

(1950) 11 AHC CK 0039
In the Allahabad High Court
Case No : Criminal Revision No. 618 of 1950

Mohan and Larkoo

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-11-1950

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 310(3), 314

Citation : (1951) 21 AWR 161

Hon'ble Judges : P.L. Bhargava, J

Bench : Single Bench

Advocate : Mr. M.B. Bhatnagar, for the Appellant; Mr. Krishna Shanker, Counsel, for the Respondent

Final Decision : Allowed

Judgement

P.L. Bhargava J.

1. The applicants-Lakru, and his son, Mohan, occupier, No. D 331 27 in Mohalla Khalispura, Banaras. Kali Das Gupta the opposite party is the owner of house, which adjoins the house occupied by the applicants and bears No. D 33/28. It is alleged that the western wall of the house of Kali Das was in a dangerous condition. The Municipal Board of Banaras served upon him (Kali Das) a notice u/s 263, Subsection (1), clause (b) of the U.P. Municipals Act, 1916 requiring him to demolish the dangerous portion of the wall. On the 14th September 1949, Kali Das filed an application in the court of the City Magistrate of Banaras, under Sub-section (1) of Section 310 of the Municipalities Act, alleging that the applicants do not allow him to demolish the wall. The applicants were, thereupon, summoned and they filed various objections to the application filed by Kali Das. On the 13th December 1949, the Magistrate made an order directing the applicants to allow Kali Das to comply with the notice; and he further directed that the filed be put up before him on December 21, 1949.

2. It appears that the order passed by the Magistrate, on the 13th December

1949, was not complied with and when the file was put up before the Magistrate on the 21st December 1949 the applicants filed an application praying that the order, dated the 13th December 1949, be vacated. Thereupon, the Magistrate made the following order:

I cannot revise the order passed by me on the 13th December 1949. It is obvious from the application that the second party (Lakru and Mohan) are not allowing the first party (Kali Das) to comply with the notice u/s 263 M. Act. I order u/s 310 Cl. (3) M. Act that the second party shall pay a fine of Rs 5 per day till such time as he refused to allow the 1st party to comply with the notice u/s 263 M. Act. Case to be put up on 29, December 1949, to find out the time for which the second party continues to do so, so that the fine could be realized.

3. On December 13, 1949, Kalidas filed an application pointing out that the applicants had not complied with the order. The Magistrate made the following order;

The second party is absent inspite of due information. I take the facts mentioned in the application, therefore, to be true, Warrant of realization of Rs. 46-fine to date in accordance with my order dated 21st, December 1949, will be immediately issued.

4. When this order was passed, the applicants filed an appeal in the court of the Sessions Judge of Banaras. It appears from the Memorandum of appeal that they challenged all the orders made by the Magistrate. The appeal was dismissed by the Additional Sessions Judge of Banaras to whom it was transferred for disposal. The main ground upon which the decision of the learned Sessions Judge proceeded was that the applicants had not preferred any appeal either against the order, dated the 13th December, 1949, or against the one made on the 21st December 1949.

5. In this revision, learned counsel for the applicants has contended that the entire procedure adopted by the learned Magistrate was illegal ; and that it was not possible for him to prefer any appeal against the orders, dated the 13th December or the 21st December 1949.

6. Sub-section (1) of Section 310 of the Municipalities Act provides for the making of an application in a case where the occupier of any building refuses to allow the owner of any other building to comply with notice which has been served upon him under the Act. The next sub-section of Section 310 empowers the Magistrate to whom the application is made, upon proof of such refusal, to make an order in writing requiring the occupier to allow the owner to comply with the notice. The third sub-section of Section 310 lays down that:

if after the expiration of eight days from the date of the Magistrate's order, the occupier continues to refuse to allow the owner to execute such work, the occupier shall be liable, upon conviction, to a fine which may extend to twenty-five rupees for every day during which he has so continued to refuse.

7. The refusal on the part of the occupier to allow the owner to execute any work in compliance with the notice issued under the Act is an offence and it has been described as such in schedule VIII appended to the Municipalities Act. Section 314 of the Municipalities Act lays down:

Unless otherwise expressly provided, no court shall take cognizance of any of the offence punishable under this Act (whereof a list is given in Schedule VIII for the purpose merely of easier reference) or under any rule or bye-law, except on the complaint of, or upon information received from, the board or some person authorised by the board by general or special order in this behalf.

8. When it is found that an offence punishable under Sub-section (3) of Section 310 of the Municipalities Act has been committed, in order to enable a court to take cognizance of that offence, the procedure laid down in Section 314 of the Act has to be followed. Apart from it, when a court takes cognizance of an offence it has to follow the procedure prescribed for trial of such an offence. In this case, however, it does not appear that the procedure prescribed by Section 314 or the procedure prescribed, for the trial of the offence, which was alleged to have been committed by the applicants, was followed.

9. The record only shows that when the matter was put up before the Court, on the 21st December, 1949, and it was found that the applicants had not complied with the order made on the 13th December 1949, the Magistrate proceeded to make the order which has been quoted above. No such order could have been made without following the procedure prescribed by law. That order being unwarranted by law, the order of the 21st December 1949 imposing a fine and the subsequent order, dated 30th December 1949, must fail along with it.

10. For the reasons stated above, the orders dated the 21st December and the 30th December 1949, cannot be sustained and they must be set aside. Accordingly, I allow this revision and set aside the orders dated the 21st December and the 30th December 1949. The Magistrate will now proceed from the stage up to which the case had reached on the 21st December 1949 in the manner provided by law.

11. Learned counsel, who appears for Kali Das in this revision, has pointed out that the complaint or the information referred to in Section 314 of the U.P. Municipalities Act might have been filed or given. That, however, does not appear from the record which is before me. It will, however, be open to Kali Das to show that when the matter is taken up again by the Magistrate.