

Emperor Vs. Gokul

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Court : Allahabad

Decided On : Jul-30-1907

Reported in : (1907)ILR29All737

Judge : Richards, J.

Appellant : Emperor

Respondent : Gokul

Judgement :

Richards, J.

1. This is an application in revision to set aside the conviction of the petitioner under Sections 168 and 147 of Act I of 1900. It appears that the petitioner having occasion to erect certain buildings in the city of Cawnpore, duly applied to the Municipal Board for sanction. The Municipal Board neglected and omitted for one month after the receipt of that valid notice to make or deliver to Gokul any order in respect thereof. Gokul thereupon again called the attention of the Board to their omission or neglect, and this omission and neglect continued for a further period of a month. Thereupon Gokul commenced to erect the buildings for which erection he had given notice to the Municipal Board. In doing as he did Gokul was acting quite lawfully. Sub-section (3) of Section 87, expressly provides that under these circumstances the Board shall be deemed to have sanctioned the proposed buildings absolutely. It became necessary in the course of the building to put up

certain scaffolding, and there is nothing to show that the scaffolding which Gokul put up was anything other than the ordinary scaffolding that must of necessity have been put up for carrying out the buildings intended by Gokul. The Municipal Board, however, being unable to interfere with the buildings set to work to try and make Gokul take down the scaffolding as being in contravention to Section 82 and as a consequence of Gokul's refusal to take down the scaffolding the present prosecution was instituted. I do not think that the Municipal Board of Cawnpore are to be congratulated on their action in this matter. Even if they had the power to order Gokul to take down the scaffolding, I do not think under the circumstances that they ought to exercise that power, more particularly as Gokul, instead of defying them, appears to have asked their consent to the maintenance of the scaffolding as soon as any question was raised. In my opinion, at the expiration of the times mentioned in Clause (3) of Section 87, that is to say at the expiration of 15 days after the second communication from Gokul, he was placed in the same position as if he had submitted plans of his proposed buildings to the Municipal Board and that they had written back informing him that an order had been made sanctioning the erections in accordance with the plans. It must be assumed for the purposes of this case that the erection of a scaffolding sooner or later was necessary in order to execute the buildings which in the events which happened are to be taken as having been absolutely sanctioned. In my judgment the sanction to the erection necessarily carried with it a right to put up such ordinary scaffolding as would be necessary under ordinary circumstances for the execution of the works; and, as I have already stated, it has never been suggested that there is anything extraordinary in the scaffolding put up by Gokul. I think it can hardly be urged that if the Board had passed an order sanctioning Gokul's building in accordance with the plans and specifications which he furnished the Board, it would be necessary for him to make a fresh application for the erection of the necessary scaffolding. Section 82 is relied upon as showing that an order for scaffolding is necessary in addition to the permission to build. It seems to me that Section 82 was intended to apply to the temporary occupation of the streets, and certainly it was never intended to apply to the scaffolding necessary for the erection of buildings, sanction to build which had already been given. The case strongly suggests that the Municipal Board are now trying to prevent the erection

of a building which they might have prevented had they taken the proper means at the proper time. I have no hesitation in setting aside the order of the Magistrate of the first class, dated the 22nd of May 1907, and also the order of the learned Additional Judge, dated the 12th of June 1907. The fine, if paid, will be refunded.

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