

Emperor Vs. Nanna Mal

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Court : Allahabad

Decided On : Apr-11-1913

Reported in : (1913)ILR35All375

Judge : Tudball, J.

Appellant : Emperor

Respondent : Nanna Mal

Judgement :

Tudball, J.

1. The facts out of which this revision has arisen are as follows. The applicant is the owner of a house in the town of Hathras. There was a balcony attached to this house overhanging a public road. It fell into disrepair and the applicant reconstructed it and made it serviceable. He also had a privy in this house, the upper portion of the screening wall of which fell down. He accordingly rebuilt this wall so as to screen the privy from the public gaze. He acted, in both instances, without any sanction from the Municipal Board. On the 22nd of July, 1911, the Board issued a notice to the applicant, as the heading of the notice shows, under Section 91, Clause (1), and Section 88 of the Municipalities Act and ordered him to remove both the privy and the balcony. He did not comply with the order and was prosecuted and convicted of an offence under Section 147 of the Municipalities Act and has been fined Rs. 20. In the meantime he also brought a civil suit for a

declaration that the notice issued by the Municipal Board was ultra vires and that he was not bound by it. The suit partly succeeded and partly failed. In so far as the notice under Section 91 is concerned, which relates to the privy, the suit was decreed. In so far as the balcony was concerned the suit was dismissed. The question now before me is whether the applicant should have been found guilty of an offence under Section 147 of the Act.

2. Taking first the case of the privy, it is quite clear that Section 91, Clause (1) or (2), could not apply to the facts of the present case. Under Clause (1) the notice contemplated is one requiring the owner or occupier of any building or land to repair, alter, cleanse, disinfect or put in good order or to close any drain, privy or cess-pool. Clause (2) of the section relates really to a new privy built without permission or contrary to directions or regulations or the provisions of the Act or the rebuilding of any privy which the Board had ordered to be demolished or closed or not to be made. It is, therefore, quite clear that Section 91 has really no application to the facts of this case and has wrongly been applied by the Board.

3. As regards the balcony, Section 88 is the section under which the Board issued the notice. It must also be noted here that the Board took no action under Section 87 of the Act. The notice was issued under Section 88. Clause (1) of that section lays down that it shall not be lawful without the written permission of the Board to add to or place against or in front of any building any projection or structure overhanging, projecting into or encroaching on any street. Clause (2) then goes on to say that the Board may, by notice, require the owner or occupier of any building to remove or alter any projection or structure. To this clause there was a proviso that in the case of any such projection which was lawfully in existence at the commencement of the Act, the Board shall make reasonable compensation for any damage caused by the removal. There is nothing in the section limiting the right of the Board to issue the notice contemplated in Clause (2) to cases in which the structure is dangerous to the public or insanitary or to cases of a similar nature. Apparently the Board has unlimited power, without assigning any reason, to issue the notice contemplated in Clause (2). The proviso merely lays down that in certain cases the Board shall compensate the owner of the structure.

4. It is urged on behalf of the applicant that the Board should, in its notice, either tender compensation or at least express its willingness to pay compensation. It seems to me impossible to hold that the Board must do this. It is only in cases of projections lawfully in existence at the commencement of the Act that the Board is bound to pay compensation. It might be, in a special case, that the Board denied that the structure was one such as to entitle the owner to the compensation mentioned in the proviso. It would be absurd to hold that the Board in such a case could not order the removal of a structure until the question of compensation had been settled. In the circumstances of the present case it was the duty of the present applicant to comply with the order of the Board, at the same time putting forward his claim for compensation. If the Board wrongly refused to pay what was due to him it would have been open to him to recover the amount in a legal manner. Under the notice issued, therefore, in so far as the balcony was concerned, the present applicant was wrong in not complying with the order. He has, therefore, been guilty of an offence under Section 147 of the Act, and the conviction was according to law. The application, therefore, fails and is rejected.