A

BISHAMBAR NATH AND OTHERS

v.

THE AGRA NAGAR MAHAPALIKA AGRA AND ANOTHER

March 28, 1973

B

[J. M. SHELAT, ACTING C.J., S. N. DWIVEDI AND Y. V. CHANDRACHUD, JJ.]

U.P. Municipalities Act, Sec. 244, "An article of food or drink appears to be intended for the consumption of man,"—Unfit condition of foodstuff is to be determined by an objective test and not on subjective satisfaction of the inspecting officer—Whether the order regulating sale of atta for animal consumption valid under Sec. 244.

C

The appellant purchased certain quantity of wheat flour from the Military Dairy Farm, Agra, which was declared unfit for human consumption. He exposed it for sale with a sign-board that the wheat flour was unfit for human consumption. The appellant wanted to sell it for lehi or for manure or for animal consumption. On complaint by the second respondent, the District Magistrate, Agra, passed an order prohibiting the sale under section 144 of the Cr. P.C. The appellant was also prosecuted under U.P. Prevention of Food Adulteration Act, but was acquitted. The appellant applied to the Corporation for permission to sell the wheat flour. On September 17, 1945, Respondent No. 1 passed an order under section 44 of the U.P. Municipalities Act permitting the disposal of the flour under certain conditions. On representation made by the appellant, Respondent No. 1 passed a second order on October 8, 1945, *inter alia,* directing that the flour should not be sold for feeding animals kept for dairy purposes. The appellant filed a suit for damages against the respondents for stopping the sale and for imposing illegal restrictions effectively preventing the sale, resulting in deterioration of the flour and loss of profits. The trial court decreed the suit but the Allahabad High Court set it aside. On appeal to this Court, the question for consideration was whether the order purported to be passed by respondent no. 1 under section 244 was a valid order, and whether respondent No. 1 was liable to pay damages.

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HELD: The phrase, "an article of food or drink appears to be intended for consumption of man," does not contemplate subjective satisfaction of the inspecting officer as held by the High Court. The seller should intend to sell an article of food for human consumption. His intention is an objective fact which should be proved by such evidence as a reasonable man will believe that the article of foodstuff is intended for human consumption. [781F]

G

Section 244(1) contemplates a direct sale for human consumption. It does not contemplate, as the High Court had held, an indirect sale for human consumption. The High Court held that if the flour is sold for feeding milch animals or animals whose flesh is eaten, it would be a sale for human consumption. The legislature did not intend prevention of sale for consumption of animals to be regulated by sub-section (1) of Sec. 244. [781H]

H

The appeal was partly allowed and remanded to the High Court for ascertaining the quantum of damages.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1809 of 1967. A

Appeal by certificate from the judgment and decree dated May 25, 1962 of the Allahabad High Court in Appeal No. 328 of 1950.

C. K. Daphtary and *Rameshwar Nath,* for the appellants. B

R. N. Sharma and *C. P. Lal,* for the respondents.

The Judgment of the Court was delivered by

DWIVEDI, J.—The appellants instituted a suit against the respondents for recovery of Rs. 34,000 as damages. The suit was grounded on tortious liability. The trial court decreed the suit, C but the High Court of Allahabad reversed the decree and dismissed the suit. The present appeal is directed against the decree of the High Court.

The appellants are the partners of the firm Shiam Lal Radhey Lal. The first respondent is the Agra Mahapalika; the second respondent is the Health Officer of the Mahapalika. The Military D Dairy Farm at Agra was in possession of a certain quantity of wheat flour. It was declared unfit for human consumption. It was purchased for the firm. According to the appellants, it was fit for being used as lehi, manure and ratab for consumption by animals. Broadly stated, their case was that the respondents initially stopped them from selling the flour and subsequently im- E posed restriction on its sale, "which effectively prevented the sale." Loss was cause to them on account of delay in sale due to their intervention.

The respondents denied their liability. They said that their action was *bona fide* and in the interest of public safety and health and in pursuance of the directions given by the magistrate. Ac- F cording to them, the appellants took no steps to prevent the sale of flour for human consumption.

The two central issues are : (1) whether the respondents are liable to pay damages in the circumstances of the case; and (2) if so, what is the quantum of their liability. On the first issue G the High Court has held that the respondents are not liable at all. On the second issue the High Court has given no finding.

