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LOTUS LINE (P) LTD.

v.

THE STATE OF MAHARASHTRA

January 7, 1965

B [P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, S. M. SIKRI, JJ.]

Damages—Measure of—whether party complaining of wrong to property entitled to restitution—or to restoration of property damaged to original condition.

A vessel owned by the appellant, caused damage to a jetty. The respondent state prepared an estimate of Rs. 16,400 as the cost of special C repairs for the damage done. Sometime thereafter, emergent repairs costing Rs. 2783/- were undertaken by the respondent state to make the jetty workable and later some minor repairs costing about Rs. 1223/- were further carried out. The appellant having refused to pay for the damage done, the respondent state filed a suit claiming all the three above mentioned amounts and interest thereon.

The trial court found that the damage done was attributable to the D negligence of the appellant, but as regards the quantum of damages. it came to the conclusion that the claim for Rs. 16,400/- was really for reconstruction of the whole damaged area, so that the respondent state was in fact seeking restitution and not compensation for the damage done. The trial court refused to give such restitution and held that the expenditure in respect of emergent and minor repairs had put the jetty in working order and therefore gave a decree of Rs. 3671/12/6 which was the amount actually spent by the state in making these repairs.

E In appeal, the High Court was of the view that the *Wednesbury Corporation's Case*, [1907] 1 K.B. 78, laid down the general rule in such cases, which was, to require the party in the wrong to make compensation and not restitution; but that this rule was subject to the exception that where the party complaining of a wrong to property was a corporation or a trustee charged with the maintenance of a highway or other public work, the wrong-doer was bound to make restitution. The High Court therefore F allowed the appeal modified the decree of the trial court by awarding a sum of Rs. 19,038/8/- plus interest.

HELD : *The Wednesbury Corporation's* case did not lay down the proposition in the form stated by the High Court. The true measure of compensation was held in that case to be the cost of restoration. The person to whom a wrong was done was entitled to full compensation for restoring the thing damaged to its original condition, but this did not mean complete reconstruction irrespective of the damage done. [702 B-D, G E-F, G]

The evidence in this case showed that the amount of Rs. 16,400/- was needed to carry out necessary repairs to restore the jetty to its original condition, and not that the amount was for complete reconstruction of the jetty irrespective of the damage done to it. As this amount would have restored the jetty to its original condition, there was no reason to allow anything to the respondent state on accunt of emergent repairs or for H any other expenditure. [703 B-D, G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 810 of 1962.

Appeal from the judgment and decree dated October 1, 1959, of the Bombay High Court in First Appeal No. 697 of 1955. A

Purushottam Tricumdas, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the appellant.

T. V. R. Tatachari, and *R. N. Sachthey*, for the respondent. B

The Judgment of the Court was delivered by

Wanchoo, J. This appeal on a certificate granted by the Bombay High Court arises out of a suit brought by the State of Bombay (respondent) against the appellant for recovery of Rs. 24,979/2/4. The facts which led to the filing of the suit C are not now in dispute as they have been concurrently found by the two courts below and may be briefly narrated. On April 27, 1948, at about midday, the vessel Padam belonging to the appellant arrived in the Dharamtar creek carrying a cargo of 3500 bags of manure weighing about 250 tons and laid anchor alongside Dharamtar jetty lying on the Pen side of the creek on the D Pen-Khopoli road. The Dharamtar jetty is meant for small vessels bringing passengers and luggage crossing the creek and so the peon on duty there requested the master of the ship to remove the vessel into the creek and to unload the cargo with the help of small boats. The master of the ship agreed to do so. But E when he tried to move the vessel away from the jetty, she actually came on top of it due to the force of the ebb tide and got stuck there. The incident was reported by the peon to his superior officer who directed the peon to inform the master to refloat the vessel at night when there was high tide. The master did so at about 3 A.M. The consequence of the vessel getting on the jetty F and the attempt to take it off was serious damage to the jetty, which was broken. This damage was found on the next day, i.e., April 28, 1948. An estimate for special repairs of the damage done was prepared soon after and was submitted on May 12, 1948 to the Executive Engineer. The appellant was asked by telegram on May 5, 1948 to send a representative in order that G an estimate of the cost of special repairs for the damage done might be prepared. The appellant replied by telegram that a representative would be sent but no one appeared on behalf of the appellant when the estimate was prepared. This estimate was for Rs. 16,400/-. It appears that sometime thereafter emergent repairs costing Rs. 2,783/- were undertaken to make the H jetty workable. Later, some minor repairs costing about Rs. 1,223/- were further carried out. In the meantime the

A appellant was asked again and again to pay for the damage done. The appellant refused to do so and therefore the State of Bombay filed the suit claiming the three sums mentioned above for special repairs, emergent repairs and minor repairs and also 6 per centum per annum interest thereon.

B The trial court found that the above facts had been established by the evidence led before it and that the appellant was liable to make good the loss as it arose on account of the negligence of the master of the ship. It then came to consider the quantum of damages. It came to the conclusion that the claim for Rs. 16,400/- was really for reconstruction of the whole damaged C area and this showed that the respondent-State wanted restitution and not compensation for the damage done. It, however, refused to give restitution on the ground that it had not been proved that special repairs to the extent of Rs. 16,400/- were absolutely necessary for the damaged portion of the jetty. The trial court also inspected the jetty and was of the opinion that the emergent D and minor repairs that had been made had put the jetty in order and traffic was going on as usual. Further it took into account the statement of a witness that a bridge was being constructed over the Dharamtar creek and was likely to be completed within two years. It, therefore, finally gave a decree for Rs. 3,671/12/6 which had been actually spent by the State in making the repairs. E The rest of the claim was dismissed.

