**ismail Karimij Devdiwala and ors. Vs. the Municipal Corporation of the City of Amhedabad**

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**Court** : Gujarat

**Decided On :** Jul-13-1972

**Reported in** : AIR1973Guj195; (1973)1GLR347

**Judge** : A.A. Dave, J.

**Acts** : Bombay Provincial Municipal Corporation Act, 1949 - Sections 45, 69, 254, 416 and 460

**Appeal No.** : First Appeal No. 203 of 1966

**Appellant** : ismail Karimij Devdiwala and ors.

**Respondent** : The Municipal Corporation of the City of Amhedabad

**Advocate for Def.** : G.N. Desai, Adv.

**Advocate for Pet/Ap.** : K.S. Zaveri, Adv.

**Judgement** :

1. This appeal raises a very interesting question of law whether the by the farmed by the Ahmedabad Municipal Corporation under the Bombay Provincial Municipal Corporation Act, would be applicable to a person residing in an area which was subsequently included within in the municipal limits of the city of Ahmedabad.

2. The facts giving rise to this appeal briefly stated are as under:--

The present appellants are the owners of land bearing survey number 260 situated with limits of Paldi village. They had constructed rooms, houses, garage workshop etc. and installed machinery thereon for oil mill, cloth printing works and other trades. The land bearing survey number 260 was not within the limits of the Corporation when the Act was enacted and came into force in the city of Ahmedabad. The said land was included within the city limits of 13-8-1958. The plaintiff had made certain construction viz. a chimney with platform and a boiler with a platform and the shed thereon, without giving an intimation about the construction to the Corporation as required under Section 254 of the Act and Rule 6. The Corporation thereupon served notices on the plaintiff directing him to show cause why the said unathorised construction should not be removed. The plaintiff by his reply Ex. 36 informed the Corporation that the construction was prior to the incorporation of the Paldi area within the municipal limits and hence the question of giving any notice for new construction did not arise. As Corporation contemplated action against him, after giving a statutory notice, the plaintiff filed the suit for a declaration that the notice served on him by the Corporation were illegal, ultra vires and bad in law and for a permanent injunction restraining defendants No. 1 Corporation and its officers, servants and agents from removing or pulling down or otherwise affecting the buildings and word on plaintiff survey number 260, 260-Act and 260-C-1-1. The defendants Corporation by its written statement Ex. 13 resisted the suit. It contended that the notice were legal; that the dispute construction came in existence after the area was included within the city limits on 13-8-1958; that prohibitory

order in fact was issued and served on the plaintiff and the 4th defendants on 4-10-1963 when the construction was being put up; that in spite of the said prohibitory order, construction was completed in violating thereof an hence the notice were issued against them; that all the provisions of the rules, regulations and by laws under the Act would apply to the facts of the present case and it is not correct to say that the disputed construction had been put up prior to the area being included within the limits of the Ahmedabad Municipal Corporation ; that the Commissioner had delegated all the power to the Estate and City Improvement Officer under Section 69(1) of the Act to perform duties and functions under Section 260 of the Act and hence, the notice issued by him were legal and valid. From the pleadings of the parties the learned Judge framed the following issues:--

'1. Whether the notice exhibits 17 and 18 are bad in law, illegal and ultra vires?

2. Whether the disputed constructions were in existence prior to 13th August, 1958 when the area concerned got included within the city limits?

3. Whether there was a valid delegation in favour of the Estate and City Improvement Officer, to issue notice under Section 260 of the Bombay Provincial Municipal Corporation Act, 1949?

4. Whether the plaintiff is entitle to the permanents injunction as prayed for?

5. What decree and order?'

The learned Judge decided issued Nos. 1, 2, and 4 in the negative and issue No. 3 in the affirmative. ON these findings, the learned Judge dismissed the suit. Against the said judgment and decree, plaintiff has preferred the present appeal.

2A.. Mr. S. K. Zaveri, leaned Advocate for the appellant made for following submissions:--

1. The construction was made prior to the land being incorporated within the municipal limits and therefore the said construction cannot be considered to be unauthorised and cannot be ordered to be removed;

2. The by-law under which the construction is sought to be declared unauthorised was not re-enacted after this land came within the municipal limits and hence the same cannot be applicable in the case of the plaintiff;

3. that the notice issued by the Estate and City Improvement Officer were not valid as he cannot be said to be an officer as contemplated in Section 45 of the Act and therefore, the power delegated to him by the Commissioner cannot be said to be properly delegated:

4. that the said officer, before issuing notices, had not heard the plaintiff and hence the notice were illegal being violative of the principles of natural justice.

