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**IN THE COURT OF DISTRICT JUDGE-3, SANGAMNER, DIST.
AHMEDNAGAR**

(Presided over by : Mr. Vivek B. Gavhane)

Reg. Civil Appeal No.18/2012.
(Old RCA No.72/2001)

Exh.43

Sudam Genuji Fatangare,
Age: 52 yrs, Occupation :Agriculture,
R/o. Pokhari Baleshwar, Tal. Sangamner,
Dist. Ahmednagar. **... Appellant.**

Versus

- 1] **The state of Maharashtra,**
- 2] **The Tahsildar, Sangamner.**
- 3] **The Chief Officer,**
Zilla Parishad, Ahmednagar.
- 4] **The Executive Engineer,**
Z.P Ahmednagar.
(summons of respondent No.1. be served on
the Collector, Ahmednagar) **.. Respondents.**

<u>APPEAL :-</u>	Under Section 96 of CPC.
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Adv.V. S. Gund, for the appellant.

Adv. S. G. Gethe, for the respondent No.3.

Adv. D.D. Deshmukh, for the respondent No.4.

Ex-parte- respondent No.1 & 2.
.....

JUDGMENT

[Delivered on :23/03/2026]

In the appeal against the judgment and decree of the Ld. C.J.S.D., Sangamner in Special Civil Suit No.96 of 1989, dismissing the appellant's suit for compensation.

Note: Appellant = Original plaintiff.
Respondents = Original defendants.

Suit Property:-

2] Agriculture lands bearing Gat Nos.776, 784, 777 and 746 of Pokhari- Baleshwar revenue village.

Facts in brief;

3] In the year 1980, the defendants acquired 31 Ares of land out of the suit property (block No.776) belonging to the plaintiff, for the purpose of construction of a water percolation tank. Remaining 25 Ares of the said land was left with the plaintiff as unacquired, and the plaintiff continued to be in its possession. There was an old well in the portion that was left with the plaintiff. In the year 1983, the defendants completed construction of the percolation tank with some pending work with regard to the waste-weir (water out let) and its guard wall. Roughly around the same period, the plaintiff had carried out developments in his left over land adjacent to the waste-weir.

4] During the rainy season of 1988, due to the incomplete construction of the waste weir and absence of guard wall the excess rain water flowing out of the tank entered the suit property with force and damaged all the developments that had been carried out by the plaintiff. Even the plantation in the other lands of the plaintiff that

depended upon the well water, died, and the plaintiff was prevented from cultivating his lands in the subsequent years.

5] As the defendants failed to compensate the plaintiff for the damage caused, he filed a suit for compensation. Initially, only the Defendant Nos.1 and 2 resisted the suit, contending that the construction work was sufficient for the protection of the dam, and that the losses caused to the plaintiff were a result of extraordinarily heavy rainfall, amounting to an 'Act of God.'

6] The suit proceeded without the W.S. of the Defendant Nos. 3 and 4 and it was eventually allowed. However, the judgment and decree were later set aside by the District Court by granting the Defendant Nos. 3 and 4 an opportunity to file a written statement. The proceedings were thus remanded back to be heard afresh.

7] The defendants No. 3 and 4 resisted the suit, contending that after acquisition of his land, the plaintiff had illegally dug a well in the area reserved for the waste-weir and was therefore not entitled to any compensation for the damage caused by the out let water.

8] All the defendants, however, admitted the damage caused to the well as well as the pump house situated in the plaintiff's land because of the heavy rainfall that took place in the year 1988.

9] Additional issues were framed. The plaintiff adduced oral as well as documentary evidence but the defendants did not.

10] The trial court got convinced of the damage caused to the plaintiff's property but blamed it on the natural calamity. Calling it an 'Act of God', the Court rejected the claim of compensation. The suit came to be dismissed with costs.

11] Aggrieved by the dismissal of his suit, the plaintiff has preferred the appeal under consideration, inter alia, on the grounds that the trial court has failed to appreciate the evidence in proper perspective, that it erred by holding it to be an act of God, etc.

12] The questions arising in this appeal are:-

i] Whether completion of the remaining work of the waste-weir and construction of a guard wall would have stopped the flow of water into the suit property or at least reduced it ?

ii] Whether the damage undisputedly caused to the well, pump house and the equipment etc. inside the suit property was an Act of God ?

My answer to question No. 1 is in the affirmative, whereas the question No. 2 in the negative, for the following reasons.

REASONS

13] The trial court has answered almost every issue in favour of the plaintiff. The defence contention about construction of the well and pump house being in encroached/acquired land of waste-weir has been discarded. The damage caused to the well, the pump house and to the equipments stored therein has been upheld. The trial court has

also held that the construction of the waste-weir is incomplete, and that the guard wall that was planned to be constructed between the waste-weir and the suit property has not been constructed at all.

14] It is only the liability part that goes against the plaintiff, as the learned Judge has held heavy rainfall to be a natural calamity and has absolved the defendants of the liability to compensate the plaintiff.