The appellants started selling the flour from March 20, 1945. On May 17, 1945, the second respondent reported to the Administrator of the Nagarpalika that the flour was in a decomposed and deteriorated condition and was unfit for human consumption. He H admitted in the report that the firm of the appellants "has set up a placard to say it (flour) is condemned atta and unfit for consumption." The Nagarpalika reported the matter to the District

A Magistrate, Agra. On July 26, 1945 an order was issued under s. 144 Cr. P. C. prohibiting the appellants from selling the flour for one month. This order was extended till September 20, 1945 by another order, dated September 18, 1945. The appellants were prosecuted for offences under ss. 4 and 14 of the U.P. Prevention of Adulteration Act and s. 273 I.P.C. The flour was B seized by the order of the magistrate and kept in the custody of the appellants until further orders. The magistrate acquitted the appellants on September 5, 1945. In the operative portion of the judgment he gave this direction : "Since this Atta is noxious to public health and it is not possible to prevent its reaching consumers (even though the accused had best intention) without C effective regulation I order that the entire Atta still be taken possession of by the Municipal medical officer of Health who will kindly regulate its disposal in consonance with considerations to the owner as is necessary to prevent its being used as food. The Atta has already been kept frozen for too long a time and I would request the medical officer to kindly expedite action in this. Copy of this order may be sent to medical officer of Health immediately." D

On September 17, 1945 the second respondent issued an order under s. 244 of the U.P. Municipalities Act. The order was with respect to 2048 bags of Atta seized by the magistrate in connection with the criminal case. The order permitted the appellants to dispose of the flour subject to the following conditions : (1) they E should engage a salesman approved by the second respondent to sell the Atta; (2) they should keep a separate stock book and sales-book in respect of the Atta. In the sales book the names and addresses of all buyers should be mentioned. There should be a column for the signature of the buyers; (3) the Atta should be sold only for being used as lehi to recognised book-binders and shoe-merchants etc.; and (4) they should submit weekly return F of sale to the Nagarpalika. By their letter, dated September 22, 1945, the appellants replied to this letter. They said that the Atta could also be used for animal food and wanted permission to sell it for animal food after mixing gram dal chuni with it. They ended the letter by saying that immediate attention should be paid to their request as they have "already suffered great loss at their G hands due to wrongful seizure etc. and as the delay affects the quality of the Atta." They sent a reminder on September 24, 1945. The respondents, by their letter, dated September 27, 1945, informed them that the appointment of Nanu Mal as salesman was approved. It was emphasised in the letter that the directions mentioned in the letter of September 17, 1945 should be carried H out by them. They gave no reply to the request of the appellants for the sale of flour for animal food. By his letter, dated October 6, 1945, the second respondent, however, permitted them to sell the flour for animal food under certain conditions. By the letter,

dated October 8, 1945, the second respondent issued the following directions to the appellants under s. 244 of the Municipalities Act : (1) The Atta should not be sold for feeding animals kept for dairy purposes; (2) flour less than one full bag should not be sold to one individual; (3) there should be a distinctive label on every bag containing the warning that the contents could be used for animals only and were unfit for human consumption; and (4) any officer of the Nagarpalika not below the rank of a Sanitary Inspector would be allowed free access to the shop in which the Atta was stored for the purpose of inspecting sales and examining the account books.

We do not think that the respondents are liable for the stoppage of sale from July 26 to September 20, 1945. During that period the sale was stopped by an order of the magistrate under s. 144 Cr. P.C. The question is whether they are liable for loss incurred by the appellants for any period after September 20, 1945. The appellants ground their claim on the respondents' orders passed under section 244 of the Municipalities Act between September 17 and October 8, 1945. They say that the orders are invalid and *malafide*. The respondents seek to escape liability in two ways : (1) firstly, they acted in accordance with the order of the magistrate, dated September 5, 1945; secondly, their orders under s. 244 were valid and made *bonafide*. The magistrate's order can afford them no protection. The magistrate had no power to make that order. Counsel for the respondents did not bring to our notice any provision of law empowering the magistrate to make that order. It is now to be seen whether the respondent's action is protected by the provisions of section 244.

