

Emperor Vs. Hashim Ali

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Court : Allahabad

Decided On : Apr-12-1917

Reported in : AIR1917All397(2); (1917)ILR39All482

Judge : Pramada Charan Banerji and ;Piggott, JJ.

Appellant : Emperor

Respondent : Hashim Ali

Judgement :

Pramada Charan Banerji and Piggott, JJ.

1. This is an appeal which the Local Government have felt it their duty in the public interest to file against the order of a Special Magistrate sitting at Lahtpur, who has acquitted one Mulla Hashun Ali on a prosecution alleged against him an offence under Section 185 of the Municipalities Act (Local Act No. II of 1916). The allegation against Hashim Ali was that he had erected a tin-roofed shed in front of a certain shop, of which he was the tenant, within the limits of the municipality of Lalitpur, and that ho had done this without obtaining the Action of the board. The case was defended upon various grounds in the court below. It was suggested that a matter of fact sanction had been obtained by one Chaube Chatarbhuji the owner of the house. We have found it necessary to look into the evidence on this point. We think it is clear that on he 30th of July, 1915, the Municipal Board of Lahtpur passed a resolution which had the effect of conveying to Chaube

Chatarbhuj their sanction to the erection of a shed of this description on the locality in question. Under the Municipalities Act itself, as well as under byelaws, such a sanction would remain in force for one year. The case for the prosecution is that the building in question was erected after the expiration of one year. The accused endeavoured to prove that the erection had actually been commenced and completed on the 27th of July, 1916, or just within one year. It has been necessary for us to examine the evidence on this point, but we agree with the learned Magistrate that the defence evidence is unreliable. The statement of the Conservancy Darogha is corroborated by one of his own subordinates and by the fact that he actually reported the construction of this building on the 6th of August, 1916. It may be taken as satisfactory proof that the shed had in fact been erected on the 5th of August, 1916. It was also suggested in the court below, as well as here, that the construction in question was not a 'building' within the definition contained in Section 2, Clause (2), of the aforesaid Act. We think there can be no doubt that it was a 'shed' and also a 'roofed structure,' within the meaning of that section. As a matter of fact Chaube Chatarbhuj had applied for sanction as already stated, but the sanction had lapsed. So far everything we have said is in agreement with the view taken by the learned Magistrate. The reason why the trial in that court ended in an acquittal is that the learned Magistrate felt himself troubled by a curious question of law. He refers to the provisions of Section 186 of the Municipalities Act, according to which the Board 'may at any time,' in a case like the present, by issuing a written notice, require any person in the position of Hashim Ali to demolish a building set up by him without the sanction of the Board, or in contravention of the terms of such sanction granted to him. The learned Magistrate has taken the view that, by reason of these provisions, it was absolutely necessary for the Municipal Board to issue a notice requiring Hashim Ali to demolish this building before they prosecuted him for having erected it. There is really nothing in the terms of Sections 185 and 186 of the Municipalities Act to support this view. The powers conferred on the Board by these two sections are intended to be used in the alternative according as the necessities of a particular case may require. A building may be quite unobjectionable in its nature, and yet its erection without the previous sanction of the Board may be an offence against the law. To hold that a Municipal Board cannot vindicate its authority

against such a breach of the law, without first ordering the demolition of an otherwise unobjectionable building, is to place a forced and illiberal construction on the Statute and would lead to consequences not desirable in the public interests. In the present case, for instance, the Municipal Board had shown that it was ready to sanction the erection of a shed on the locality in question, and had actually granted sanction for the purpose, but there had been a contravention of the law on the part of Hashim Ali, in that he had allowed that sanction to lapse and then proceeded to set up this shed without giving fresh notice or submitting any fresh application to the Municipal Board. In such circumstances as this a prosecution for an offence against the Act was a more appropriate remedy than an order for the demolition of the building. We are quite satisfied that the issuing of a notice by the Board under the provisions of Section 186 of the Municipalities Act, is not a condition precedent to the institution of a prosecution under Section 185. The reason given by the learned Magistrate therefore for acquitting the accused in this case is unsatisfactory and his view of the law mistaken. We must set aside the order of acquittal, and in lieu thereof we record the conviction of Mulla Hashim Ali for an offence under Section 185 of the United Provinces Municipalities Act. We think that under the circumstance it will be quite sufficient for us to sentence him to pay a fine of five rupees, and we order accordingly.