

Emperor Vs. Ambika Prasad

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Court : Allahabad

Decided On : May-04-1936

Reported in : AIR1936All693; 165Ind.Cas.223

Appellant : Emperor

Respondent : Ambika Prasad

Judgement :

ORDER

Allsop, J.

1. This is a reference by the learned Sessions Judge of Allahabad that the conviction of Ambika Prasad under Section 307, United Provinces Municipalities Act 1916, should be set aside. It is necessary in order to understand the matter to set forth certain facts. Ambika Prasad made an application to the Municipality on 27th April 1931 that he should be allowed to erect a certain building. He received no reply for three months and then issued a registered notice to the Board under the provisions of Section 180(3) of the Act. According to him he thereupon waited 14 days and having received no reply proceeded to put up the building. On the other side it is alleged that he had already put up the building before 27th April 1931 and that he had already been reported for having done so and that a prosecution had been launched against him. These are questions of fact into which I do not propose to enter. I mention them merely because it has been

argued that Ambika Prasad has been very badly treated by the Municipal Board.

2. The first prosecution failed because the Municipal Board did not put in an appearance. The Board then issued a notice under Section 186 of the Act on 13th October 1931 that the building should be demolished. Ambika Prasad did not comply and he was prosecuted under Section 307 and was fined Re. 1 but was afterwards acquitted in appeal. On 28th November 1932 the Board issued another notice and this was followed by another prosecution which again ended in the acquittal of Ambika Prasad because nobody appeared on behalf of the Board. Then on 27th June 1934 the Board issued yet another notice and that again led to the prosecution of Ambika Prasad. He was fined Rs. 100 and he made an application in revision to the learned Sessions Judge who has made this reference. The notice on 27th June 1934 was issued by the Executive Officer of the Board under the provisions of Section 60(d) and Schedule 1 of the Act. According to the Schedule the Executive Officer is the authority which is empowered to issue notices for demolition under Section 186 of the Act and an appeal lies against his order directing that a building should be demolished. The appeal is to the Board itself under the provisions of Section 61(1)(a) of the Act. Under Section 61(3) the order remains suspended until the appeal is decided. The order contained in the notice issued by the Executive Officer was suspended when Ambika Prasad appealed to the Board. The Board decided the appeal on 22nd February 1935 against Ambika Prasad and he should then have complied with the notice. In the alternative he could have appealed under Section 318 of the Act to the officer appointed by the Local Government or the District Magistrate as the case might be. He did not appeal under the provisions of this section.

3. It has been suggested that the notice issued by the Executive Officer on 27th June 1931 was illegal because the applicant had applied for permission to build on 27th April 1931, and not having received any reply to his application within the specified period was entitled to presume that permission had been granted. If the facts are as Ambika Prasad alleges them to be, he would be entitled to make such a presumption under the provisions of Section 180(3) of the Act. On the other hand, if he had already put up the building before 27th April 1931, I do not suppose that he would have any defence to the notice. The point however is that

id is not for this Court to come to any decision upon these questions. It is made perfectly clear in Section 321 of the Act that no order or direction referred to in Section 318 shall be questioned in any other manner or by any other authority than is provided therein. Orders under Section 186 are referred to in Section 318 of the Act and therefore an order issued under Section 186 can be questioned only by the appellate authority mentioned in Section 318, and it cannot be questioned in a criminal Court. It has been argued that Section 318 begins by reference to any order or direction made by a Board under the powers conferred by certain sections, and it is suggested that these words presuppose that the order is legally issued under the sections.

4. I do not think that there can be any force in this contention because, if the argument were a sound one the provisions of Section 321 of the Act would have no meaning. I can imagine extreme cases where the Board purports to issue an order say under Section 186 or any other section mentioned in Section 318 and it is obvious that that section does not apply and in such circumstances it might perhaps be argued that the order was not really an order issued under the section under which the Board purported to issue it, but there is nothing of that kind in this case. Ambika Prasad had erected a building and the Board had ordered him to demolish it and that was clearly an order under Section 186 whether that order was justified or not justified. The question whether the order was properly issued was one for the appellate authority appointed under Section 318 of the Act, and the validity of the order cannot be questioned here. The only questions which the criminal Court can decide are whether the order was issued and whether Ambika Prasad complied with them. There can be no doubt that the order was issued, and it is equally certain that Ambika Prasad did not comply. The learned Judge has made this reference on another ground. It appears that Ambika Prasad transferred the building by a deed of sale in September 1934, i.e., during the time when the appeal against notice was still pending before the Board. At the time when the appeal was dismissed and the order again came into force, i.e., on 22nd February 1935 Ambika Prasad was not in a position to comply with the notice because he was no longer the owner of the house. The learned Judge has said that nobody can be punished for not complying with an order if he is not in a position to comply with it. I think that the proper answer to this suggestion is that a person to whom a

notice is issued, if he cannot comply with it, should appeal under the provisions of Section 318, Municipalities Act. If he does not appeal, then it is not open to him to question the validity of the order upon the ground that he was not the proper person to whom it should have been issued or that he was no longer the proper person to carry out the order of the Board. That being so, I do not think that the point can be raised in the criminal Court that the applicant should not be punished because he is no longer in a position to comply with the order. That is the technical aspect of the matter.

5. In so far as the justice of the case is concerned, it is obvious that the applicant was himself responsible for putting himself into a position where he could not comply with the order. That being so, there is nothing to be said for him on grounds of equity. In my opinion there is no force in this reference and I refuse to interfere with the order of the Magistrate. The reference is rejected and the papers may be returned to the Court below.

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