In support of his submission, Mr. Zaveri invited him the attention to the relevant provisions of the Bombay Provincial Municipal Corporation Act, 1949, hereinafter referred to as the Act. Before considering the question of law involved in this appeal, it will be worthwhile to refer to the evidence on record in order to find out whether the impugned construction was made by the plaintiff prior to his land being incorporated within the municipal limits of the city of Ahmedabad. It is not disputed that the Pladi area in the which the suit land is situated was included within the municipal limits of the city of Ahmedabad on 13th August, 1958. The plaintiff case is that all the construction mentioned in the said notice was in existence prior to the said date.

[Then after discussion evidence his Lordship observed]. Thus the defendants has clearly established from the oral as well as documentary evidence that all this construction was made by the plaintiff after the Paldi area came to b incorporated within the municipal limits of the city of Ahmedabad on 13th August, 1958. I do not agree with the learned Advocate for the appellants that the impugned construction was already there and that the said chime and platform were already utilised for the oil mill which existed there are at the relevant time. if this construction was made after the Pladi area came to the incorporated in the city of Ahmedabad,

the plaintiff has got to obtain permission of the Corporation before making any construction as provided in Section 253 and 254 read with Rule 6 farmed under the Act. Section 254(1) states--

'(1) Every person who shall intend--

(a) to make and addition to a building or

(g) to carry out any repairs to buildings involving the construction of a floor or a room; shall give notice the Commissioner, in the form prescribed in the by-laws and containing all such information as may be required to be furnished under the by-law'.

Rule 6 states--

'(1) No person shall commence to erect a new building or to execute any such work as is described in Section 254--

(a) until he has given notice of this intention, as herein before required to erect such a building or executed such work and the commissioner had either intimated his approval of such building or work of railed to intimate his disapproval thereof within the period prescribed in this behalf in Rules 3 or 4'.

No such notice seemed to have been given by the plaintiff to the Corporation before making this construction. It is, therefore, clear that whether construction the plaintiff had made on the land without obtaining the permission of the Commissioner would be unauthorised and was liable to removal. Having failed in this effect to show that the said construction was made by prior to the area being included within the municipal limits, the plaintiff submitted the at there was no question of making an application to the Commissioner as contemplated under Section 254 of the Act and the Rule 6 made there under for the simple reason that the by-law under which the from the application was prescribed were promulgated prior to the Paldi area being included with in the municipal limits and as these by-.laws were not re-enacted after the area was included within corporation limits, these by-laws would not be binding on the plaintiff and therefore no proceeding could be taken against him for not giving a notice the Commissioner before making a any construction. It was urged by the learned Advocate for the e Corporation that the question regarding validity of the by-laws does not directly arise in this case. Mr. Desai invited my attention to the contention of the notice, Exs. 17 and 18 issued by the Estate and City Improvement officer. He urged that the plaintiff had made the construction in contravention of building regulation No.6 as stated in notices, Exs. 17 a document and 18 Mr. Desai urged that it was not the case of the Corporation that the plaintiff act was unauthorised as being contrary to the provisions of the by-law

3. Mr. Desai submitted that any person who intended to make a new construction to carry out repairs to a building involving construction of the floor or a room, was required to give a notice to the Commissioner in the form prescribed by the by-law as stated in Section 254 of the Act. He, therefore, urged that what was reused to be done by the plaintiff was to give a notice an it was immaterial whether the by-law under which the form was prescribed was valid or not. According to Mr. Desai, if the plaintiff failed to give a notice altogether before making the construction, he would be volating the provisions of Section 254 read with Rule 6 and therefore it would be competent for the Corporation to taken appropriate proceeding against him. Mr. Zaveri on the other hand explained it away by saying that the could not give any notice to the Corporation for the simple reason that the by-law under which the form was prescribed could not be said to be valid and would not be applicable in his case as the said by-law was not re-enacted after the Paldi area was included within the municipal limits.