15] The focus of the arguments of Ld. advocate appearing for the plaintiff has been entirely on showing how the destruction caused in the suit property cannot be attributed to the Act of God. On the other hand, none of the Ld. advocates for any of the defendants argued despite been given more than enough opportunities by the Court.

16] While studying the law on the 'defence of *Act of God*' I could lay hands on the following valuable decisions:-

- I] *Rylands v. Fletcher [(1868) LR 3 HL 330]*
- ii] *Vohra Sadikbhai Rajakbhai & Ors. vs State of Gujarat & Ors.* (AIR 2016 Supreme Court 2429)
- iii] *S. Vedantacharya & Anr. v. Highways Department of South Arcot & Ors.*, (1987)3 SCC 400
- iv] *Ramalinga Nadar v. Narayana Reddiar* (AIR 1971 SC 1244).

17] The defence of 'Act of God' carves out an exception to the principle of strict liability laid down in the landmark case of *Rylands v.*

Fletcher (Supra), which states that if a person brings onto his land, for his own purposes, anything likely to cause mischief and if it escapes, he acts at his peril and is prima facie answerable for all damages resulting from its escape, regardless of negligence.

18] In the case of *Vohra Sadikbhai Rajakbhai & Ors. vs State of Gujarat & Ors.* (Supra), it had come on record that the overflow of the dam was occasioned by torrential and heavy rains. It was the case of the plaintiff that there was negligence on the part of the defendants in not taking care of the forthcoming monsoon season and in not keeping the water level in the dam sufficiently low to absorb the rainfall which was going to raise the water level in the dam. The defendants had not refuted the aforesaid averment. The only defence was that the overflow was due to heavy rains and that water was released in public interest. The Hon'ble Court held that it was incumbent upon the defendants to demonstrate, by adequate evidence, that the water in the dam was kept at a reasonable level, that the rains were extraordinary and unforeseeable, and that releasing the water served a public purpose. Mere assertion was held insufficient to discharge this burden. It was further observed that modern technology enables prediction of rainfall, and therefore the defendants had failed to discharge their burden. Hence, negligence was established.

19] In *S. Vedantacharya & Anr. v. Highways Department of South Arcot & Ors.* (Supra), the State had constructed a reservoir and acquired part of the plaintiff's land for an overflow channel but failed to complete the channel. Due to heavy rainfall, water overflowed and

damaged the plaintiff's land. It was held that failure to construct a proper channel constituted negligence and that the plea of Act of God could not absolve the State from liability. The relevant observations are as follows:-

'Surely, heavy rain and flood are not beyond the contemplation and anticipation of the Highways Department and when bridges and culverts are constructed we expect the department to make suitable provision for strengthening the culverts and bridges against heavy rain and flood. The report gives no indication of any anticipatory action taken by the Highways Department to prevent such happenings. We think that merely because the cause of the accident was heavy rain and flood, Highways Department cannot on that account alone claim to be absolved unless there is something further to indicate that necessary preventive measures had been taken anticipating such rain and flood. There is nothing to indicate that any such anticipatory action was taken in the present case. We, therefore, think that the High Court was not justified in dismissing the suit. We, therefore, set aside the judgments of the High Court and pass a decree in favour of the plaintiffs. The appellants will get Rs. 14,000/- with interest from the date of the decree of the High Court. They will be entitled to their costs throughout.'

20] In **Ramalinga Nadar v. Narayana Reddiar** (supra), the Hon'ble Supreme Court explained that for the defence of Act of God to succeed, the event must be due to natural forces alone without human intervention. If human conduct contributes to the loss, liability arises notwithstanding the presence of natural forces.

21] The above case laws demonstrate that State authorities responsible for public works like construction and maintenance of dams must exercise reasonable care in managing them and

safeguarding adjoining landowners, particularly those whose lands lie near spillways/waste-weirs, or discharge channels.

22] In the present case, the plaintiff owns agricultural land adjacent to the waste-weir (spillway) of the percolation tank constructed and maintained by the defendants. The Ld. advocate for the plaintiff invited my attention to the admissions of the defendants with regard to the incomplete work of the waste-weir. Relevant part of the written statement of Defendant Nos. 1 and 2 is as follows:

“... the construction work of the percolation tank is complete. Incomplete construction of the waste-weir has no bearing on the completion of the percolation tank. The construction work done already is sufficient to ensure safety of the percolation tank... In the year 1988, there were heavy rains in the region, and the percolation tank was full in the month of August 1988. Hence, the excess water of the percolation tank exited through the waste-weir in a huge quantity and, since the plaintiff had constructed his well as well as pump house inside the waste-weir, it naturally got damaged.”

The defendants No. 3 and 4, in their written statement, have stated:

“... irrespective of the existence of any guard wall to the waste-weir, water was bound to enter the well as well as pump house of the plaintiff, as the same had been constructed illegally inside the waste-weir, and the same were bound to get destroyed as they were constructed in the outlet of the percolation tank.”

