writing to institute a suit. The provision with regard to the obtaining of the Advocate-General's consent has now been modified by the provisions of S. 91 stated above.

Meaning of Public Nuisance:

The term "public nuisance" occurring in S. 91 has not been defined in the Code of Civil Procedure. It is an act that interferes with the enjoyment of a right that all members of the community are entitled to, such as the right to fresh air, to travel on the highways, etc.

In view of the provisions of S. 3 (48) of the General Clauses Act, the definition of "public nuisance" as given in S. 268 of the Indian Penal Code will apply to the present Code. It says: "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 right."

The consensus of judicial opinion has, in recent years, veered round the view that the English rule that the plaintiffs cannot maintain a suit in respect of an obstruction to a highway unless they prove special damage to themselves personally in addition to the general inconvenience to the public is not applicable in India.

Procedural provision:

This section is a procedural provision. It does not purport to create any new right, nor does it purport to deprive anybody of a right derived from the general law of the land. Consequently, it does not control representative suits under Order I Rule 8 or modify the right of a person to sue apart from the provision of this section.

Thus a representative suit brought not on behalf of the public of a place but of one particular community forming part of it, i.e., for declaration of its right to take out a procession along a particular route and for removal of certain obstructions did not earlier require previous consent of the Advocate-General or the leave of the court.

Special Damage:

A suit seeking relief in respect of public nuisance is maintainable although sanction of the Advocate-General as it obtained prior to the Amendment Act, 1976, or the leave of the court, had not been obtained as required by S. 91, C.P.C., if the plaintiff proved special damage. Special damage is that damage which by reason of a nuisance would be suffered by some individual beyond what is suffered by him in common with other persons affected by that nuisance.

Suresh Chander Goyal & Ors Vs. Davinder Singh & Ors, 2016 Delhi HC

A plain reading of Section 91 makes it very clear that there are two modes of escape from the special restriction of Section 91 namely proof of special damage and proof of invasion of the special rights of a limited

class which will give an independent right of action. If the suit is treated to be in the individual capacity, what would be required of the plaintiffs would be the proof of the nuisance causing damages or violation of any personal or private rights.

II. REMEDIES IN CASES OF PUBLIC NUISANCE

As mentioned above, section 91, clause 2 permits the concomitant existence of individual as well as suits under other laws for relief for public nuisance. Since public nuisance is an offence both in civil and criminal jurisprudence, the reliefs range from punitive to pecuniary (generally in case of private claims). In public nuisance cases, the most common relief is the injunction order for continuing the act causing nuisance or an order for removal of the cause by the magistrate. Therefore, the remedies for public nuisance are:

1. Criminal Prosecution under such section of chapter XIV of the Indian Penal Code as may be applicable to the case.

Sections 269 to Section 291 enlist provisions for punitive remedies with imprisonment, fine or both. For attracting provisions of Chapter XIV, it is not necessary that the annoyance should injuriously affect every single member of the public within the range of operation, it is sufficient that nuisance disturbs the people living in the vicinity.

2. Removal of nuisance or stopping the nuisance-causing activity by the orders of the magistrate under section 143 and 133, CrPC.

Section 133 of Cr.P.C. allows the magistrate to order removal of the nuisance causing agent or activity from the locality provided that he is satisfied that the nuisance affects or injures number of people enough to attribute 'public nature' to the right being violated, the dispute is not of private nature, between two members or groups of public or the dispute is a case of emergency or imminent danger to public interest as in cases of pollution by industries.

3. Action under this section by the Advocate General, or two or more persons with the leave of the Court where a declaration or injunction or some other appropriate relief is desired to put an end to a public nuisance.

This is when the remedy is sought under section 91 of the CPC where a suit is filed either by the advocate general himself or by two or more people in representative capacity with the prior consent of the advocate general or the leave of the court. The reliefs available to the parties in such cases are temporary or intermittent injunction if the injury complained of is either irreparable or continuous. Even if no substantial damage is caused by the act, injunction can be granted if the nature of nuisance-causing act is such that it can obstruct public rights in future. Declaration of can also be sought as a remedy.

4. Action by a private individual, where he has sustained some extraordinary damage by it.

The distinction between private and public nuisance collapses in cases where an individual is caused damage by the act of nuisance which prima facie violates a public right. In such a case, invoking clause 2 of section 91, an individual can file a claim for damages or injunctions for violation for some right without prior consent of the Advocate General or the leave of the Court if there is sufficient proof of violation of his some of his or her existing rights. As per the amended provision, no such sanction is required and independent locus is conferred on every person aggrieved by public nuisance or wrongful act to file a suit for declaration or injunction. For instance, if the petitioner's land that is used by everyone in the village (public right) as a passage is dug for making a channel by the authorities, a sufficient cause of action for initiating a suit under clause 2 of article 91 is created. Apart from this section no individual can maintain an action against another for a relief against public nuisance except on proof of special damage.