Section 244 finds place in Chapter VIII of the Municipalities Act. Chapter VIII deals with markets, slaughter houses and sale of food etc. Sections 239, 242 and 243 are also included in Chapter VIII. Section 239 materially provides that "whenever it appears to the District Magistrate to be necessary for the preservation of the public peace or order, he may.....prohibit or regulate, the slaughter within the limits of a municipality of animal or animals of any specified description for purposes other than sale and prescribe the mode and route in and by which such animals shall be brought to, and meat shall be conveyed from, the place of slaughter." Section 242 reads : "Whoever feeds or allows to be fed, an animal which is kept for dairy purposes, or may be used for food, on filthy or deleterious substance, shall be liable to conviction to a fine which may extend to fifty rupees. Section 243 is in these words : "The President, the executive officer, or the medical officer of health and, if authorised in this behalf by resolution, any other member, officer or servant of the board may, without notice, at any period of the day or night, enter into and

A inspect a market, shop, stall or place used for the sale of food or drink for man, or as a slaughter-house, or for the sale of drugs and inspect and examine any articles of food or drink, or any animal or drug which may be therein." Section 244 reads : (1) If, in the course of the inspection of a place under the preceding section, an article of food or drink or an animal appears to be B intended for the consumption of man and to be unfit therefor, the board may seize and remove the same, or may cause it to be destroyed, or to be so disposed of as to prevent its being exposed for sale or use for such consumption." Section 244(1) is not happily worded. However, when the phrase "an article of food or drink or an animal appears to be intended for the consumption of man" C is read in the context of s. 243, the implication of the phrase becomes plain. It implies that the sale of an article of food or drink or an animal should appear to be intended for human consumption and should be unfit therefor. Admittedly, the flour was unfit for human consumption. So the real issue is as to whether its sale appeared to be intended for human consumption.

D

According to the High Court, the phrase "appears to be intended for the consumption of man" connotes that the sale of an article of food should appear to the inspecting officer to be intended for human consumption. His subjective satisfaction about this matter is decisive. The High Court has also taken the view that sub-E section (1) aims to prevent a direct as well as an indirect sale for human consumption. According to the High Court, if the flour is sold for feeding milch animals or animals whose flesh is eaten, it would be a sale for human consumption. In our opinion, s. 244(1) is not susceptible of those meanings. The phrase "an article of food or drink appears to be intended for the consumption of man" does not contemplate any subjective satisfaction. The seller F should intend to sell an article of food for human consumption. His intention is an objective fact. There should be present some facts or circumstances which would incline a reasonable man to believe that the sale of an article of food or drink or an animal was intended for human consumption. The language of sub-section (1) of s. 244 is radically different from the language of G s. 239. Under s. 239 the District Magistrate is empowered to act whenever it appears to him to be necessary for the preservation of public peace or order. These words are not used in s. 244(1). Again, the phrase "an article of food or drink or animal appears to be intended for the consumption of man" does not contemplate an indirect purpose of sale. It contemplates sale for human con-H sumption. If an article mentioned in sub-section (1) of s. 244 is sold for feeding an animal which is kept for dairy purposes, the seller shall be liable on conviction to a fine which may extend to fifty rupees. (See section 242). If the Legislature had intended

to prevent sale for animal consumption also, it would have clearly said so in sub-section (1) of s. 244. A

It is true that the object of s. 244(1) is laudable. But it is not legitimate to strain the language of the section as the High Court has done in aid of such object. It is open to the legislature to amend the section if it intends to give greater protection to municipal action. B

It is clear from the evidence on record that the appellants had taken steps to inform the buyers that the flour was unfit for human consumption. They had placed a sign-board in which it was clearly stated that the flour was unfit for human consumption. The oral evidence adduced by the appellants is to the same effect. It C is admitted by the respondents that the appellants had placed a placard informing that the flour was unfit for human consumption. Their oral evidence does not show that the appellants were selling flour for human consumption. The appellants mixed maize flour with the condemned flour. But this act also would not show that they intended to sell the mixed flour for human food. The respondents could not therefore take action under s. 244. The orders D passed by them under section 244 are invalid.

It is immaterial that the respondents had acted *bona fide* and in the interest of preservation of public health. There motive may be good but their orders are illegal. They would accordingly be liable for any loss caused to the appellants by their action. E

The High Court has not recorded any finding on the quantum of their liability. In view of our finding that the respondents are liable, the case will now have to go back to the High Court for giving a finding on the issue regarding damages.

We allow the appeal and set aside the judgment and decree of the High Court. The case is remanded to the High Court for F deciding the issue about damages. Costs will abide the decision of the High Court on the question of damages.

S.B.W. *Appeal allowed.*