

In Re: K. Subba Rao

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Court : Chennai

Decided On : Feb-21-1947

Reported in : AIR1948Mad466; (1947)1MLJ199

Appellant : In Re: K. Subba Rao

Judgement :

ORDER

Yahya Ali, J.

1. The petitioner who is an Advocate practising at Vizagapatam has been convicted by the Bench Court, Anakapalle, under Section 199 read with Section 317(c) of the District Municipalities Act, 1920, and sentenced to pay a fine of Rs. 20, in default to simple imprisonment for one day. He appealed against the conviction and sentence to the Sub-Divisional Magistrate, Vizagapatam, who confirmed the conviction and sentence.

2. The case against him is that he carried out and completed certain repairs and improvements to his house in contravention of the provisions of the Act. The petitioner filed an application on the 1st October, 1945, for making some additions to his house, and some correspondence was going on between him and the executive authority for proper plans drawn to scale and for other information which was necessary for the disposal of the application. The petitioner, however, without waiting for the permission of the executive authority, carried out the improvements

and completed the same by the 20th December, 1945. He must evidently have commenced the work before the expiry of 60 days from the date of the application. The question is whether this act amounts to an offence under Section 199 read with Section 317(c) of the Act. Under Section 199, a construction or re-construction of a building should not be begun unless and until the executive authority has granted permission for the execution of the work. Section 201 requires that within 30 days after the receipt of an application for permission to construct or re-construct a building the executive authority should either grant the same or refuse it on one or more of the grounds mentioned in Section 203. Under Section 202 the applicant is entitled, if permission has not been granted within the 30 days mentioned in Section 201 to make a written request to the Council, and on receiving such a request the Council is bound to determine by written order whether such approval or permission should be given or not. The applicant has, after putting in the written request to the Council to wait for one month longer to give time to the Council to make the decision; but after the expiry of that one month, such approval or permission would be deemed to have been given if the Council has not within one month determined whether such approval or permission should be given or not, and in such a case the applicant is entitled to proceed to execute the work. But even then he should do so without contravening the provisions of the Act or any by-laws made under the Act. Beading Sections 197, 199, 201, and 202 together, it is clear that the applicant cannot carry out or complete any construction or re-construction of a building within at least a period of 60 days after the date of the application, and if he does so, he commits an offence under Section 199, read with Section 317(c) of the Act. It is, from the facts of this case, manifest that the applicant did not make any written request at all to the Council and he did not even choose to wait for the period of 60 days. Without making such a request to the Council, it is not open under the Act for any applicant for permission to construct or re-construct a building to carry out or complete the work without the express permission of the executive authority.

3. The conviction of the petitioner is right. I do not propose to interfere with the sentence as the petitioner, being an Advocate, must be presumed to be fully aware of the relevant provisions of the Act and there can be no excuse for his not complying with them and contravening the express directions contained in the

Statute. The petition is dismissed.

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