Besides civil suits and criminal cases, another way of realizing these remedies is through the instrument of public interest litigations or PILs. In the last two and a half decades, PILs have emerged as a striking balance of citizen-consciousness and judicial activism to work for the welfare of all. The next section of this paper aims to trace the history of PILs in India and their use to check public nuisance detrimental to the environment.

Award of damages for previous suit improper:

Where suit for declaration and injunction against nuisance as in representative capacity and another application to treat suit to be instituted under Section 91 were

rejected, held that as there was no suit before Court for trial and no written statement was filed the question of defendants claiming damages will not arise.

III. PUBLIC INTEREST LITIGATION AND PUBLIC NUISANCE

With the break-neck speed of development and mechanisation of human life, the instances of public nuisance have increased considerably. Often, such nuisances, besides causing inconvenience to public, also act to the detriment of the environment. Public Interest Litigations recently, have assumed the importance of being the primary tool for bringing to the notice of judiciary, causes of action against public nuisance damaging the environment.

Public interest litigations have largely been benefitting to the weaker sections of the society who were deterred by practical impediments in approaching the courts. They have also significantly aided the protection and preservation of environment to encourage sustainability. However, the concept of PILs has lately been subjected to it being a tool for harassing private parties in the name of environment, for the mere want of monetary compensation.

Public interest litigation or social interest litigation is principally a litigation in which a person, even though not aggrieved personally, brings an action on behalf of

the downtrodden masses for the redressal of their grievances. It may be defined as a litigation undertaken for the purpose of redressing public injury, enforcing public duty and claiming public rights. In India, the trajectory of PILs has been traced in the sphere of constitutional and not civil litigation. This however, does not exclude the possibility of it being filed as a civil suit either in the capacity of a class action under order 1, rule 8 or a public nuisance suit under section 91 of the CPC.

The Indian jurisprudence saw a faint glimpse of the concept of pro bono litigation in a judgment delivered by Justice Krishna Aiyer in *Mumbai Kamgar Sabha v Abdulbhai* which was a case regarding some dispute in payment of bonus. Quoting Justice Aiyer,

“Public interest is promoted by a spacious construction of locus standi in our socio-economic circumstances and conceptual latitudinarianism permits taking liberties with individualization of the right to invoke the higher courts where the remedy is shared by a considerable number, particularly when they are weaker. Less litigation, consistent with fair process, is the aim of adjective law.

The concept of PILs was spelt out with conviction and clarity in the *S.P.Gupta v Union Of India* where the Court clarified that it was the court's responsibility to ensure that the instrument of public interest litigation was not being used to garb private profit or political motivation or other oblique considerations other than those in furtherance of justice and public welfare. However, it was the *Ratlam Municipality case* that broke new ground for using litigation in public interest for removal of nuisance (caused by dismal state of the drains in the locality in the case).

PILs with backing of judicial activism became an important means of realizing what was envisaged in Article 48A of the Constitution. There has been an array of public interest litigations raising environmental issues including on water and air pollution, river pollution and management, noise pollution, management and regulation of hazardous waste, regulation of mining and conservation of forest and wildlife resources. The Court (High Court in case of an Article 226 writ and Supreme Court in case of an Article 32 writ), acting as a sentinel to people's fundamental right to a clean environment, has to maintain the delicate balance between encouraging development of the nation and ensuring sustainability of the environment. The Supreme Court through various pronouncements in environment PILs has acknowledged the fact that no development is possible without some adverse effect on the ecology and the environment. Despite that, the theme underlying the judgments is that of sustainable development which as defined in the 1987 report of the World Commission on Environment and Development (Brundtland Report) is, “development that meets the needs of the present without compromising the ability of the future generations to meet their own needs.”

Thus the Supreme Court has not been hesitant in prohibiting nuisance causing acts like blowing loud air horns, bursting firecrackers after 10 P.M. at night which obstructed right to sleep at night and to leisure or even

noise cause by religious activities, and other acts of public nuisance obstructing public welfare and greater good.

IV. CONCLUSION

Despite availability of remedies in civil, criminal as well as constitutional jurisdiction, public nuisance, garbed behind the need for development, has become a vice which our society has failed to combat successfully. Despite the spate of laws on the subject of environment, we find ourselves in a situation where we are standing at the brink of precipice of sustainability in our environment. More than new laws, what is required is the effective implementation of the existing ones. The State should take up the responsibility to ensure that industries and other development activities with potential to cause irreparable damage to environment or obstruct an important public right by being a cause of nuisance are kept in statutory check.

V. REFERENCES

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