

Munbode Bibi Raoujia & Ors v Chitranund Domah

1998 SCJ 170

CHAMBERS

THE SUPREME COURT OF MAURITIUS

IN THE MATTER OF:-

BIBI RAOUJIA MUNBODE & ORS

APPLICANTS

V.

CHITRANUND DOMAH

RESPONDENT

JUDGMENT

The applicants are praying for an order to prohibit the respondent from running a cabinet workshop where electric motors have been installed. The facts averred by the applicants are that they are co-owners of a plot of land of the extent of 55 toises situate at Royal Road, which they claim is a residential area. The fact that the respondent is now operating a cabinet workshop would be a source of nuisance consisting of noise and dust and would affect their health.

At the time of the application, the respondent had not yet obtained the necessary permit to operate the workshop.

According to the respondent the applicants' property is at a considerable distance from the site where the workshop is operating. Close to the applicants' premises there are many workshops where there is a panel beater, a motor mechanic, a heavy metal workshop and another mechanic. According to the respondent, the operating of all these small enterprises does cause much noise. Further his premises are close to Royal Road and this road is a busy one and is used by buses, heavy lorries, cars which cause much noise and pollution. The workshop he intends to operate would certainly not be a source of noise or pollution as averred by the applicants.

A plan of the location of the premises of the applicants was put in. A number of factors should be borne in mind here such as the royal road which is very busy and secondly the fact that the co-respondent has granted a permit to the respondent is surely an indication that it has taken into consideration the complaint of the applicants and also the particular environmental factors existing in the area where the parties live or work.

Thirdly it must not be overlooked that this country is living in a period of fast industrial development. What could have been looked upon as an activity that should have been

prohibited on account of nuisance may not necessarily be so today. Nuisance is a relative concept. If any individual with a high degree of susceptibility to noise, dust or smoke and who lives on a very busy road applies successfully for an order of injunction to prevent heavy vehicles from using the road where he lives, then a serious blow may be caused to the economic activity of the country. We live in an age where we all have to bear with some inconvenience caused by nuisance of all types, subject to environmental laws. Fourthly the respondent is earning his livelihood from his activity. The causing of some nuisance cannot override the need for an individual to earn his living in accordance with human rights principles to which this country is committed.

For all these reasons, the judge set aside the application.

Keywords: nuisance, dust, smoke, pollution, residential area.

Legislation: Noise Prevention Act