

**Munno Devi Vs. the Muncipal Board**

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**SooperKanoon Citation :** [sooperkanoon.com/451325](http://sooperkanoon.com/451325)

**Court :** Allahabad

**Decided On :** Mar-04-1925

**Reported in :** AIR1925All415

**Appellant :** Munno Devi

**Respondent :** The Muncipal Board

**Judgement :**

**Sulaiman, J.**

1. This is a reference by the Sessions Judge of Agra recommending that the convictions of Mt. Munoo Devi, a school teacher, under Sections 185 and 307 of the Municipalities Act (Local Act No. II of 1916 as amended by Act No. II of 1919) and the sentences of fine of Rs. 10 on each count be set aside.

2. The facts are not in dispute. The lady applied to the Municipal Board on the 29th of July, 1924, for permission to rebuild certain parts of her house, but in her application she did not clearly specify the extent of the proposed building. On the 30th of July the municipal draftsman prepared a map showing the western side of the building only. Acting probably on the approval of the Ward Member she began to build in anticipation of sanction. On the 25th of August she applied for the preparation of a new plan including both the western and eastern sides. The Board ordered a new plan to be prepared and the applicant to deposit the necessary fees. On the 2nd of September before any final orders had been passed on her

application the Board served a notice on her to remove the building already constructed. Later on namely on the 6th of September the Board sanctioned permission to build the western half of the building. She stopped going any further with the construction and applied to the Board stating that she had constructed the building in anticipation of sanction because her house was cracked and was in danger of falling down if she did not repair it. On the 19th September she was prosecuted for building without permission and also for failing to comply with the orders of the Board.

3. The learned Magistrate came to the conclusion that she did begin to construct parts of the building before leave was granted to her. He also found that the leave was confined to the construction on the western side only and that no order on her application to build on the eastern side had yet been finally passed. Her application for such a permission is still pending. As to the construction on the eastern side the learned Magistrate on inspection has found that the old chajja projecting on this side has been enlarged and now extends as far as her chabutra. The evidence of the Chief Sanitary Inspector was to the effect that a verandah and a latrine were being built in August and that the said latrine was in the balcony. He further stated that the balcony was covered with tin. In this he was supported by another witness who occupies an adjacent house. On the day when the Magistrate inspected the locality he, however, did not notice any tin covering. The construction had apparently been partially removed though perhaps not completely.

3. The learned Magistrate justly commented on the unsatisfactory way in which the Municipal Board acted in the matter. On the 2nd of September notice to remove the construction was issued which included constructions on both sides. On the 6th of September sanction to construct the western portion was actually granted. Nevertheless on the 19th she was prosecuted with regard to both portions. The Municipal Board also does not seem to have acted promptly on her application of July when the rainy season was on and her house must have been in some danger. The Board certainly cannot be congratulated on the way in which it proceeded; against the applicant.

3. Technically speaking the applicant was guilty of beginning to make her construction even on the western side before formal sanction had been granted. Though the subsequent grant of the sanction ought to have deterred the Board, if it had acted reasonably from prosecuting her for building without permission, it cannot obviate the fact that she did begin to build before any sanction had been granted-Furthermore no sanction has yet been granted for the construction on the eastern side.

4. Section 178 of the Municipalities Act requires that before beginning within the limits of the municipality to erect a new building or new part of a building or to re-erect or make a material alteration in a building etcetera a person shall give notice of his intention to the Board. Under Section 179, Sub-clause (1) the Board may require further information and plans to be furnished. Under Section 180, Sub-clauses 3 and 4 if the Board neglect) or omit for one month after the receipt of a valid notice under Section 178 to make and deliver to the person who has given such notice an order of the nature specified in Sub-section (1) of Section 180 such person may by a written communication call the attention of the Board to the omission or neglect, and, if such omission or neglect continues for a further period of fifteen days, the Board shall be deemed to have sanctioned the proposed work absolutely, provided that he does not act in contravention of the Act or any bye law. In this Section 180 a fifth clause has been added which is as follows : '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'. Under Section 185 of the Amended Act 'whoever begins, continues or completes the erection or re-erection of, or any material alteration in a building or part of a building...without giving the notice required by Section 178 or in contravention of the provisions of Section 180, Sub-section (5) or of an order of the Board refusing sanction or any written directions made by the Board under Section 180 or any bye-law, shall be liable upon conviction to a fine which may extend to Rs. 500.

5. It is therefore clear that she should not have commenced that work until sanction had been granted. The Board had not neglected or omitted to take steps on her application for one complete month nor did she by written communication

call the attention of the Board to any such omission or neglect and then wait for a further period of 15 days. No sanction therefore can be deemed to have been given. The offence mentioned under Section 185 was therefore technically committed.

6. As to the notice to remove the constructions made by her it is to be noted that before the period of the notice had expired, the Board sanctioned permission to build the western half of the building. There was therefore no disobedience so far as this part of the construction was concerned. With regard to the eastern portion the Board had apparently issued notice for demolition on the strength of its bye-law No. 19 which provides that no erection or construction will be allowed over any existing chabutra situated in any road or lane less than 16 feet wide. The Board had power under Section 198 of the Act to make such a bye-law. But she apparently did remove the tin covering though possibly not within the time fixed by the notice, if the evidence of the Chief Sanitary Inspector is to be believed. As the tin covering did not exist when the Magistrate inspected the locality it does appear that she has at any rate partially removed the construction leaving very little of it still in existence. Under these circumstances an offence under Section 307 has been, technically committed.

7. In view, however, of the conduct of the Municipal Board itself which has been adversely commented upon both by the Magistrate and the learned Sessions Judge and in view of the fact that she did stop further construction of the building after receiving the notice for demolition. I do not think that this is a fit case in which anything more than a nominal fine should be inflicted on her.

8. Accordingly while upholding the conviction I reduce the fines to nominal ones of rupee one each on the two counts, in other respects the order is upheld.