

Nihal Muhammad Vs. Emperor

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Court : Allahabad

Decided On : Jul-24-1923

Reported in : AIR1924All200; 85Ind.Cas.41

Judge : Walsh, J.

Appellant : Nihal Muhammad

Respondent : Emperor

Judgement :

Walsh, J.

1. In dealing with this Reference I am even more handicapped than was the learned Judge. It is really a question of fact. To some extent it is a question for experts. These questions of whether buildings correspond with sanctioned plans, many of which are not too precise or accurate in detail, are sometimes very difficult and require expert evidence and explanation, and I am practically without any material at all. It is impossible to decide between the respective merits and opinions of the Sessions Judge and the Magistrate respectively in this case, in a discussion of plans and erections neither of which I have seen. On three points of principle I can express my opinion. A Municipality taking proceedings for a penalty under this Act, ought to make its sanction and orders or conditions for new buildings or erections so conspicuously clear as to leave no room for controversy. If in a particular case before me as a Magistrate they failed to do so, I should

dismiss the complaint. Secondly, the learned Judge is quite right, and the Magistrate should never have allowed the case to proceed before him without the production of the Municipal file. On the other hand I agree with the Magistrate that to erect a wall, which for this purpose must be part of a building and, therefore, a building within the meaning of the section quoted by the learned Judge, is, in my opinion a material-alteration. I think that the expression 'an alteration in a building' in Section 178, Sub-section (3) must include a part of such building. The definition in Section 214 of a part of a building lays down Avhat is to be read into this expression when it is used. But it is not inconsistent with a wall supplementary to or accessory to a verandah or balcony or house or other larger building, being in itself a building within the. meaning of Section 178. To raise a wall above the prescribed height of the building as provided by the section, would clearly be within the mischief aimed at by the section, and to say that it was only part, of the building, when it was the only thing the raising of which mattered to anybody, and therefore, could not be dealt with under the section, would reduce these provisions, which are made for the public interest, to an absurdity. Using the best judgment I can on the materials before me, it seems that the person in question, Nihal Muhammad, either rightly or wrongly did attempt technical breaches. On the other hand I agree with the Sessions Judge that the extent of his breach is very indistinctly made out. In questions of building plans, breaches of sanction and conduct in excess of rights conferred by or permitted by a public authority, the object is to enable the public authority to control streets and buildings under the best expert opinion, and it is not so important to inflict a fine upon the person who has committed a breach as it is to compel him to put his building back in accordance with the plan as sanctioned. Penalties must be provided and penalty sections must be used for bad cases where the individual has been contumacious and has palpably acted mala fide. But the penalty is only intended in terrorem and not to be used vindictively for technical offences. It seems to me, therefore, that the justice of the case will be met in this way. I reduce the penalty from Bs. 100 to Rs. 5, and I return the case to the Magistrate through the Sessions Judge with the intimation that this order has been passed without prejudice to the right of the Municipality, if so advised, to take such steps as are open to it under the Act to compel Nihal Muhammad to put his building into conformity with the plan originally

sanctioned. I regret that I am unable on this latter point to express a more definite opinion. I have had no legal assistance and I do not know whether the Act enables the Municipality to pull down the building or alter anything which has been erected in breach of the sanction. Such a power certainly exists under the Public Health Act and Metropolis Act in England, and I suspect that it must have been provided somewhere in India.

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