This led to an appeal by the State before the High Court, and the only question which the High Court had to decide was the quantum of damages. In that connection the High Court relied on *The Mayor of Wednesbury Corporation* v. *The Lodge Holes* F *Colliery Co. Limited*(1) and held that that case laid down that the general rule was to require the party in the wrong to make compensation and not restitution; but there was an exception to this rule and that exception was where the party complaining of a wrong to property was a corporation or a trustee charged with the maintenance of a highway or other public work. In such a case the wrong- G doer was bound to make restitution because a corporation or a trustee who was charged with the maintenance of public works was bound to restore the property in its or his possession to its original condition. On this view, the High Court allowed the appeal and modified the decree of the trial court by awarding Rs. 19,038/8/- and interest at 6 per centum from the date of suit till realisation. H The present appeal on a certificate granted by the High Court challenges the principle laid down by the High Court, and it is

(1) [1907] 1 K. B. 78.

urged that no such principle has been laid in *Wednesbury Corporation's* case(1) and that that case was overruled in *Lodge Holes Colliery Co. Ltd.* v. *Mayor of Wednesbury*(2). A

The only question that arises for decision before us therefore is the quantum of damages in a case like this. Apart from the fact that the case relied upon by the High Court has been partly overruled in the *Lodge Holes Colliery Co. Limited's case*(2), we have been unable to find therein the principle which the High Court has deduced from the case of *Wednesbury Corporation*(1). Learned counsel for the respondent-State is also unable to point out any passage in the judgment of Cozens-Hardy L.J. which lays down the proposition in the form in which the High Court has stated it. As we read that case it lays down that the rights of a corporation in such a case are at least as high as that of a private owner, with this addition that a trustee or corporation cannot renounce those rights in the same way as a private owner could. The true measure of compensation was held in that case to be the cost of restoration and compensation must give full restoration. In that case the dispute really was whether the road which had subsided should be raised to the same level as it was before or whether the purpose would be served even though it was not raised to the same level and a dip was allowed therein. The Appeal Court held that the Corporation was entitled to full compensation for restoring the road to its original condition. It may be mentioned that this view was not accepted in full by the House of Lords. It seems to us however that the view taken in *Wednesbury Corporation's case*(1) that a person to whom a wrong is done is entitled to full compensation for restoring the thing damaged to its original condition may be accepted as the true measure of damages in a case of this kind. This applies equally to a private person as to a corporation or trustee. Therefore, the respondent-State was entitled to compensation to the extent necessary to restore the jetty to its original condition. If this is to be called restitution, the corporation as well as a private person would be entitled to it. But if by restitution, the High Court meant complete reconstruction irrespective of the damage done, then neither a private person nor a corporation or a trustee is entitled to complete reconstruction irrespective of the damage done. B C D E F G

This being the principle, the respondent-State would be entitled to such cost as would restore the jetty to its original condition. It is in that connection that an estimate was submitted for special H

(1) (1907) I K. B. 78.

2. [1908] A. C. 323.

repairs to the jetty as early as May 12, 1948. The appellant was invited to send a representative to assess the cost of repairing the damage done but it neglected to do so. There is nothing on the record to show hat the special repairs to the tune of Rs. 16,400/- were for complete reconstruction of the jetty irrespective of the damage done to it. Nothing has been brought out in the evidence of Patel who prepared the estimate and of the Sub Divisional Officer who supervised it to show that the estimate of Rs. 16,400/- was for complete reconstruction of the jetty irrespective of the damage done. The covering letter to the estimate shows that it was an estimate for special repairs to the jetty. If the appellant neglected to send a representative to be present to assess the damage and the cost of repairing it, it cannot now come forward and say that the amount of Rs. 16,400/- would not be the proper sum required for restoring the jetty to its original condition. All that has been brought out in the evidence of the two witnesses referred to above is that it could not be said whether any part of the dismantled material was fit for re-use; nor were the witnesses able to say what the dismantled material would have fetched if sold. Barring these two matters all that the evidence shows is that the amount of Rs. 16,400/- was needed to carry out the special repairs, which would have presumably restored the jetty to its original condition. Therefore the respondent-State would be entitled to this sum of Rs. 16,400/-. But in view of the fact that some of the material might have been fit for re-use and some of the material might have been resold and thus fetched some price, we would deduct the item of Rs. 1,600/ (from the total of Rs. 16,400/-) which refers to "dismantling the damaged portion and removing the debris outside including sorting materials and stacking the useful one to a suitable site etc." The rest of the estimate amounting to Rs. 14,800/- is clearly for restoration of the jetty to its original condition and the respondent-State would be entitled to that amount.

We may add however that there is no reason to allow anything to the respondent-State in the shape of emergent repairs. It has been shown that Rs. 14,800/- would have restored the jetty to its original condition and that is all that the State is entitled to have. How it decided to spend that sum, whether at one time or at different times in the shape of emergent repairs or minor repairs, has no bearing on the quantum of compensation necessary for restoring the jetty to its original condition. For the same reason the fact that the State might not have spent the whole amount by the time the trial court came to give its judgment or the fact that

a bridge was going up and the jetty might not thereafter be required has no relevance on the question of damage done on April 27, 1948, though the former may affect the date from which interest may be awarded. We are therefore of opinion that the respondent-State is entitled to Rs. 14,800/- as compensation for the damage done to the jetty to put it back in its original condition. We therefore partly allow the appeal and reduce the amount decreed to Rs. 14,800/-. This sum will carry interest at the rate of Rs. 6/- per centum from the date of decree of the trial court till realisation as ordered by the High Court. The appellant will pay proportionate costs throughout to the respondent-State.

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Appeal partly allowed.