

Municipal Corporation of The City of Ahmedabad

Vs

Ben Hiraben Manilal

Civil Appeal No. 744 of 1978

(D. P. Madon, Sabyasachi Mukharji JJ)

05.04. 1983

JUDGMENT

MUKHARJI, J.-

1. This appeal raises the question as to the scope and ambit of the powers of the municipal authorities under Section 260 read with Section 478 of the Bombay Provincial Municipal Corporation Act, 1949. There were four suits out of which gradually four Letters Patent appeals came to be decided by the High Court of Gujarat. One of these four Letters Patent appeals, the Municipal Corporation has come up in one of the appeals before us, i. e. Appeal No. 188 of 1974 which arose out of First Appeal No. 10 of 1968 which again arose out of the Civil Suit No. 311 of 1966.
2. The short facts are that on March 26 1960 the plaintiff- respondent herein purchased a built-up house. In 1965, there was construction of some walls without the sanction of the Municipal Corporation. On July 21, 1965, notice was issued by the Estate Officer of the Municipal Corporation under Section 260 (10) (a) of the Bombay Provincial Municipal Corporation Act, 1959. In reply to this notice, plaintiff-respondent contended that the impugned construction was made by the plaintiff but was in existence when she had purchased premises. On September 6, 1965 a suit was instituted before the Civil Judge, Ahmedabad, claiming permanent injunction restraining the defendant, the appellant herein, from removing the impugned authorized construction and for other incidental reliefs. The learned Judge decreed the suit. There was a first appeal in which the decree was affirmed. Thereafter there was Letter Patent appeal in which points were urged namely : [i] whether the notice, in the facts and circumstances of this case, was valid, and [ii] whether the Commissioner of the Municipal Corporation had delegated the power of issuing notice to the Estate Officer. On the second point of the Letters Patent appeal it was held in favour of the appellant and this point is not pressed before us. On the first point, it was held that the notice impugned was beyond, in the facts and circumstances of the case, the powers of the Municipal Corporation, Ahmedabad because it was held that the notice under the section could only be issued against the person who had constructed the building or who was constructing the building.
3. Inasmuch as the notice was issued under Section 260 of the Act, it would be material to set out the relevant provisions of the Act, i. e. Section 260 (1) (a). It provides :

260. Proceedings to be taken in respect of building work commenced contrary to rules or by-laws.-[1] If the erection of any building or the execution of any such work as is described in Section 254 is commenced or carried out contrary to the provisions of the rules or by-laws the Commissioner, unless he deems it necessary to

take proceeding in respect of such building or work under Section 264, shall-

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or

# \* \* \*##

Clause (b) of Section 260 (1) provides that in the contingency specified in sub-section (1) set out hereinbefore, in the alternative the Commissioner shall require the person to show cause why such building and work shall not be removed, altered or pulled down. Sub section (2) of Section 260 provides that if the person concerned fails to show sufficient cause to the satisfaction of the Commissioner or the building is not altered or removed, Commissioner may remove, alter or pull down the building, the expenses of which shall be paid by the said person. Before us, learned Advocate for the appellant drew our attention to Section 478 the Act in support of the action drew our attention to Section 478 of the Act in support of the action taken buy the Corporation. Section 260 speaks of erection of any building or the execution of any such work as is described in Section 254 "is commenced or carried out contrary to the provisions of the rules or by-laws. Then it further provides that Commissioner shall require the person "who is erecting such building or executing such work or has executed such building or executed such work" to show cause why the infringing portion shall not be demolished or altered or pulled down. Now Section 254 stipulates that notice is to be given to the Commissioner for addition, alteration etc. in the building.

4. There was no dispute in the instant case that the portion of the building mentioned in the notice of the Corporation was done without the sanction of the Corporation or notice to the Corporation. The expressions used in Section 260 by themselves are not quite clear, as to whether it is directed against the person who has commenced or carried out the construction contrary to the provisions of the by-laws or the rules or whether in views of the language used in sub-clause (a) of sub-section (1) of Section 260 namely "has erected such building" notice, could also be issued to any person other than who has actually built the unauthorised building. But it is submitted that if Section 260 is read in conjunction with Section 478 of the Act and if so read then it contemplates action both against the person who has commenced or is constructing the building as well as the person who is the owner of the building which has been constructed or erected without the permission and in violation of the laws or the rules. Section 478 is as follows :

478. Works or thing done without written permission of the Commissioner to be deemed unauthorised. (1) If any work or thing requiring the written permission of the Commissioner under any provision of this Act, or any rule, regulation or bylaw is done by any person without obtaining such written permission or if such written permission is subsequently suspended or revoked for any reason by the Commissioner, such work or thing shall be deemed to unauthorised and, subject to any other provision of this Act, the Commissioner may at any time, by written notice, require that the same shall be removed, pulled down or undone, as the case; may be, by the person so carrying out or doing. If the person carrying out such work or doing such thing is not the owner at the time of such notice then the owner at the time of giving such notice shall be liable for carrying out the requisition of the

Commissioner.

(2). If within the period specified in such written notice the requisitions contained therein are not carried out by the person or owner, as the case may be, the Commissioner may remove or alter such work or undo such thing and the expenses thereof shall be paid by such person or owner, as the case may be.

