

Daulat Khan Vs. Emperor

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Court : Allahabad

Decided On : Mar-30-1937

Reported in : 170Ind.Cas.496

Judge : Ganga Nath, J.

Appellant : Daulat Khan

Respondent : Emperor

Judgement :

ORDER

Ganga Nath, J.

1. This is an application in revision by Daulat Khan against his conviction and sentences under Section 185, Municipalities Act and Section 79, U.P. Town Improvement Act. He has been sentenced to a fine of Rs. 25 under each of the sections. The applicants obtained a plot of land for building purposes from the Improvement Trust. He executed an agreement in which the conditions under which the applicant was to build were given. One of the conditions was that no balcony or any projection over the foot-path or any portion of the road or land shall be made without the special sanction of the Trust. The applicant thereafter constructed a house with a balcony projecting over a foot-path. A notice was served on the applicant under Section 79, Town Improvement Act, to remove the balcony but he failed to comply with it. Thereafter he was prosecuted and has

been convicted. The street in which the applicant's house has been transferred by the Improvement Trust to the Municipal Board and admittedly now vests in the Municipal Board. The applicant obtained permission for the construction of the balcony from the Municipal Board. The question is whether this permission of the Municipal Board can exonerate him from the condition under which he had acquired the land and affect the powers of the Improvement Trust. The Improvement Trust has not yet been dissolved and the scheme is still in force in the area in which the house in dispute is, as appears from the judgment of the learned Magistrate. He has observed in his judgment:

It is admitted by the Trust that the road and the lanes and foot-paths lying in the Improvement Trust area in which the scheme under Section 23 of the Act was still in force, was transferred to the Municipal Board but they claim, and rightly too, that the plots on which the buildings stood, and the alterations and changes to these buildings were still under the control of the Improvement Trust and the Municipal Board had no right to give permission to the accused to add or subtract from the building as originally sanctioned by the Trust.

2. Section 49 of the U. P. Town Improvement Act lays down:

The provisions Sections 178 to 186, 189 to 191, 203 to 216, 218 to 224, 236, 256, 257, 261, 265, 266, 267 (except in respect of cleansing and disinfecting), 268 to 270 and 2/b, Municipalities Act, shall, so far as may be consistent with the tenor of this Act, apply to all areas in respect of which an improvement scheme is in force, and for the period during which such scheme remains in force all references in the said sections to the Board or to the Chairman, or to any officer of the Board, shall be construed as referring to the Trust which in respect of any such areas, may alone exercise and perform all or any of the powers and functions which under any of the said sections might have been exercised and performed by the Board or by the Chairman or by any officer of the Board.

3. Under this section the applicant should have obtained permission from the Improvement Trust and not from the Municipal Board. It has been urged on behalf of the applicant that since the road on which the house abuts now vests in the Municipal Board, the permission from the Municipal Board was sufficient. As would

appear from Section 49, Town Improvement Act, it is not the vesting of any road in the Municipal Board which puts an end to the powers of the Improvement Trust Act. So long as an improvement scheme remains in force in any area, the permission for construction has to be obtained from the Improvement Trust and not from the Municipal Board. The roads may be vested in the Municipal Board for the purposes of sanitation, lighting and repairs. The vesting of the road or any lane in the Municipal Board does not affect the powers given to the Improvement Trust under Section 49. Town Improvement Act, so long as an improvement scheme remains in force in the area in which the road or lane may be. The applicant has acted against the provisions of the Town Improvement Act and also against his own agreement. He has been rightly convicted. There is no force in the application. It is rejected.

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