

Ww. E. Randabel v Dr. E. D. Laurent

1998 SCJ 472

Chambers IN THE SUPREME COURT OF MAURITIUS

In the matter of:-

Ww. E. Randabel

Applicant

v. Dr. E. D. Laurent

Respondent

JUDGMENT

On the strength of the affidavit dated July 10, 1998, that the works of the respondent on the coastline had tampered with the boundary along the road and the line separating the two properties, I issued an interim order restraining and prohibiting the respondent, and/or his representatives, and/or his employees, and/or his contractors from proceeding any further with the constructions presently being erected by him on the Tamarind Beach, which depart from the current alignment of retaining walls existing on adjoining properties and presently standing close to or within the high water mark.

The matter was postponed for the respondent to show cause why the interim order should not be made interlocutory and why the other prayers should not be acceded to namely to build 15m inside the high water mark, not to dredge any channel in the sea and to remove all the rubble found on the beach.

After the various protracted exchanges of affidavits, the matter was set down for hearing on October 28, 1998, when in fact, the dispute in respect of the boundary line between the properties of the parties was not even an issue and it transpired that the complaint of the applicant was that the respondent is building a wall which is more than a retaining wall on the high water mark which during the high tide is causing some inconvenience to the applicant when making use of the beach as that strip of sand in front of respondent's bungalow is immersed by sea water.

It is common ground that the right of property of the respondent goes up to the high water mark and it is very significant that the applicant did not deem it fit to put into cause the competent authorities when according to her, despite complaints made by her, no action was taken by them.

On the day of the hearing, considering that the issue of the locus standi of the applicant to enter the present action is very material having regard to all the affidavits and documents produced, I invited argument on this matter.

I understand learned counsel for the applicant that her client is entitled to bring the present action in view of the inaction of the various competent authorities concerned when the acts of the respondent were damaging the environment and modifying the ecological functions of the cove in the region's ecosystem which would lead to the irreversible destruction of the marine flora and fauna, the alleged retaining wall which was built was spoiling the view and cutting the beach into two and that the construction was in breach of section 9 of the Territorial Sea Act.

The contention of learned counsel for the defence is that since the respondent had received all clearances from the relevant authorities for the construction of his bungalow and being in possession of a letter from the Black River District Council dated January 26, 1998 authorising him to build the retaining wall which is found within the boundary limit of respondent's property, the applicant has no legal right which requires protection and that she cannot put herself forward as the defender of the environment. It was further submitted that the applicant had failed to disclose all relevant facts in the present matter since after complaints were made to the relevant authorities, officers from those departments came and measured the high water mark and the boundary separating the two properties and this in presence of the applicant.

In *Neerooa v Bhugun* [1998 SCJ 417], it was held that the fact that the respondent, his neighbour, did not comply with the building permit did not give him a legal right to enter an injunction to proceed with the construction when none of his rights had been breached. It was pointed out that 'an injunction is only an ancillary, equitable and discretionary measure to protect the right, legal or equitable, of a party from irreparable or at least serious damage pending the trial of the legal right. Consequently, an applicant must show that he has a legal right requiring protection before the disposal of the substantive cause of action.'

I am afraid from the sets of facts relied upon by the applicant, I fail to see what legal right of hers which require protection pending the trial of the main case, which by the way has not been entered so far. With or without the retaining wall, that part of the beach which the applicant has an undeniable right of passage will during high tide be under the water and she or for that matter any other citizen is not entitled to walk on the land belonging to the respondent which goes up to the high water mark. She is not prevented from having access to that part of the beach.

I fail to see in what way section 9 of the Territorial Sea Act can be of any help to applicant's contention when the letter of the District Council makes

it clear that the construction of the retaining wall was on the respondent's property. Furthermore the leaving of rubble on the site of work, which is not completed following the present case, is not hindering in any manner her right of way. Consequently, I hold that she has no locus standi.

As rightly pointed out by the respondent in his affidavits, the relevant authorities did look into the complaint of the applicant by sending officers to check the boundaries as shown in the photos produced by the respondent to the knowledge of the applicant and yet such facts were not disclosed. Worst, she averred that the relevant authorities did nothing.

Similarly, it is not the role of the court to substitute itself for the relevant authorities to say where and in what manner the retaining wall must be built.

For the reasons given, the interim order made earlier is discharged and the application is set aside with costs. I certify as to counsel.