

(1985) 06 BOM CK 0012

In the Bombay High Court

Case No : Criminal Revision Application No. 121 of 1984

Municipal Corporation

APPELLANT

Vs

Mohd. Hussnuddin and Another

RESPONDENT

Date of Decision : 27-06-1985

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 189

Citation : (1986) 2 BomCR 1 : (1986) MhLj 329

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : K.G. Nawandar, for the Appellant; V.G. Gangapurwala and S.T. Deo, for the Respondent

Judgement

Sharad Manohar, J.—A patently unsupportable order revealing misplaced sympathies in the matter of imposition of sentence is passed by the learned Magistrate dealing with offence u/s 189 of the Maharashtra Municipalities Act.

2. The facts are very simple. The respondent, admittedly, constructed two rooms quite unauthorisedly and in rank disregard of the municipal laws. Notice was given to him by the Municipal Council requiring him to demolish the unauthorised constructions. The respondent refused to pay heed to the notice. Ultimately the petitioner council was compelled to institute proceedings against him u/s 189(9) of the Municipalities Act.

3. In the Court, the respondent admitted the fact that he had carried out the unauthorised construction and entered the plea of guilt. Upon this plea, the learned Magistrate just ordered him to pay a fine of Rs. 60/- in purported exercise of his jurisdiction u/s 189(9) of the Municipalities Act and felt that there the matter should end, without bothering that there is some duty cast upon him also under sub-section (10) of the Act.

The position, thus, is that the owner of the building goes about violating the municipal law in the grossest possible manner, pays no heed to the protestations

of the municipal officers and what is done is that the same is regularised by the learned Magistrate requiring him to pay just Rs. 60/- to the Government treasury.

4. The order passed by the learned Magistrate almost smacks of favouritism. The maximum fine prescribed in this connection is Rs. 5000/-. Further, the power is given to the learned Magistrate to direct demolition of the unauthorised construction and if his order is not obeyed, there is a penalty provided at the rate of Rs. 25/- per day. The scheme of the Act, therefore, shows that there is a duty cast upon the Court to see to it that unauthorised constructions do not spring up within the area of the Planning Authority. The learned Magistrate has allowed all duties to go the winds and has given a charter to the respondent to go on enjoying unauthorised construction by payment of only Rs. 60/- to the Government treasury. It is impossible to approve of such a lenient view. Lenience of the present character smacks almost of the dereliction of duty.

5. What the learned Magistrate should have seen is that the power given to him under sub-section (10) is coupled with duty and it has got to be exercised as a matter of mandatory requirement on his part. It was, therefore, incumbent upon him to order the respondent to demolish the unauthorised construction within 15 days and to enforce the order by following the procedure prescribed by sub-section (1) of section 189.

6. The order passed by the learned Magistrate is, therefore, modified and it is ordered that the respondent shall pay fine to the extent of Rs. 2000/-. The respondent is also ordered to demolish the unauthorised construction forthwith and in any event within 15 days from today, failing which he shall have to pay fine at the rate of Rs. 25/- per day until the unauthorised construction has been demolished.

The rule earlier issued is made absolute to the above extent. The amount of fine of Rs. 2000/- to be paid within one month from today.