
(1930) 09 BOM CK 0018
In the Bombay High Court

Bai Basantibai

APPELLANT

Vs

Municipal Commissioner of Bombay

RESPONDENT

Date of Decision : 29-09-1930

Acts Referred:

Specific Relief Act, 1877 — Section 45

Citation : AIR 1931 Bom 173

Hon'ble Judges : Beaumont, C.J;Blackwell, J

Bench : Full Bench

Judgement

Beaumont, C.J.—This is a petition presented u/s 45, Specific Relief Act, asking that a rule may issue to the Municipal Commissioner to show cause why he should not be directed to refuse sanction to an application made by Gordhandas Chunilal, whom I will refer to as "the building owner," for passing the plans for an addition to the height of his building, and that the Municipal Commissioner may be restrained from giving his sanction.

2. The matter arises in this way. The petitioner is the owner of a certain property in Bombay which adjoins the property of the building owner, and the building owner is proposing to increase the height of his building. The building owner's property, it is alleged, has two frontages, one on a narrower road and another on a broader road, and the substantial question in dispute is whether the height of the building should be limited u/s 349-B, City of Bombay Municipal Act, by the width of the wider road or of the narrower road. The building owner submitted a plan of his proposed additional building u/s 342, City of Bombay Municipal Act; and the effect of that is, that u/s 345, if within 30 days after the receipt of the notice the Commissioner fails to intimate in writing to the person, who has given the said notice his disapproval of the building which is proposed or if within the said period the Commissioner signifies in writing to the said person his approval of the said building, then the building owner may proceed with the building in accordance with his intention as described in the notice "but not so as to contravene any of the provisions of the Act." Then Section 349-B is a section

dealing with the height of the buildings, and it provides that

subject to the maximum prescribed by Section 349 A, the height to which a building may be erected or raised shall be regulated by the width of the street on which it abuts.

3. And then there are various provisions for carrying that out. So that you have got a statutory provision that the height of the building is to be regulated by the width of the street on which it abuts.

4. Now what happened in this case appears from the affidavit of the Assistant Engineer of the Bombay Municipality. The plans were submitted by the building owner, and I think they were subsequently amended. But ultimately intimation of disapproval u/s 346 of the Act was given on 24th July 1930, to the building owner disapproving the work proposed to be executed by reason that the whole of the proposed addition was not permissible by bye law 41 C and on certain other formal grounds, and the building owner was informed that subject to his modifying his intentions so as to obviate the objections but not otherwise, he was at liberty to proceed with the works; and then follow the words "but not so as to contravene any of the provisions of the said Act."

5. Then the petitioner came on the scene and objected to the proposed plans being passed on the ground that they did not comply with Section 349-B, and the Municipal Commissioner ultimately took the opinion of counsel who advised him that the plans did comply with the section, and accordingly the Commissioner was not prepared to disapprove the plans on the ground that they did not comply with Section 349-B. Thereupon the petitioner made this application to the Court u/s 45, Specific Relief Act, which provides that the High Court may make an order requiring any specific act to be done or forbore by any person holding a public office. Then there are certain provisos, of which the two relevant provisos are, proviso (a):

that an application for such order be made by some person whose property, franchise or persona, right would be injured by the forbearing or doing (as the case may be) of the said specific Act,

and proviso (d):

that the applicant has no other specific and adequate legal remedy.

6. What the petitioner says is that she requires the Municipal Commissioner to be ordered to forbear from passing the plans authorizing this additional height. Now, in my opinion, the real answer to that is that the Commissioner has not done, and is not threatening to do, anything of the sort. He did not disapprove the plans on the ground that the building exceeds the authorized height, because his own view, fortified by the opinion of counsel, was that the building did not exceed the authorized height, but he has qualified his approval of the plans by saying that he is not authorizing any building in contravention of the Act, and Section 345 of the Act, which is the section enabling the building to be completed

after the plans have been approved, also provides that the building is not to contravene any of the provisions of the Act. It seems to me therefore that the Municipal Commissioner has not done any thing which can possibly be questioned and that there is no case for ordering him to forbear from doing anything.

7. Other interesting points have been argued u/s 45 of the Specific Relief Act. It is said that that section does not apply to a case of this sort at all, that it only applies to a dispute between the person who applies under the Act and the public officer. For instance, if the public officer, the Municipal Commissioner, had refused to pass the plans of the building owner, then the building owner could have applied u/s 45. But it is said that that section does not enable a third party to complain that the public officer has conferred some light on another person which he had no right to confer. It is said further that the injury under proviso (a) must be an injury of a legal nature, and that the mere fact that the property is diminished in value, when the diminution in value is not caused by something giving rise to a cause of action is not an injury within proviso (a). I am not myself satisfied that either of these arguments is well founded, but I do not think it necessary to discuss or determine those questions. I think the short answer to this application is that the Municipal Commissioner has not given to the building owner any authority to contravene any of the provisions of the Act, and therefore the petitioner has nothing to complain of. I think therefore that this petition fails.

Blackwell, J.

8. I agree with the learned Chief Justice that the Commissioner in this case has not sanctioned the doing of any act which would amount to a contravention of the provisions of Section 349-B of the City of Bombay Municipal Act, and that therefore this petition fails on that ground.

9. Speaking for myself, I am also of opinion that this petition is entirely misconceived upon another ground. Section 45, Specific Relief Act, enables the High Courts therein mentioned to make an order requiring any specific act to be done or forborne, within the local limits of its ordinary original civil jurisdiction, by any person holding a public office,. That is subject to several provisos, proviso (a) being:

that an application for such order be made by some person whose property franchise or personal right would be injured by the forbearing or doing (as the case may be) of the said specific act.

10. The applicant in the present case has complained that the Commissioner has sanctioned the building plans of Sir Dinshah Mulla's client. I do not see how the mere sanctioning of the plans can cause any injury to the property of a third person. It does not follow that the individual, at whose instance the Commissioner has sanctioned the plans, will over act upon them. He may act upon them or he may not. If he does act upon them then it seems to me that the question must always be open as to whether the plans so sanctioned did or did

not contravene any of the requirements of the City of Bombay Municipal Act. If in fact they did contravene and if the person who has obtained the sanctioning of the plans begins to build pursuant to them, then there may be an injury occasioned to the property of a third person. If injury is so occasioned then, assuming that it is an injury of which the law will take cognizance, he clearly has a specific and adequate legal remedy by an action for an injunction to restrain the other party from building in contravention of: the requirements of the City of Bombay Municipal Act. But it appears to me that in the present case no injury whatever is made out by the applicant. Accordingly, speaking for myself alone, I think that the petition is misconceived upon that ground also.

Per Curiam.

11. Petition is dismissed with costs. Sir Dinshah Mulla's client to have a separate set of costs. Injunction dissolved.