
(1988) 04 MAD CK 0010

In the Madras High Court

Case No : Criminal App. No.884 of 1984

Junior Engineer, Corporation of Madras, 84-Division, Madras

APPELLANT

Vs

Buhari

RESPONDENT

Date of Decision : 04-04-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313(1)

Citation : (1988) 04 MAD CK 0010

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : Thenkodi Nelson for Mr. G. Natesan, for the Appellant; Liaquat Ali, for the Respondent

Final Decision : Allowed

Judgement

Padmini Jesudurai, J.—The appellant who had filed a complaint against the respondent for an offence under S. 362 of the Madras City

Municipal Corporation Act, 1919 (IV of 1919) here in after referred to as the Act), for failure to obtain permission before constructing the

building, which complaint was tried by the XX Metropolitan Magistrate, Egmore, Madras as S.T.C. No. 2698 of 1983 and in which the learned

Magistrate acquitted the respondent, has preferred the present appeal challenging the acquittal.

2. Facts briefly are:--The respondent is the owner of premises No. 14 (Old No. 3), Whannels Road, Egmore, Madras. P.W. 1, the Junior

Engineer attached to the Corporation of Madras, visited the above premises on 7th May, 1983 and found the respondent carrying on construction

of certain pillars, without necessary permission from the Corporation. P.W. 1 verified the records and found that on 5th October, 1979 the

respondent had applied for permission for construction of a theatre in the same premises and it had been refused by the Corporation by order

dated 2nd December, 1979. P.W. 1, thereupon, issued a notice to the respondent under S. 236 of the Act, requiring him to stop further

construction. The respondent did not stop the construction and did not choose to send any reply. P.W. 1, therefore, after obtaining sanction, laid

the prosecution.

3. During trial, the Junior Engineer was examined as P.W. 1 and Exts. P1 to P6 were marked on the appellant's side. The respondent when

questioned under S. 313(1) CrI. P.C., stated that, even in 1962, he had obtained permission for constructing a recreation hall in the scene

premises, that he had commenced construction on the basis of the approved plan within one year of the grant of such permission, and in law, there

was no limitation regarding the time within which the construction had to be completed and that, therefore, he was entitled to continue the

construction, already commenced in 1961. In support of his legal contention he examined his Engineer as D.W. 1. According to D.W. 1 on 7th

February, 1961 the topoplan for the construction of a recreation hall under Ex. D3, with a plan of the cross section, Ex. D5, were submitted to the

Corporation, which in turn issued Permit No. 646/61 dated 31st May, 1961 as per Ex. D1 and that they commenced construction immediately

and constructed a foundation wall upto the basement level, 102 ft. East to West, 53ft. North to South and 4 feet high, that due to financial

difficulties, the construction could not be completed and it was, therefore, continued in 1983 as per Exs. D3, D5 plans and that since the

construction had already commenced within one year of the issue of Ex. D1, no further permission was necessary to continue and complete the

construction. D.W. 1 also produced Exts. D15 and D16, which are the account books of the respondent, to prove that Rs. 50,000 had been

spent in 1961, for the above construction. He has also produced a letter of the Chief Engineer of the Corporation, Ex. D11 dated 24th October,

1983, to the effect that, if construction was commenced in 1961, there was no legal bar to it being continued without any fresh permission.

4. The trial Court accepting the facts put forward by the respondent, as well as the legal plea, acquitted him. Aggrieved with the acquittal, the

complainant has preferred the present appeal.

5. Thirumathi Thenkodi Nelson, learned Counsel for the appellant contended that in Ex. P1, which is the plan for the construction of the theatre

submitted on 5th October, 1979, the respondent had not shown any foundation wall upto the basement level as having been already in existence,

nor was that wall shown as 102 ft. East to West, 53 ft. North to South and 4ft. high in Ex. D6, the application for construction of a switch room

therein, submitted on 5th September, 1965. The respondent did not send any reply, to the notice issued to him under Ex. P3 putting forward these

facts and that, therefore, the trial Court ought not to have held that the foundation wall had been constructed even in 1961. The legal contention put

forward by the respondent also, ought not to have been accepted by the trial Court.

6. Per contra, Thiru Liaquat Ali, learned Counsel for the respondent, contended that Exs. D15 and D16 showed that the construction had begun

even in 1961 and both these account books had been submitted to the income tax Department, long prior to the filing of the prosecution; and the

evidence of D.W. 1, who himself had signed in Exs. D3, D5 and Ex. P1 had been rightly accepted by the trial Court. The acquittal, therefore, had

to be sustained.

7. The question that arises for consideration is whether, the respondent has committed an offence under S. 362 of the Act?

8. To determine the legal issue, as to whether the commencement of construction, within the period mentioned in Ex. D1 permit issued on 31st

May, 1961, would entitle the owner, to continue the construction on any future date, without any fresh permission, the question, as to whether or

not the construction of the building, had really commenced in 1961, is relevant, in this particular case. According to D.W. 1, on the receipt of Ex.

D1, which is on the basis of the plans Exs. D3 and D5, construction had commenced, and the foundation wall 102 ft. East to West and 53 ft.

