

Urban Improvement Trust Vs. Narbada Devi

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Court : Rajasthan

Decided On : Apr-01-1981

Reported in : 1981CriLJ1695; 1981()WLN467

Judge : N.M. Kasliwal, J.

Appellant : Urban Improvement Trust

Respondent : Narbada Devi

Judgement :

N.M. Kasliwal, J.

1. This is an appeal by the Urban Improvement Trust, Alwar against an order of acquittal passed by the learned Judicial Magistrate No. 1, Alwar. The facts in brief are that a scheme No. 11 was published under Section 32 of the Rajasthan Urban Improvement Trust Act, 1959 (hereinafter referred to as 'the Act') by the Urban Improvement Trust, Alwar. The accused non-petitioner Smt. Narbada Devi made certain constructions over the land covered by Scheme No. 11 and a report in this regard was submitted by the Inspector on 22nd September, 1971. In pursuance to the above report of the Inspector, a notice under Section 90 of the Act, was issued on 23rd September, 1971, in the name of Smt Narbada Devi wife of Shri Vishnu Datt Sharma, Pat-wari. Hazuri Gate, Alwar. This notice was accepted by Shri V. D. Sharma husband of Smt. Narbada Devi on 29th September, 1971. As the accused non-petitioner did not stop the constructions, a complaint was filed, against her

under Section 91 of the Act. The learned Magistrate, recorded the statements of Brij Nandan Tiwari P. W. 2, Kishori Narain PW 1, and Hari Shaian PW 3 from the side of the complainant and statement of the accused was recorded under Section 342 Cr.P.C. The accused examined Munnilal DW 1, Nand-lal DW 2. Munshi Lai DW 3, and Kanhaiya Lai DW 4 in defence. After hearing arguments the learned Magistrate, though accepted the case of the prosecution that the accused had made constructions in violation of Scheme No. 11 but took the view that notice Ex. P3 dated 23rd September. 1971 issued under Section 90 of the Act, was not properly served on the accused and as such she could not be held guilty under Section 91 of the Act. Aggrieved against the aforesaid order of acquittal passed by the learned Magistrate, the Urban Improvement Trust has filed this appeal.

2. It is contended by Mr. Goyal, learned Counsel for the Trust that the accused was living with her husband Shri Vishnu Dutt, and the notice was properly issued in the name of the accused but when the process server PW 3, Hari Bhaian, went on the spot, the accused herself told that the notices may be given to her husband and in these circumstances if the notice was taken by the husband of the accused it was a sufficient and valid service of notice on the accused. It is also argued that Vishnu Datt Sharma, has not been produced to rebut the statement of Hari Bhaian PW 3 and the learned Magistrate committed a serious error of law in holding that the service of notice on the accused was not properly made,

3. Mr. Jain, appearing on behalf of the accused has contended that it was incumbent on PW 3 Hari Bhajan, to have served the notice on Smt, Narbada Devi herself when she was present and the husband had no authority to accept notice on her behalf. It is a question of fact whether the service of notice was effected on Narbada Devi or not and it cannot be interfered in appeal by this Court,

4. There can be no manner of doubt that before holding a person guilty for non-compliance of notice under Section 90 of the Act, it must be proved that a due notice was given to such person. Section 91 of the Act, is a penal provision and lays down that if any person, after due notice given under Section 90 does not stop erection, alteration or addition or does not demolish or alter any building or wall he shall be punishable with fine which may extend to five hundred rupees or

with simple imprisonment, for a period of six months or with both and the said unauthorised construction shall be demolished or altered . by the order of the Magistrate dealing with the case if so requested by the Trust. Where a person is to be penalised with fine or imprisonment on account of non-compliance of a particular provision, it can be said without any controversy that the prosecution must prove such non-compliance in a strict manner. Thus, we have to see whether in this case a due notice was given to the accused under Section 90 of the Act, Section 80 of the Act lays down the provisions with regard to service of notices. According to this Section all notices required by this Act to be served upon any person shall, save as otherwise provided in this Act or such rule or regulation, be deemed to be duly served;

(d) in any other case, if the document is addressed to the person to be served and (i) is given or tendered to him; or (ii) if such person cannot be found, is affixed On some conspicuous part of his last known place of residence or business, if within the State or is given or tendered to some adult member of his family or is affixed on some conspicuous part of his land or building to which it relates, or (iii) is sent by registered post to that person. In accordance with the above provision for the service of notices it was incumbent to give or tender the notice personally to the person and only in case, where such person cannot be found, it can be affixed or given or tendered to some adult member of the family. In the present case according to PW 3 the accused Narbada Devi was present on the spot and as such the notice could not be given to her husband. The notice Ex. P3, was issued in the name of accused Narbada Devi, at her residential address of Hajuri Gate Alwar, but it appears as stated by P.W. 3 himself that he had gone for the service of this notice on the place where the alleged unauthorised constructions were made by the accused. This witness in his examination in chief only stated that the notice was taken by Vishnu Datt, who is the husband of the accused. Ex. P3 bears the signatures of Vishnu Datt Sharma, at A to 8. In cross-examination the witness stated that at the site only Vishnu Datt was present and Narbada Devi was inside. He further stated that Vishnu Datt told him that he was the husband of accused Narbada Devi, and as such he got the notice served through Vishnu Dutt Sharma instead of Narbada Devi. Then he said that he had also told Narbada Devi to take the notice, on which she said that her husband would do so. There is no

endorsement on the back of Ex. P3, to the effect that Narbada Devi had told or had given any authority to Vishnu Datt Sharma to accept the notice on her behalf. In any case, if the statement of this witness to the effect that Narbada Devi was present on the spot when he had gone for service of the notice is to be believed, there is no provision under Section 80 for serving such notice on the husband in place of Narbada Devi herself. There is no provision for giving an authority to accept notice on behalf of a person when he or she is present to accept the notice. It is only in a case where such person cannot be found, that it can be given or tendered to some adult member of . the family and not otherwise. The accused has totally denied to have received such notice.

5. Thus, in my view there is a clear non-compliance of Section 80 of the Act in the matter of service of notice under Section 90 to the accused. It is contended by Mr. Goyal that the knowledge may be deemed to be sufficient for service of such notice and in this case acceptance of notice by Vishnu Datt Sharma should be deemed to be to the knowledge of the accused herself.

I see no force in this contention that mere knowledge is sufficient for the compliance of service of notice under Section 90 of the Act. As already observed when a person is to be penalised by fine or imprisonment, it would be necessary to comply with the requirements of serving the notice strictly in accordance with Section 80 which lays down the manner and mode of service. Mr. Goyal, then placed reliance on Clause (b) of Sub-section (2) of Section 80 of the Act. In my opinion Clause (b) of Sub-section (2) of Section 80 is not at all applicable in this case inasmuch as Sub-section speaks of a document which is required or authorised to be served on the owner or occupier of any land in building and may be addressed to 'the owner', or 'the occupier', as the case may be, of that land or building naming that land or building, without further name or description, and shall be deemed to be duly served under Clause (b) if the document so addressed or a copy thereof so addressed, is delivered to some person on the land or building or where there is no person on the land or building to whom it can be delivered, is affixed to some conspicuous part of the land or building. The notice under Section 90 of the Act, cannot be said to be a document which is required or authorised to be served on 'the owner or the occupier of any land or building. The notice under

Section 90 is to be given to a person who without the permission of the trust erects, or adds to or alters any building, and as such the provision of Clause (h) of subsection (2) of Section 80 cannot be applied in the case in hand.

6. In the result. I find no force in this appeal and the same is dismissed.

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