

(1971) 05 DEL CK 0021

In the Delhi High Court

Case No : Regular Second Appeal No. 312D of 1963

Municipal Corporation, Delhi

APPELLANT

Vs

Janki Pershad

RESPONDENT

Date of Decision : 18-05-1971

Acts Referred:

Citation : (1972) RLR 31

Hon'ble Judges : P.S. Safeer, J

Bench : Single Bench

Advocate : D.D. Chawla and Nand Kishore, for the Appellant;

Judgement

Pritam Singh Safeer

(1) The anchorsheet of this appeal is Exhibit D. 2. That was a notice issued by the appellant u/s 344(1) and section 343 of the Delhi Municipal Corporation Act, 1957. The proviso to section 343 made it obligatory for the Municipal Corporation of Delhi to give reasonable opportunity of being heard to the person whose building was going to be demolished. The proviso contained in section 343 does not itself indicate any specific period which would be the reasonable opportunity of being heard within its scope. In Exhibit D. 2 a period of 24 hours was arbitrarily fixed. The court of first appeal has found that such a period would not be a reasonable period allowing an opportunity of being heard. A person may be out of station. Even if such a person is served with the notice, the period of 24 hours as from the time of service would be grossly inadequate.

(2) It is submitted by the learned counsel for the appellant that the notice was also u/s 344(1) of Act 66 of 1957. A notice for stopping the construction would be for a very different purpose than a notice which may be issued calling upon the person to be notified to show cause why not that which has already been constructed be ordered to be demolished. The notice asking for stopping the construction has an element of emergency in it. It is inappropriate to combine such a notice with the one which may be covered by the proviso contained in

section 343 of the aforementioned Act. I am of the view that the notice allowing only 24 hours for showing cause within the meaning of the proviso as contained in section 343 of the said Act was inadequate. It cannot be said that it offered any reasonable opportunity. On a close perusal of Exhibit D. 2 it becomes evident that only the ultimate paragraph purports to be u/s 343 of Act 66 of 1957, which is :-

"TAKE further notice that the construction having been carried on as stated above you are hereby directed to show cause within 24 hours at 3 to 5 P.M. in the office of the undersigned as to why an order of demolition of the aforesaid erection be not made as required u/s 343 of the said Act."

--- *** --- The notice nowhere specifies as to what is the illegal construction. It would not be possible for anyone to avail of the proviso and thus obtain a reasonable opportunity of being heard unless he is confronted with a specific allegation that particular part of the construction offending a particular provision or by-law is to be demolished. The person receiving such a notice as Exhibit D. 2 for purpose of the aforementioned proviso will be working under grave limitation. He will be having no notice in fact which may be complying with the requirements of section 343 of the Act. A notice to be a notice under that provision must specify the details of the illegal construction so that a representation may possibly be made showing as to the construction is legal or illegal. The first part of the notice covers a different field. The ultimate part alone is concerned with section 343. In no part of Exhibit D. 2 the illegal construction is specified. Exhibit D. 2 cannot be construed as a notice fulfilling the demands of law. There is no merit in this appeal. The same is hereby dismissed.