4. Mr. Zaveri referred to Section 460 of the Act which states--

'No by -law shall be made by the Corporation , unless--

(a) a notice of the intention of the Corporation to make such by-law into consideration shall have been given

in the official gazette, and in the local newspapers at least six weeks before the date on which the Corporation finally considered such by-law.

(b) a printed copy of the such by-law shall have been kept at the chief municipal officer and made available for public inspect free of charge by any person desiring to peruse the same at any reasonable time for at least one month from the date of the notice given under clause (a);

(c) x x x x x (d) all objection and suggestions which may be made in writing by any person with respect thereto within one month of the date of the notice given under clause (a) shall have been considered by the Corporation'.

Mr. Zaveri therefore, urged the as required under Section 460 of the Act, no by-law could be made by the Corporation until all the objections, suggestions which may be made in writing by any person in respects there to were considered by the Corporation .

He urged that the Paldi area was not within the municipal limits at the time the by-law were made and hence, the question of giving any objection and suggestion with respect to the by-law by the plaintiff and other residents of the Paldi area would not arise. Thus any by-law made with regard to the other area of the Ahmedabd city could not be made applicable to an area which was incorporated within the municipal limits after the said by-law were famed. He urged the these by-laws would not given his case. No action, therefore, could be taken against the plaintiff for making any construction without intimating the Corporation. In support of his case, Mr. Zaveri referred to the case of Bagalkot City Municipality v. Bagalkot Cement Co., AIR 1963 SC 771, wherein it was observed that--

'A by-law made, without the previous publication of its draft to 'person likely to be affected thereby' as required by Section. 48(2) would be an invalid bye-law. The publication contemplated by Section 48(2) is publication to persons whom the by-law when made if likely to affect by its own terms and not to person residing outside the municipal directs as constituted when the by-law was made or who were not the rate payers of the municipality. Since by-law cannot be made under Section 48 so as to affect people by its own terms of force unless to them it had been previously published, the present by-law cannot be read as including within the octroi limits the municipal districts as extended from time to time. To do that would give it a meaning against it contexts and this, the General Clauses A doe not warrant'.

Relying on these observations, Mr. Zavery very forcefully urged that as the residents of the Paldi area could not give their objection an suggestions to the by-law when it was amended because the Paldi area was not within the municipality limits, the said by-law could not affect their own right and interest and therefore it could not be binding on them after the said Paldi area was included it the city limits without it being re-enacted. Apparently, this ruling would help Mr. Zaveri. but if it is minutely perused, it would be seen that an observation made by the Supreme Court are with regard to the actual wording used in Section 48(2) of the Bombay District Municipalities Act, wherein in Section 48 (2), the words used were-- 'persons likely to be affected thereby'. It is interesting to note that in Section 460 of the Bombay Provincial Municipal Corporation Act, no such words like 'person likely to be affected thereby' are found. In sub-clause (document) it is merely stated--

'No by-law shall be made by the Corporation unless--

(document) all objection and suggestions which may be made in writing by an person with respect thereto within one months of the date of the notice given under Clause (a) shall have been considered by the Corporation'.

The use of the word 'by any person with respect thereto' would include all the residents of the city of Ahmedabad and not necessarily 'any person likely to be affected thereby' as stated in Section 48 (2) of the Bombay District Municipal Act. Besides, Section 462 says--

'When any by-law has been confirmed by the State Government it shall be published in the official gazette, and thereupon shall have the force of law'.

In the instant case, all the requirements of Section 460 were followed by the Corporation before farming the by-law. It is not the say of the learned Advocate for the plaintiff that proper procedure had not been one into by the Corporation before enacting the said by-law. His only grievance is that whatever by-law my have been enacted prior to the Paldi area being included within the municipal limits, would not be binding on the plaintiff because he had no opportunity to give objective and suggestions as required under sub-clause (document) of Section 460. Thus, the pertinent question which would arise for my consideration is-whether when the by-law has been duly confirmed by the State Government and after it is published in the official gazette, and gets force of law, would it be open to the plaintiff to say that this by-law could not be application to him simply because at the time it was promulgated, that place in which the suit property is situated was not within the city limits of Ahmedabad? In my opinion, after the by-laws are duly enacted and published in the official gazette, they get force of law and would be equally applicable to the new area which would be included in the municipal limits. The ratio of the case before the Supreme Court cannot govern the facts of the instant case. As already observed earlier, the material words 'person likely to be affected thereby' as stated in S. 48 (2) of the District Municipalities Act and secondly, these is no such section like Section 462 in the District Municipalities Act under which the by-law gets the force of law. In this connection, it will be worthwhile to refer to the observation of the Supreme Court in this very case wherein it is stated--

'From what we have said it does not followed that the by-law cannot under some provisions in the Act other than Section 48 affect people two home it had not been published before to it that a by-law cannot be made under Section 48 so as to affect people by its own terms of force unless to them it had been previously published.