North to South upto the basement level, which was 4 ft. was constructed even in 1961 and thereafter due to financial difficulties, the construction

could not be completed. It is true that in Ex. P1, which is the plan submitted by the respondent on 5th October, 1979 for construction of a theatre

in the scene site, 18 years after the first plan, Ex. D3 and D5, the scene plot is

only shown as a vacant land. No construction or foundation wall is shown as having been put up in the scene site. There is, therefore, no reference in Ex. P1 to the wall 102 ft. X 53ft.X 4 ft. upto the basement level existing in the scene site. This, no doubt, is something which has to be put against the respondent. Similarly, even in the earlier plan Ex. D6 dated 15th September, 1965 for construction of a switch room in the scene site, the entire building as per Ex. D3 and D5 is shown as the existing building. It is not the case of the respondent that the entire building was completed in 1961 or at any time after that. No wall 102" X 55" X 4" is shown as existing in the plot. No doubt, these two documents are relied upon by the prosecution to contend that no foundation wall 102"X53"X 4" was ever constructed, either in 1961 or within one year of the issue of Ex. D1 permit.

9. Though the above contention at first sight appears plausible yet, a closer comparison of these Plans Ex. D3, D5 and P1 indicates, that, in Ex. P1

submitted for construction of a theatre, the measurement of the auditorium part of the theatre proposed to be constructed in 1979, is exactly the

same as the measurement of the recreation hall as given in Ex. D5 in 1961. In Ex. D1 the recreation hall was 102ft. East to West and 53 feet

North to South. In Ex. P1 the inner dimensions of the auditorium part of the proposed theatre are also 100" X 50". That measurement is retained.

No doubt in Ex. P1 besides this hall 100" X 50" we find certain other additions, like lounge and gents toilet on the eastern side, ladies toilet on the

northern side, car park and drive way on the western side and a foyer on the southern side. These additions cover up the entire plot. As already

pointed out earlier, the measurement of the auditorium part of the theatre is the same as the measurement of the recreation room found in Ex. D5.

This greatly probabilises the contention of the respondent that in 1961 they constructed the foundation wall 102 X 53 X 4ft. upto the assessment

level, and thereafter further constructions had stopped and Ex. P1 was prepared synchronising with that foundation wall already constructed.

Added to that, we have the evidence of D.W.1. Exts. D15 and D16, have passed through the income tax authorities long prior to the launching of

this prosecution. No doubt, in Exts. D15 and D16. It is not mentioned for what construction this amount of Rs. 50,000 was spent. However, in the

absence of any material to show or even a suggestion to D.W.1, that these entries relate to same other construction, which the respondent could have carried on in 1961, the contention of the respondent can be accepted.

10. It has next to be seen as to whether, under the Act. Construction commenced within one year of Ex. D1 issued on 31-5-1961, could be continued in 1983. In Ex. D1, which is issued under S. 238 of the Act, it is stated that it expires on 31-5-1962. S. 242 of the Act as it stood on 31-5-1961 was as follows:--

If the construction or re-construction of a building is not commenced within one year after the date on which permission was given to execute the work, the work shall not be commenced until a fresh application has been made and a fresh permission granted under this chapter.

It would appear, therefore, that if the work was commenced within one year of the date of the permission, work could be completed at any time thereafter, there being no outer limit within which the work was required to be completed. This section has been amended by the Madras City

Municipal (Amendment) Act, 1961, (Tamil Nadu Act 56/1961);

which received the assent of the President on 17-3-1962 and came into force on 14-4-1962 by a Notification of the State Government. After the amendment, the section is as follows:--

(1) If the construction or re-construction of a building is not commenced within six months after the date on which permission was given to execute the work, the work shall not be commenced, until a fresh application has been made and a fresh permission granted under this chapter.

(2) If the construction or reconstruction of the building is not completed within such period not exceeding two years, from the date on which permission was given for the construction or reconstruction) as may be specified in this behalf by the commissioner, it shall not be continued thereafter, until a fresh application has been made and fresh permission granted under this Chapter.

A combined reading of the two Sub-sections make it clear, that the construction should commence within six months of the date of the permission

and should be completed within the period specified in the permission, which should not exceed two years, from the date on which permission had

been given for the construction. If, therefore, the construction is not commenced

within six months of the date of the permit, or completed with in the period mentioned in the permit as indicated in sub-S. (2), a fresh permission has to be obtained even to commence construction or to continue construction.

11. In the instant case, Ex. D1 is issued on 31-5-1961. The Amending Act had come into force on 14-4-1962. Even if it could be construed that construction could be completed within two years of the date of the issue of the permit, that period would end with 31-5-1963. Once an outer limit for completing the construction is fixed under S. 242 of the Act, the construction has to be completed within that date. It is not open to the respondent to contend, that he had commenced construction within the date of expiry of Ex. D1 and that he could complete the construction even after the lapse of 22 years. The permit Ex. D1 issued on 31st May, 1961 would not authorise him to continue construction of the building in 1983.

That the construction had commenced even in 1961, is no answer, since S. 242(2) of the Act specifically requires that; the construction should be completed, within the time fixed in the permit, which should not exceed two years from the date of permit. The letter, Ex.D11 written by the Chief Engineer, Corporation of Madras, 2-1/2 months after the date of filing of the complaint in Court, will not help the petitioner. The question as to whether the petitioner is entitled to continue the construction in 1983 on the basis of a permit obtained in 1961, though the foundation had been constructed immediately thereafter, has to be determined, not on the basis of Ex. D11, but upon the construction of the relevant provisions of the Act. S. 362(a) of the Act, penalises commencement of any construction without the permission of the Commissioner, continuing construction in 1983 without the prior permission, as required under S. 242(2) of the Act, falls within S. 362(a) of the Act.

12. In the result, the appeal is allowed, the judgment of the learned Magistrate is set aside and the respondent is convicted for an offence under S. 362 of the Act and sentenced to pay a fine of Rs. 100.