23] It is clear from the above pleading that the Defendant Nos.1 and 2 have categorically admitted that the work of the waste-weir was incomplete and that there was no guard wall between the

waste-weir & the suit property. Defendant Nos. 3 and 4 did not categorically mention that the waste-weir was incomplete but they did not claim it to be complete either. They have impliedly admitted the absence of a guard wall by stating that its presence is immaterial since the plaintiff has unauthorisedly constructed the well and pump house inside the waste-weir(out let). Even the line of cross-examination of the plaintiff's witnesses shows that incomplete work of the waste-weir and non-construction of the guard wall, is an admitted position. Hence, the trial Court rightly answered the issue No.1 (about incomplete work of waste-weir) in the affirmative.

24] It is evident, and rightly held by the trial court, that the well as well as the pump house belonging to the plaintiff were well within the boundaries of the unacquired land of the plaintiff and that there has been no encroachment on the land reserved for the waste-weir. It is also evident that there was no guard wall between the waste-weir and the suit property.

25] It was the decision of the defendant State to construct the percolation tank adjacent to suit property. Had the percolation tank not been constructed, the rainwater of the entire region would not have accumulated and flown through an unguarded and incomplete waste-weir into the plaintiff's land.

26] The evidence on record shows that water was being stored and the waste-weir has been discharging water during rainfall of preceding 3 years of the catastrophe. However, in 1988 there was a heavy rainfall and due to the said incomplete work, heavy discharge

of water from the percolation tank took place through the waste-weir and water directly entered the plaintiff's land.

27] The defendants have attempted to evade liability by contending that the damage was caused by heavy rainfall amounting to an Act of God. However, they have not adduced any evidence in support of this contention though.

28] The very fact that the waste-weir and the guard wall were a part of the construction plan signifies their importance, and the undisputed fact that they were not completed for 3 years (until the cause of action) manifests the negligence of the defendants, particularly the concerned officers of the defendant No.3 and 4 who were responsible for its completion.

29] The irrigation department cannot absolve itself of liability merely by attributing the damage to heavy rainfall. The evidence demonstrates human intervention and negligence. The losses suffered by the plaintiff are directly attributable to the failure of the defendants to complete the construction of the waste-weir and its protective guard wall. These are not inevitable consequences of natural forces but are the result of preventable negligence as contemplated by the law laid down and reaffirmed by the valuable decisions quoted above.

30] The trial Court has failed to take into consideration the above discussed aspects. It did not take cognizance of the fact that the burden to prove the defence of '*Act of God*' lied upon the defendants

and they have not adduced any evidence on their behalf. In a case this serious, discarding the cogent evidence adduced by the plaintiff on the basis of simple assertions in the W.S. about Act of God, is erroneous. The defence of Act of God must therefore fail.

31] The plaintiff is entitled to appropriate compensation for the destruction of the well, pump house, the various equipments therein etc as recorded in the panchnama (Exhibit-45) and the report of the Court Commissioner (Exhibit-20). The decision of the trial Court that it was a natural calamity for which the defendants can not be held accountable, is therefore, unsustainable. It reminds me of the saying “ **Actus Dei nemini facit injuriam nisi culpa interveniat**

Meaning: *An act of God causes injury to no one unless human fault intervenes.*

32] The trial court may have erred in absolving the defendants of their liability towards the damages sustained by the plaintiff but it rightly assessed the losses of the plaintiff at Rs.1,00,000. (One Lakh only). In doing so, it relied upon the assessment made by the revenue department vide panchnama exhibit-45 and the court commissioner’s report exh.-20, covering the actual physical damage and excluding the claims of loss of future income from the lands that depended on the irrigation of well water. I believe, future losses were evitable as evidently, the plaintiff was affluent enough to have repaired all the destruction in timely manner before the need to irrigate the plantation arose after passing of the rainy season.

33] Considering the panchnama (Exh.45) and the report of

the Court Commissioner (Exh.20) I am convinced to accept the quantification of losses by the trial Court (Rs.1,00,000/-only). There is no reason to differ from the same. I believe, an interest at the rate of 8% per annum, from the date of the suit, should suffice.

34] In the conclusion, the impugned judgment and decree need to be set aside and the appeal deserves to be allowed to the extent stated above.

ORDER

- i) The appeal is hereby partly allowed with costs.
- ii) The impugned judgment and decree in Spl.96/1989 are hereby set aside.
- iii) The defendants shall pay to the plaintiff a compensation of Rs.1,00,000/-(Rs. One Lakh Only) with interest @ 8 % per annum from the date of institution of the suit, until retaliation of the entire amount.
- iv) The defendant No.1 (Exchequer) should consider fixing accountability for the mismanagement.
- v) Decree accordingly.

(Copy to the Ld. Collector, Ahmednagar for complaiance.)

Sd/-

Date:23.03.2026.

(Vivek B. Gavhane)
District Judge-3
Sangamner.