We are concerned only with the initial validity of a by-law for interpreting the meaning of the words used in it. the argument or the appellant contemplates a situation where an existing valid by-law is by an independent statutory provision made to affect people to whom it had not been published before it was made. With such a situation we are not concerned. We are unable to agree that if some provision of the Act exists which makes a valid by-law applicable to the newly added areas of a municipality and to the residents there, though to them by-law might not have been published before it was made, it would follow that a by-law could be validly made under the Act without previous publication to persons likely to be affected thereby. We repeat that if it cannot be so made, the present by-law cannot be read as including within the octori limits the municipal district as extended from time to time. To do that would be to give it a meaning against its context and this, the General Clauses Act does not warrant.'

With respect, I am in entire agreement with the principle of law enunciated therein. In the instant case, the Corporation does not rely on the impugned by-law for taking appropriate proceedings against the present plaintiff. The Corporation had given notices to the plaintiff for violation of the provisions of Section 254 read with Rule 6 of the Act. It is an admitted position that no notice was given by the plaintiff before making the impugned construction. The plaintiff, therefore, would clearly be liable for his acts done in contravention of the said provisions. I am unable to agree with Mr. Zaveri that the notices as issued by the Corporation were invalid because the by-laws under which he was required to give an application, were invalid. It may be noted that the plaintiff was not required to give a notice under by-laws. The plaintiff was required to give notice under Section 254 of the Act and Rule 6 made thereunder what Section 260 contemplates was that the application should be given in the form prescribed under the by-law. Having failed to give any such notice, the plaintiff cannot be heard to say that the by-law which had prescribed the from was invalid and that precluded him from giving an application. The case of the plaintiff from the beginning was that the said construction was made prior to the area being included within the city limits of Ahmedabad and therefore it was not necessary for him to give any notice to the Commissioner before making the construction. As already observed earlier, the plaintiff has failed to prove that the impugned construction was made prior to the said area being included within the municipal limits of the city of Ahmedabad. From the evidence on record, I am

satisfied that the said construction was made after the Paldi area came to the incorporated within the municipal limits. Therefore, if the plaintiff wanted to make any new construction or any repairs which required construction of a floor or a room, he was required to give a notice to the Commissioner in the prescribed form. I am unable to agree with Mr. Zaveri that the said by-law which prescribed the form was invalid because it was enacted prior to the Paldi area being incorporated within the municipal limits. I have already said that it was not necessary to invite objections from the persons affected thereby but it was open to any person to give objections to the Corporation. The plaintiff had, at no time, raised any objection to the said by-law. Besides, as stated earlier, the by-law having obtained the force of law, it cannot be challenged by the plaintiff on the ground that the said by-law was not re-enacted after the Paldi area was included within the municipal limits of the city of Ahmedabad. In my opinion, it is not necessary to re-enact the by-law before applying the same to any new area which may be incorporated within the municipal limits of the city of Ahmedabad. There is no warrant for the submission made by Mr. Zaveri that in such a case, it was obligatory on the Corporation to invite objections from the residents of the new area before applying the said by-law to that area. Mr. Desai, learned Advocate for the Corporation invited my attention to a judgment of this High Court in Criminal Appeal No. 45 of 1969 decided on 1st February, 1972 wherein my learned brother A. D. Desai, J. had negatived the contention raised by the accused that after application of the Act to the new area, rules were not published and hence, the accused could not be charged for committing breach of the rules. It was observed --

'Section 453 of the Act provides that the rules mentioned in the Schedule `A' as amended from time to time shall be deemed to be part of the section. There is no dispute, and there cannot be any, that the rules in respect of which the breach is alleged are contained in schedule `A' which was enacted with the Act. In view of the provisions of Section 453 of the Act, the rules became applicable as soon as the Act came into operation. As the rules are part of the Act the accused was deemed in law to know the provisions thereof.'

