
(1922) 11 AHC CK 0056
In the Allahabad High Court

Mohammad Qasim

APPELLANT

Vs

The Municipal Board and Another

RESPONDENT

Date of Decision : 27-11-1922

Acts Referred:

Citation : AIR 1923 All 371 : 75 Ind. Cas. 607

Hon'ble Judges : Gokul Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gokul Prasad, J.—This is an appeal arising out of a suit for restoration of the yard of an enclosure to its original state and for recovery of a certain amount as damages for the occupation of certain rooms in that compound by the Municipal Board. The plaintiff also pray from an injunction restraining the Municipal Board from realising a certain amount alleged by them to have been spent in paving the yard with bricks to make it sanitary. It appears that the plaintiff has a compound in the City of Saharanpur in which there are 21 shops. In April 1917, a notice was give to the plaintiff by the Municipal Board to pave the yard of the compound in such a way that the water therefrom be properly drained and this was to be done by paving the yard with bricks or kankar or stone ballast. Later on, he was served with another notice directing him to pave the yard as aforementioned or in the alternative to raise its level by putting on earth so that the water might be easily drained away and the place might not become muddy by the coming in and going out of the carts which come to that compound. The plaintiff made some attempt by placing earth towards making the yard sanitary. This was not approved by the Municipal Board who prosecuted him criminally. The plaintiff after that once more tried to make the yard better but this, too, did not find favour with the Municipality. The Municipality therupon gave him the last notice which was served on him on the 30th of May 1917, telling him further that if he did not comply with the order within three months, action would be taken u/s 307 of the Municipalities Act. All these notices purported to be u/s 271 of the

Municipalities Act. The plaintiff made no further attempt to comply with this notice and, at last, in April 1918, that is, about a year afterwards, the Municipal Board had the yard made pacca with bricks on edge and sent the bill amounting to about Rs. 315 to the plaintiff for payment to defendant No. 2, the contractor who had done the work. The plaintiff thereupon brought the present suit. The Municipal Board contended in defence that they were justified in the action which they took and that their contractor, the defendant No. 2, was entitled to the money. The first Court decreed the claim for recovery of Rs. 250, as damages and dismissed the rest of the suit. On appeal the learned Judge has come to the conclusion that the action of the Municipal Board was perfectly legal and within its powers and that the plaintiff was not entitled to the decree which he got. He has found that the plaintiff did not comply with the notice sent to him and that the materials of the Municipal Board were kept in the two rooms with his consent, and that he was not entitled to the rent of those rooms. The plaintiff comes here in second appeal. The first argument advanced on his behalf is that the contract between the Municipal Board and the contractor, defendant No. 2, was not binding on him because it was neither in writing nor was it sanctioned by any resolution of the Municipal Board and reliance was placed on Sections 96 and 97 of the Municipalities Act. It is not easy to understand this contention. u/s 97 of the Act any contract made in any way other than that prescribed by Section 96 of the Municipalities Act would not be binding on the Municipal Board, but if the Municipal Board accepts liability under that contract I do not see how a third party can come in and say that the contract is illegal. In my opinion the Municipal Board having accepted the validity of the contract the plaintiff cannot challenge its validity. There is no force in this contention and I repel it. The next contention raised on behalf of the plaintiff is that he had done what the Municipal Board had asked him to do and the Municipal Board was not justified in having the pavement made as it did. This argument must tail on the finding of the First Court which has been accepted by the lower Appellate Court and is to the following effect: "The plaintiff did not put earth or brick kiln earth, etc., in the sahan as directed by the notice served on him by the defendant No. 1 (i.e. the Municipal Board)." This ground of appeal also fails. Another plea which was taken before the lower Appellate Court and which has been pressed before me is that the notice sent by the Municipal Board was not valid inasmuch as it was not signed by the Chairman. There are no materials on the record to show whether the Secretary who signed the notice was authorised by any resolution or otherwise of the Municipal Board to sign such notices. The point was not taken in the First Court and as it requires a finding on a question of fact, I refuse to entertain it. The result is that the appeal fails and is dismissed with costs inducing in this Court fees on the higher scale.