

Aminullah Vs. Emperor

Aminullah Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/475858

Court : Allahabad

Decided On : Dec-06-1927

Reported in : AIR1928All95

Appellant : Aminullah

Respondent : Emperor

Judgement :

ORDER

Dalal, J.

1. This revision reveals some very high-handed proceedings on the part of the Municipal Board of Cawnpore. The facts are admitted. The applicant Aminullah was allotted one of the plots given to stall-holders along the side of a public road from Collectorganj up to the LaTouch Road crossing. The terms of the lease have not been disclosed to this Court, but taking them to be most favourable to the municipality they may be from month to month, terminable at the end of a month. The municipality passed a resolution that this roadside should not be let out in future to stall-holders and that the present stall-holders should be told to quit. The municipality was entitled to pass such a resolution and it was the duty of its executive officer to give proper notice under Section 111 (h), T.P. Act. The municipality would then have been able, on the expiration of the legal notice, to determine the lease. What the executive officer did was promptly to issue a notice

under Section 211 to the lessees to remove themselves, treating the lessees as trespassers making an encroachment on a public road. This practically means, and when brought to the point by the Court Mr. Saila Nath had to admit, that according to the municipality all the leases terminated automatically and the lessees became trespassers as soon as the resolution was passed that the municipality no longer wanted the roadside to be occupied by these lessees. This point of view is in my opinion entirely wrong. Reliance is placed on bye-law 15 which has been properly notified and published in the Government Gazette. It is quoted in the judgment of the Dist. Magistrate as below:

No person shall build, keep a stall or otherwise interfere or encroach upon any land which is the property of His Majesty or of the Board or which is under the control of the Board unless permission to this effect has been duly granted by or on behalf of His Majesty or the Board, and no person shall continue to do so after such permission has ceased to be in force or has been withdrawn.

2. The argument here is that as soon as the resolution was passed the permission to occupy the roadside had ceased to be in force and had been withdrawn. No such illegal claim by a municipality can be countenanced. A lease can terminate only according to law and the municipality is not outside the provisions of the Transfer of Property Act. Obviously the last words mean the ceasing of permission or the withdrawing thereof according to law and not at the sweet will of the members of the municipality. If this claim were permitted it would follow that one day the municipality might grant a registered lease of a plot of land on a roadside for five years to a certain person, and next day the lease would terminate on a resolution being passed by the municipality withdrawing the permission to occupy the land. A municipality is as much bound by law as an individual person. When the notice under Section 211 was issued the applicant was a lessee of the municipality according to law and was not a trespasser and was not encroaching on any street. The notice under S 211 was, therefore, illegal and there could be no prosecution under Section 307, Municipalities Act, in consequence of breach of that notice.

3. It was next argued by Mr. Saila Nath that the applicant became a trespasser and encroached on the street at the termination of the notice. This argument completely gives away the case of the municipality. If the applicant became a trespasser at some date subsequent to the one on which the notice under Section 211 was issued, then obviously, on the date when the notice was issued, the applicant was not guilty of any encroachment and the notice was certainly illegal. It was incumbent on the municipality to issue a proper notice as required by the Transfer of Property Act. If such a notice was not complied with it was open to the municipality to treat the applicant as a trespasser and his possession of the roadside as an encroachment, and to issue a notice under Section 211. On the date when this particular notice was issued the time had not arrived for the termination of the lease nor had the applicant become a trespasser or one who encroached upon the land. On that date the applicant was fully justified in occupying the plot of land that he did and was a lessee of the municipality. The prosecution was harsh and illegal. I wondered whether it would be possible to compensate the applicant by taking action under Section 250, Criminal P.C. It seems doubtful, however, whether this Court has jurisdiction to pass an order for compensation when the matter comes up in revision. As to the accusation being vexatious I have not the slightest doubt.

4. I set aside the conviction and sentence and direct the fine, if any recovered, to be refunded. The order regarding stay of the structure is withdrawn. I explained to Dr. Katju that matter was not before the Court for decision and he accepted the view. The only matter before the Court was whether the conviction of the applicant under Section 307 was legal or not.