
(1969) 12 MP CK 0006
In the Madhya Pradesh High Court
Case No : S.A. No. 335 of 1965

Moulvi Sadruddin Vakil and another	Vs	APPELLANT
Municipal Board, Bhopal		RESPONDENT

Date of Decision : 24-12-1969

Acts Referred:

Bhopal State Municipalities Act, 1955 — Section 175

Citation : (1972) MPLJ 985

Hon'ble Judges : G.P. Singh, J

Bench : Single Bench

Advocate : C.P. Sen, for the Appellant; B.K. Tiwari, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, J.

This appeal is by the plaintiffs. The relevant facts are that there are a number of tenants who are in occupation of shed, constructed on the land belonging to the plaintiffs. Notices were issued by the Municipal Board, Bhopal on 6th and 9th December, 1958 to the tenants as also to the plaintiffs u/s 175 of the Bhopal State Municipalities Act, 1955 alleging that the constructions were made without sanction and directing them to demolish the constructions and intimating that if they were not demolished, action would be taken for their demolition u/s 317 of the Act. The plaintiffs and the tenants went up in appeal to the District Judge Bhopal u/s 328 of the Act, but the appeals were dismissed on 27th March, 1952. Later on, another notice was issued to the plaintiffs under Rule 17 of the Nazul Rules alleging encroachment on Government land under the management of the Board measuring 68 "x 34" and intimating that in case the encroachment was not removed within fifteen days, action will be taken for removal of the same u/s 317 of the Act. The plaintiffs then commenced the suit giving rise to this appeal for issue of permanent injunction against the Board to prevent it from disturbing the plaintiffs' possession and removing the sheds and other constructions. The plaintiffs pleaded that the land over which the sheds of the tenants stood, as also

the land which was alleged to have been encroached "upon, belonged to them and the notices issued by the Board were invalid being in excess of jurisdiction. The suit was decreed by the trial Court, but was dismissed in first appeal. The plaintiffs have, therefore, come up in second appeal, to this Court.

The case of the plaintiffs-appellants in respect of the notice issued under the Nazul Rules may first be examined. The finding of the Additional District Judge is that the plaintiffs failed to prove that the land alleged to be encroached upon belonged to them and, therefore, their challenge to the notice must fail. This line of reasoning cannot be supported. The plaintiffs are in possession of the land and the defendant-Board cannot take any action except by a suit to dispossess them unless the action taken is justified under some law. In the present case, the notice was issued by the Board under Rule 17 of the Nazul Rules. The question to be determined, therefore, is whether the notice issued to the plaintiffs could be issued under Rule 17 or whether the Board had no jurisdiction to issue the same. A copy of Rule 17, which has been made available to me by the learned counsel appearing for the Board, shows that the rule applies only when the encroachment is on a public street or public place. It is only when this condition is satisfied that the Municipal Board can issue a notice under the rule for removal of the encroachment. The notice issued to the plaintiffs, which is Ex. P/3, states that the land encroached upon is Government land under the management of the Board. Now, the notice itself does not state that the land over which the encroachment has been made forms part of a public street or public place. Even in the written statement it is not pleaded that the land encroached upon by the plaintiffs is part of a public street or public place. The expressions "public place" and "public street" are defined in clauses (16) and (17) of section 2 of the Act. The definitions clearly show that simply because certain land is owned by the Government and is vested in the Board for management, it does not become public place or public street. In the circumstances, it must be held that the notice issued by the Board under rule 17 of the Nazul rules was clearly unauthorised and the Board must be restrained from giving effect to that notice.

As regards the validity of notices issued u/s 175 of the Bhopal State Municipalities Act, the learned Additional District Judge was of the view that the suit was barred by section 330 of the Act.

To examine the correctness of this finding the relevant provisions of the Act must first be referred to. For erection or re-erection of any building within the municipal limits, a person has to obtain the sanction of the Board as required by sections 166 and 168 of the Act. Whoever begins, continues or completes the erection or re-erection of any building in contravention of section 166 or 168, commits an offence which is made punishable u/s 174. The Board can also issue a notice u/s 175 to stop erection of a building or to demolish a building. This section which has an important bearing in this case reads as follows:-

175. The Board may at any time by written notice direct the owner or occupier of any land to stop the erection, re-erection or alteration of a building or part of a

building or the construction or enlargement of a well thereon in any case where the Board considers that such erection, recreation, alteration, construction or enlargement is an offence u/s 174 and may, in like manner direct the alteration or demolition as it deems necessary of the building, part of a building or the well, as the case may be.

