

Ram Sarup Vs. Emperor

Ram Sarup Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/453274

Court : Allahabad

Decided On : Sep-02-1947

Reported in : AIR1948All144

Appellant : Ram Sarup

Respondent : Emperor

Judgement :

ORDER

Harish Chandra, J.

1. This a revision application of Ram Sarup alias Lallu Mal, a resident of Bijnor Municipality, from an order convicting him under Section 210, U.P. Municipalities Act, 1916, for the contravention of an order of the Municipal Board of Bijnor requiring him to remove certain structures erected by him in front of his shop without the permission of the Municipal Board as required under Section 209. As a matter of fact the prosecution case was that the construction in question had been made by the applicant against a resolution passed by the Municipal Board on 28-7-1945. Learned Counsel for the applicant stated that no copy of the resolution had been produced by the Municipal Board before the learned Magistrate, but on an examination of the record I find that a certified copy of the resolution is in fact on the record, being paper No. 28A of the file.

2. The Special Magistrate who tried the applicant convicted him under Section 210, Municipalities Act, and sentenced him to a fine of Rs. 25. He appealed to the District Magistrate who rejected the appeal by a short order. After that the applicant went up in revision to the Sessions Judge of Bijnor who also rejected his application. He has now come up to the High Court in revision against the order convicting and sentencing him as stated above.

3. The resolution of the Municipal Board of Bijnor, dated 28-7-1945, prohibited the erection of shops by means of planks projecting out of any building within the limits of the Municipal Board Of Bijnor and also required the demolition of such shops as had already been erected in such manner. Admittedly, the applicant has erected a small shop in front of his pacca shop by means not such projecting planks. It appears that the top plank folds on hinges and that it is folded back in the evening and serves as a shutter for the door of the pacca shop which is locked up at night. In the day time the structure is used as an extra shop, and the evidence is that it has been let out to a tailor.

4. The applicant's contention was that the wooden shop projected on his own land and not on municipal land, and he produced a number of sale deeds in support of his contention. The learned Special Magistrate, in a fairly well written judgment, has considered these documents and finds that they give no measurements at all. The southern boundary of the shop is described as 'Public Road', and these documents are therefore absolutely no evidence to prove that the portion of the land over which this projecting shop has been constructed is the property of the applicant and is not part of the 'public Road'. On the other hand, the Nazul clerk of the Municipal Board appeared as a witness and stated that the land over which the projection has been made is part of the 'public road'. His statement shows that he had taken measurements and that his statement is based on these measurements. No doubt, the maps upon which the measurements were based were not produced by the Municipal Board; but, in the absence of any evidence on the part of the applicant to show prima facie that he was the owner of this plot of land, I do not think the prosecution was called upon to produce all those documents, and I do not see why the statement of the Nazul clerk should not be considered as sufficient for the purposes of the case. No doubt, the learned

Special Magistrate also made a local inspection and took measurements on the spot and came to the conclusion that the land in question was part of the 'public road'. Unfortunately he prepared no inspection note as he is required to do under the Code of Criminal Procedure, and had his finding been based merely on the local inspection which had been made by him it is obvious that it would not, have been regarded as legal. But, as we have seen, the finding of the learned Special Magistrate is not based merely on his local inspection and there is other evidence to show that the land; in question is part of the 'public road.'

5. My attention has been drawn to the case in *Tirkha v. Nanak* : AIR1927 All350 . In that case the Magistrate who was trying a case under Section 133, Criminal P.C., did not record any evidence and decided the case simply on the basis of a local inspection made by him, and his order was set aside. As I have just said, the circumstances of the present case are entirely different. There is not only the evidence of the Nazul clerk, but there is a further fact which supports the case for the prosecution. It appears from, the evidence that previous to this case the applicant has also been prosecuted under Section 307, Municipalities Act, with respect to a similar projection. During the course of the proceedings in that case the applicant made an application (Ex. p-1) in which he stated that he had removed the takhta and kewar with respect to which he had been prosecuted, and prayed for the withdrawal of the case. The case was accordingly withdrawn. In face of such an admission made by the applicant in a previous case on 8-8-1945, his present contention that the projection has been made by him on his own land cannot be regarded as a bona fide claim to the ownership of the land in question.

6. In *Gauri Shankar v. Emperor* : AIR1930 All26 , Sen J. held that where there was a clash between the Municipal Board on the one side and a private individual on the other with reference to some property, the matter had got to be adjudicated by the civil Court which was the only forum for determining title. A perusal of the judgment shows that the circumstances of that case were entirely different. It could not be said prima facie that the land in dispute in that case was part of a 'public road', and it further appeared that the accused had produced a document more than thirty years old in support of his title to the land. The claim of the accused in that case thus appeared to be a bona fide one. But in the present case it is not

possible on the evidence to hold that the claim put forward by the applicant with respect to the land in question is a bona fide one. It would be very hard on Municipal Boards to have to go to the civil Court in every case of this nature, and this is obviously not the intention of the ruling in *Gauri Shankar v. Emperor* : AIR1930 All26 .

7. I accordingly see no reason to interfere with the finding of the Courts below that the, erections in question have been made by the applicant so as to project over land which is part of the 'public road.'

8. The next contention put forward on behalf of the applicant is that Section 210, Municipalities Act, would apply only to constructions of a permanent nature, and I am referred to the case in *Emperor v. Mahomed Yusuf* 4 A.I.R. 1917 All. 403. But the evidence shows that the construction in question is made up of planks which are either fixed permanently to the pacca shop of the applicant or are fixed to it by hinges. I, therefore, agree with the learned Sessions Judge that the construction in question is in the nature of a permanent erection, and that the present case is fully covered by Section 210, Municipalities Act.

9. Another argument advanced on behalf of the applicant is that folding planks are necessary for the applicant as a means of access to his shop from the road and that they cannot, therefore, be described as an erection within the mischief of Section 210, Municipalities Act. It is, however, not denied that the structure is being used as a shop, and if it is also used for the purpose of going into and coming out of the shop the position is not, in my opinion, altered in any way.

10. Another point which is raised in the grounds of revision is that the present complaint by the Municipal Board with respect to the same encroachment is not maintainable when a similar complaint had been compounded by it on a previous occasion. But from what has been said before it would appear that the applicant himself had in the previous case admitted that he had removed the construction and the present construction must therefore be regarded as a fresh one, and I see no reason why it should not be possible for the Municipal Board, to remove it under the powers given to it under the Municipalities Act. For the reasons given above the application is dismissed. The fine, if not already paid, must be paid

within a month.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com