

(1967) 12 DEL CK 0015

In the Delhi High Court

Case No : Regular Second Appeal No. 210-D of 1963

Dula Mal Soni

APPELLANT

Vs

New Delhi Municipal Committee

RESPONDENT

Date of Decision : 16-12-1967

Acts Referred:

Citation : (1967) 12 DEL CK 0015

Hon'ble Judges : S.K. Kapur, J

Bench : Single Bench

Advocate : A.R. Wig and V.D. Misra, for the Appellant;

Judgement

S.K. Kapur, J.

(1) Dulla Mal, plaintiff, appellant, alleges that he is in occupation of a shed in the backyard of plot No. N/99 Connaught Circus, completed by him several years ago and repaired in or about December, 1959, New Delhi Municipal Committee respondent alleging that it was an unauthorized construction issued a notice to the appellant u/s 195 of the Punjab Municipal Act on 3-1-1961. This notice was signed by Shri A. P. Mehta, Assistant Secretary. This was followed by another notice dated 17-4-1961 u/s 220 of the said Act. By both these notices, the appellant was required to remove the structure. On 27th April, 1961, the appellant filed a suit alleging inter alias that the structure was more than 6 months old and, Therefore, could not be demolished and that the notices under sections 195 and 220 were not issued by a person authorised in that behalf. The respondent. New Delhi Municipal Committee, denied both the contentions and urged that the structure had been constructed in November, 1960. Both the Courts below agreed with the respondent and decided that the notice - u/s 195 was within time. That finding of fact has however, rito been challenged before me. The only contention urged -by Mr. Whig, the learned counsel for. the appellant is about the authority of the persons signing notices under sections 195 and 220 of the said Act. The onus of the relevant issue being issue No. 1, was placed on the plaintiff appellant. Mr. Whig's contention is that the notice u/s 195

purports to have been signed by the Assistant Secretary, and the notice u/s 220 by the Secretary and the New Delhi Municipal Committee has produced no evidence, not even a resolution showing that these persons had been delegated the powers of issuing such notices. This contention was answered against the appellant by the lower Appellate Court on the ground that section 114 of the Evidence Act raised a presumption that all official acts had been regularly performed. Mr. Whig, the learned counsel for the appellant says that the presumption u/s " 114 is only as to the regularity of the acts and not that the acts have been done. He has relied on *Ram Partap Marwari v. Emperor, Khurshid Chik v. Raniganj, Municipality, and Swadeshi Cotton Mills Co. Ltd. v. State Industrial Tribunal, U. P. and others*", Mr. Whig has drawn . my attention to section 33 of the said Act and says that powers u/s 195 of the said Act could be conferred on the Municipal Engineer alone and secondly that even if the Municipal Engineer had been delegated with the power, the notice must still be signed by the said Municipal Engineer. The suggestion being that issue of the notice itself is a power u/s 195 exercisable by the delegate alone. Mr. Misra, the learned counsel for the respondent has on the other hand relied on documents- Exhibited DI/I, DI/2 and DI/5, which show that the notices were issued under the orders of the Municipal Engineer. He also seeks aid from section 215 of the said Act and contends that all such notices u/s 195 have necessarily to be signed by the Secretary or the Assistant Secretary. It is then said that the order of the Municipal Engineer directing issue of notice was signed as "Municipal Engineer N.D.M.C.," and, Therefore, on behalf of New Delhi Municipal Committee, which gave rise to presumption u/s 114 of the Evidence Act that he had been so authorised u/s 33 of the said Act. Apart from invoking the provisions of section 114 of Evidence Act, which I shall discuss a little later. I would like-"to point out that the onus of the issue was placed on the plaintiff and yet he took" no steps to summon the records of the Municipal Committee to prove or disprove the passing of any resolution delegating power to any of its officers. Moreover in my opinion the Municipal Engineer having signed on behalf of New Delhi Municipal Committee, there would be presumption that the powers had been delegated to him and it was in the circumstances for the plaintiff to disprove the same. Once it is presumed that the Municipal Engineer had been delegated with the powers of issuing notices, the same would have to be "signed u/s 215 by any of the officers mentioned therein and must, Therefore, be held to have been properly signed by the Secretary or the Assistant Secretary. When a delegate exercises a power, he does so on behalf of the Principal and consequently when the Municipal Engineer directs issue of a notice it would be a notice by the Committee and will have to be signed in accordance with section 215. The proviso to section 215 lends support to the view that I am taking. Under the said provision, the Medical Officer of Health has been expressly authorised to sign a notice issued by the Committee under any section of the said Act under which power may be delegated to him in pursuance in section 83(-b) and has been so delegated. The effect of the proviso is that where for instance powers have been delegated to the Medical Officer of Health with respect to section 105 of the said Act, he may

sign the notice issued under that provision. It shows that in the absence of the proviso, even a notice u/s 105 would have to be signed by the Secretary or the Assistant Secretary in spite of delegation of power. It follows that except in cases covered by the proviso all the notices issued by the committee have to be signed by the officers mentioned in section 215 of the said Act. My conclusions, Therefore, are that

(1)there is a presumption that Municipal Engineer was delegated with the power of issuing notices and (2) the notices were properly " signed .by the Secretary or by the Assistant Secretary. (2) No other point was raised in this appeal. It, Therefore, fails and is dismissed with no order as to costs.