5. It is true that notice impugned in this case was not issued under Section 478. [this section was also not placed for consideration by the learned Trial Judge or the first appellate court or in the Letters Patent appeal before the High Court. But the question being one of construction of a provision of a statute, in our opinion, that construction must be so made as to be in conformity with the other provision of that particular statute and the provisions must be read as a whole. This being a question of law, this section can be relied upon in support of the notice under Section 260 (1) (a). If indeed Section 478 comprehends both the owner or the occupier who has actually constructed and as well as the owner or occupier of the building which has been unauthorisedly constructed, then the action of the Corporation can be supported. It is well settled that the exercise of a power, if there is indeed a power, will be referable to a jurisdiction, when validity upon it and to a jurisdiction under which it would be nugatory, though the section was not referred, and a different or wrong section of different provisions was mentioned. See in this connection the observations in *Pitamber Vajirshet v. Dhondu Navlapa* (ILR (1888) 1 Bom 486, 489). See in this connection also the observations of this Court in the case of *L. Hazari Mal Kuthiala v. I. T. O. Special Circle, Ambala Cantt* (1961) 41 ITR 12, 16 : (1961) 1 SCR 892 : AIR 1961 SC 200 : (1961) 1 SCJ 617) . This point has again been reiterated by this Court in the case of *Hukumchand Mills Ltd. v. State of M. P.* (1964) 52 ITR 583 : (1964) 6 SCR 857 : AIR 1964 SC 1329 : (1964) 1 SCJ 561) where it was observed that it was well-settled that wrong reference to the power under which action was taken by the Government would not vitiate that action if it could be justified under some other power under which Government could lawfully do that act. See also the observations of the Supreme Court in the Case of *Nani Gopal Biswas v. Municipality of Howrah* (1958 SCR 774, 779 : AIR 1958 SC 141 : 1958 SCJ 297 : 1958 Cri LJ 271) .

6. The question that, therefore, falls for consideration, is, whether Section 260 (1) (a) of the Act read in conjunction with Section 478 of the Act of 1949 empowers the Municipal Corporation to take action for demolition or removal of unauthorised construction. Even though the expressions in Section 260 are not quite explicit, but if the provisions of Section 260 (1) (a) are read in conjunction with the latter part of the provisions of Section 478 which stipulates specifically that if the person carrying out such work or doing such things is not the owner at the time of such notice, the owner at the time of giving such notice shall also be liable for carrying out the requisition of the Commissioner, makes it clear that the action for demolition or removal can be taken by the Corporation or municipal authorities exercising power under provisions of the said Act against persons who had not themselves built the infringing portion.

7. Chapter XV of the Bombay Provincial Municipal Corporation Act, 1949 as applicable to the area concerned, deals with the building regulation and includes Section 260 of the Act. These provisions are to regulate the building construction for the safety, health and well-being of the inhabitants of the particular Municipality or corporation. Therefore the provisions should be read broadly which will effectuate the intention of the legislature and prevent the mischief which was intended to be remedied; or avoided by the provisions. It is well settled that when a problem of construction comes before a court, the intention of the legislature must be given effect to as expressed in the language of the provisions. Where the language is explicit, no problem arises. Even where the usual meaning of

a language falls short of the whole object of the legislature, a more extended meaning may be given to the words if they are fairly susceptible of it. The construction must not however, be strained to include cases plainly omitted from the natural meaning of the words. It has been said very often that it is the duty of a judge to make such construction of a statute as shall suppress the mischief and advance the remedy (see in this connection the observations of Maxwell on The Interpretation of Statutes. 10th Edn., p. 68, under the heading "Beneficial Construction"). If we keep in mind the purpose of these regulations and the object of these regulations, i. e. regulating the building construction in a municipal statute, it appears that it will be anomalous result if it be said that if a building is constructed illegally or in an unauthorised manner, action can only be taken against the person who is doing the unauthorised act or illegal act but after the construction of the building is passed over to others, the construction of the building enjoys immunity from any action in respect of the same. That it appears, could not be a proper construction particularly in this case in view of the specific language used in the latter part of sub-section (1) of Section 478 of the Act set out hereinbefore. Keeping in background the facts of this case and the said provisions, in our opinion, the action taken by the Corporation was warranted by the provisions of the Act. Therefore it cannot be said that the notice issued by the Municipal Corporation was unauthorised or illegal. In the that view of the matter, the judgment and order of the High Court of Gujarat impugned in this case must be set aside on this aspect of the matter and the appeal is thus allowed and the respondent's suit dismissed. We express no opinion on the other point of delegation. The parties will bear, in the facts and circumstances of the case, their own costs throughout.

8. We have proceeded on the construction of the powers of the Municipality in the situation mentioned hereinbefore. We must, however, observe that learned Advocate for the appellant assured us that in view of the fact that the infringement in question was not of a very significant nature, i. e. building certain railings or walls, if it could be regularised on a proper application by the respondent, the Corporation or the Municipality concerned will see that the same is done and the railings or the walls on the infringing part is not removed or demolished.

</html