Mr. Zaveri however tried to distinguish this ruling by stating that the rule as soon as it was framed became part of the Act itself and, therefore, when the Act was applied to a particular area, the rules automatically came to be applied which was not the case with regard to the by-laws. He urged that the by-laws did not become part of the Act and therefore, it would be open to the plaintiff to urge that the by-law being invalid, no action could lie against him for making the construction without obtaining prior permission. It is true that the by-law does not become part of the Statue as in the case of a rule. As stated in Section 453 of the Act.

'The Rules in the Schedule A as amended from time to time shall be deemed to be part of this Act.'

Thus, the moment any new area came to be included within the municipal limits of the Corporation, the whole Act would be applicable and all the parties residing in the area would be governed by the provisions of the Act. But even so far as the by-laws are concerned, even though they did not become part of the Act, they get force of law as stated in S. 462 of the Act. Once it gets force of law, it cannot be challenged on the ground that the said by-law was enacted prior to the area being included within the municipal limits. In my opinion, the learned Judge below was right in holding that the notices issued by the Corporation were valid.

5. Lastly, it was urged by Mr. Zaveri that the notices were invalid because they were not issued by the Commissioner and were issued by the Estate and City Improvement Officer. He submitted that under Section 69 of the Act, the powers and functions of the Commissioner could be delegated to a municipal officer generally or specially empowered in this behalf. Mr. Zaveri submitted that the Estate and City Improvement Officer could not be said to be a municipal officer as contemplated in Section 69 of the Act. He referred to Section 45 of the Act which enumerates municipal officers. According to him, municipal officers contemplated in Section 69 would be city engineer, medical officer of health, municipal chief auditor and municipal secretary as enumerated in Section 45(1) of the Act. I am unable to agree with him. In fact, there is no warrant for confining the use of the word `municipal officers' to the four officers included in Section 45 of the Act. That would be limiting the scope of Section 69. That could not be the intention of the Legislature. Besides, the municipal officers are not merely four officers enumerated in Section 45 of the Act but there would be other

officers as would be determined by the standing committee from time to time as stated in Section 51 of the Act. It is not disputed that the Estate and City Improvement officer is attached to the Municipal Corporation and is an officer under the employ of the Corporation. It cannot, therefore, be said by any reasoning that the Estate and City Improvement Officer is not an officer to whom the powers or functions of the Commissioner could not be delegated under Section 69 of the Act. As already stated earlier, Section 69 of is very wide in its scope and it would be open to the Municipal Commissioner to delegate these powers to any municipal officer of his choice. There is no warrant for the conclusion that the municipal officers contemplated in Section 69 would be only those municipal officers who are included in Section 45 of the Act. In my opinion, any officer serving in the Corporation would be a competent person to whom delegation of the powers and functions of the Commissioner could be made. In my view, the order passed by the Commissioner delegating his functions to the Estate and City Improvement Officer is valid and as the impugned notices, Exs. 17 and 18 were issued by this officer, under the powers delegated to him by the Commissioner it cannot be said that the notices were invalid.

6. Mr. Zaveri, then, made a grievance that the present plaintiff was not given an opportunity by the Corporation before issuing the impugned notices on him, and therefore the notices were illegal and invalid being violative of the principles of natural justice. I fail to understand the reasoning of the learned Advocate for the appellant. The notices issued by the Estate and City Improvement Officer asked the plaintiff to show cause why the proceedings should not be taken against him and pursuant to these notices, the plaintiff in fact gave a reply, Ex. 36. There is nothing in the Act or in the rules made thereunder under which any personal hearing was to be given. Merely because the plaintiff was not heard in person, it cannot be said that any principles of natural justice were violated. Whatever the plaintiff had to urge was stated in his reply Ex . 36. and if after perusing the reply, the Corporation thought it fit to take proceedings against him, it cannot be said that the act of the Corporation would be in contravention of the principles of natural justice. Taking a cumulative picture of the oral as well as documentary evidence on record, I am satisfied that the notices Exs. 17 an 18 issued by the Estate and City Improvement officer were valid.

7. In view of this state of affairs, the appeal fails and is dismissed with costs.

8. Appeal dismissed.