Any person aggrieved by an order or direction u/s 175 and other " sections referred to in section 328, can appeal under that section to such officer as the Sate Government may appoint for the purpose of hearing such appeals. I am informed that the District Judge was the officer appointed to hear appeals u/s 328 Then comes section 330 which precludes other modes of challenge to an order or direction appealable u/s 328 except by an appeal under that section and gives finality to the order of the appellate authority. The section reads:

(1) No order or direction referred to in section 228 shall be questioned in any other manner or by any other authority than is provided therein.

(2) The order of the appellate authority confirming, setting aside or modifying any such order or direction shall be final:-

Provided that it shall be lawful for the appellate authority upon application and after giving notice to the other party, to review any order passed by him in appeal by a further" order passed within three months from the date of his original order.

A perusal of these sections goes to show that the Act provides remedy by way of appeal for challenging the orders or directions of the Board referred to in section 328 and other modes of challenge are expressly barred by section 330. These sections, however, refer to an order or direction of the Board which means that the order or direction is within the jurisdiction of the Board. If an order or direction is in excess of the statutory powers of the Board, it will be really not an order or direction of the Board though it may purport to be so. Such an order or direction will be liable to be challenged by recourse to the normal remedy of a civil suit and section 330 will not apply to it. Now, section 175 of the Act confers upon the Board a statutory discretion! to issue a notice directing demolition of a building if the Board considers that the erection of the building was an offence u/ s 174. If the Board issues a notice without considering whether the erection of the building was an offence u/s 174, the notice and any direction contained in it will be wholly unauthorised. Similar will be the result if the Board issues a notice mala fide on some extraneous considerations or in such circumstances when no reasonable person could have considered that an offence u/s 74 was committed. It is well settled that when a statutory discretion is exercised by a local authority, the authority must take into account matters which it is required by the statute to take into account, it must not take into account matter" which are not germane to the exercise of the discretion and it must act reasonably, that is to say, the action taken must not be such which no reasonable authority could ever have taken ; (See, the judgment of Lord Gitene M. R in Picture Houses v.

Wedneshury Corporation (1968) 1 All E. R. 694 (H.L.) rtf tried with approval in Smt. Surjoo Bai Vs. Municipal Board, If, in a given case, these settled principles are not followed by the Board in exercising its discretion u/s 175, it would be said that there has been no real exercise of discretion under that provision and the purported notice or any direction contained in it is really not a notice or direction u/s 175. A civil suit for challenging such a notice or direction will not be hit by section 330. In this connection, it may be pointed out that the Bhopal State Municipalities Act, 1955 is modeled on the lines of the Uttar Pradesh Municipalities Act, 1916. Sections 175, 328 and 330 in the Bhopal Act correspond to sections 186, 318 and 321 in the Uttar Pradesh Act. The construction adopted by me of the aforesaid sections in the Bhopal Act accords with the construction adopted by the Allahabad High Court of the corresponding sections in the Uttar Pradesh Act; See, Ziaul Hasan and Others Vs. Mt. Ruquyia Begum and Another, ; Brij Bihari Lal v. Emperor AIR 1949 All. 56; and Mahadeo Prasad v. U.P. Government (1947) 2 All E. R. 680 (C.A.)

The notices u/s 175 of the Act, in the instant case, are challenged on the ground that the constructions directed to be demolished were old constructions existing for the last twenty years requiring no sanction under the Act and the notices could not be issued in respect of them. If it were true that the constructions were more than twenty years old when the notices were issued, they must have existed at the time when the Bhopal Act of 1955 was enacted. No reasonable Board could, if these facts were true, consider that the constructions needed sanction of the Board under the Act of 1955 or that an offence was committed u/s 174 in erecting them. Therefore, if the allegations of the plaintiffs were correct that the constructions were twenty years old in 1958, the notices u/s 175 will have to be held to be wholly unauthorised and they will not be protected u/s 330 of the Act. The learned Additional District Judge was thus wrong in not considering this ground of challenge to the notices and in holding that a suit to challenge the validity of the notices was entirely barred u/s 330.

In the result, the appeal is allowed. The judgment and decree passed by the Additional District Judge are set aside and he is directed to hear and determine the appeal afresh in the light of the observations made in this judgment. There will be no order as to costs of this appeal.