

Nasiruddin Vs. Emperor

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Court : Allahabad

Decided On : Oct-15-1942

Reported in : AIR1943All47

Appellant : Nasiruddin

Respondent : Emperor

Judgement :

ORDER

Yorke, J.

1. This is an application in revision by one Nasir Uddin who was convicted by a first class Magistrate of Agra of an offence under Section 307(b), U. P. Municipalities Act, and sentenced to pay a fine of Rs. 50 with seven days' simple imprisonment in default. The additional District Magistrate of Agra reduced the sentence to a fine of Rs. 15 with seven days' simple imprisonment. The facts of this matter, which at the outset required some thrashing out, are now fairly clear. On 21st December 1939, the applicant, Nasir Uddin, sent to the Municipal Board of Agra an application, under Section 178 of the Act, giving notice to the Board of his intention to erect a new building. It was the duty of the Board in the light of Section 180 of the Act to pass orders on this application within a month and it was competent for the applicant, on the Board neglecting or omitting for one month after the receipt of a notice under Section 178 to make and deliver to the applicant

an order, by a written communication to call the attention of the Board to the omission or neglect, and Sub-section (3) of Section 180 further provides that

if such omission or neglect continues for a further period of 15 days, the Board shall be deemed to have sanctioned the proposed work absolutely.

2. The applicant at this stage gave no such notice to the Board but he proceeded to lay the foundations of his building which is in itself an act in the nature of construction. In consequence on 14th February 1940 the Board gave a notice to the applicant under Sections 185 and 186 of the Act, calling on him to remove the constructions which he had already made and also threatening him with prosecution under Section 185 for illegal erection of a building. Section 185 contemplates not only the erection of a building but the beginning, continuance or completion of the erection of a building. The applicant did not pay any attention to this notice after its being served upon him and in consequence a few days later on 21st February the Board served another notice on him to stop further constructions. This notice was really not necessary and, in any case, it could have no effect to cancel or alter the notice, already served, of 14th February. It is not clear what the applicant did but it may be taken that he proceeded in disregard of this notice, also, because at a later stage of the proceedings we find that despite all these notices the applicant had completed the construction of his new building.

3. It was in these circumstances, that on 23rd April 1940 the applicant sent to the Board a notice purporting to be a notice under Section 180, Sub-section (3) drawing their attention to the omission or neglect of the original application of 21st December 1939. It may perhaps be presumed that it was after he had sent this notice and allowed a further period of 15 days to expire that he proceeded to the completion of his building, but there is no evidence on the record on the point. The applicant was in due course prosecuted for disobedience of the order of 14th February and on 4th October 1940 he was convicted by a Magistrate and fined for not removing the foundation. That conviction and sentence may be taken to cover the period up to 4th October 1940. The applicant has now again been prosecuted for continuing to disobey the notice of 14th February and he has again been convicted and fined and he has got off very lightly indeed. None the less he is not

satisfied and it is contended on his behalf that this conviction is illegal.

4. Put shortly, the point which is argued is that in view of the provisions of Sub-section (3) of Section 180 the applicant was entitled to continue his constructions after 7th May 1940 and he cannot be convicted for any breach of the notice of 14th February 1940 which took place after that date. Learned Counsel for the Municipal Board has contended that this argument is entirely fallacious. He puts forward really two lines of argument. The first is that the order of 14th February amounts to an order on the original application under Section 178 and to a rejection of that application. There is some force, I think, in this contention. The second line of argument put forward really comes to this that the notice which the applicant claims to be a notice under Sub-section (3) of Section 180 is really no notice at all for the following reasons. No doubt Sub-section (3) of Section 180 provides as already indicated but Sub-section (5) provides that:

no person shall commence any work of which notice has been given under Section 178 until sanction has been given or deemed to have been given under this section.

5. Reading Sub-section (3) with this Sub-section (5), it is contended that Sub-section (3) covers the case only of a person who is not already in the wrong. In order to get the advantage of Sub-section (3) an applicant must, first of all, make a valid application to the Board. Secondly, he must wait for the expiry of a period of one month and after that he must make a written communication drawing the attention of the Board to the omission or neglect to pass an order and thereafter he must wait for a further period of 15 days. If this were not the intention of the Legislature and the true interpretation of the Act it would be open to a strong-minded applicant to start his constructions at once and then, if, for example, the proper persons on the Board had fallen ill or by any other means it became impossible for the Board to deal with his application, to carry out his constructions, serve a notice on the Board, and thus put up a new building in defiance of the provisions of the Act at the expense only of a fine for an offence under Section 185. I am clear that that cannot be supposed to have been the intention of the Act. There is, however, only one case upon the point which mentions the point at all

directly. The only case of this Court is Emperor v. Parshottam Kandu : AIR1935 All986 in which attention was drawn to the fact that

under Section 180(5) it is incumbent on a person who has given notice under Section 178, not to commence any work of which notice has been given until sanction has been given or is to be deemed to have been given by the Board. This sub-section does not require that the notice under Section 178 must be such notice as was absolutely necessary to be given. Where the notice has been given under that section, Sub-section (5) is applicable.

6. In an Oudh case, Municipal Board, Bahraich v. Jwala Prasad ('35) 22 A. I. R. 1935 Oudh 197, it was held by Smith J. that

where a person applied to the Municipal Board for permission to build a house but the Board did not deal with it promptly and he proceeded with the building even though the Board had not accorded him sanction and subsequently he called the attention of the Board to the matter and applied again stating that he had erected the building in anticipation of sanction, the application he made could not be regarded as made under Section 180, Clause (3) since by that time he had already erected the building. This he ought not to have done until the Board had accorded him sanction.

or, I might add, 'was to be deemed to have accorded him sanction.' No reasons were actually given in the body of the judgment for the view so expressed but it seems to me that that is the clear intention of the Act and that any other interpretation would result in the provisions of the Act becoming ineffective. In these circumstances, I have no doubt that the notice or communication sent to the Board by the applicant on 23rd April 1940 cannot be regarded as a notice under Sub-section (3) of Section 180 and it follows that the sending of that letter has had no effect whatsoever on the position of the applicant. He is still in the position of some one who has disobeyed the notice dated 14th February 1940 and who has been punished for disobedience up to 4th October 1940 only, and he is liable to be punished for continuance of the breach of the order from that date till the date when he was next convicted. It can scarcely be said that the applicant has been severely dealt with, and as he has chosen from the very beginning to be

recalcitrant and to disregard the law he has only himself to thank for the consequences entailed. I find no force in this application and dismiss it accordingly.

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