

(1982) 02 MP CK 0027
In the Madhya Pradesh High Court
Case No : First Appeal No. 1 of 1972

Municipal Council, Kukshi, Dist. Dhar, M. P.	APPELLANT
Vs	
Ramdas Haribhai Mukati	RESPONDENT

Date of Decision : 26-02-1982

Acts Referred:

Madhya Pradesh Municipalities Act, 1961 — Section 187, 323(2)

Citation : (1982) JLJ 659 : (1982) MPLJ 260

Hon'ble Judges : H. G. Mishra, J

Bench : Single Bench

Advocate : S. D. Sanghimth N. K. Sanghi, for the Appellant; M. P. Sundecha, for the Respondent

Final Decision : Dismissed

Judgement

H. G. Mishra, J.

This is an appeal by the defendant Municipal Council against the judgment and decree dated 24th September, 1971, whereby the suit brought by the plaintiff respondent has been partly decreed in respect of declaration and recovery of damages in an amount of Rs. 2063.50 paise.

Facts material for decision of this appeal are as under: The plaintiff-respondent had submitted an application dated 12-3-1962 to the Municipal Council, Kukshi (defendant-appellant-herein) for grant of permission u/s 187 of the Madhya Pradesh Municipalities Act, 1961 (for short, the Act) for reconstructing house No. 18, situated at Shruddhanand lane in Ward No. 2, in the town of Kukshi (hereinafter referred to as the suit house). In the said application the plaintiff asked for permission inter alia, to construct 3" wide and 26" long gallery on the eastern side of the suit house. This application was registered at file No. 572/16 x 362. However, the Municipal Council granted the permission vide certificate dated 21-4-1962 (Ex. P/2), but the permission to construct the aforesaid gallery was not said to have been refused in the said certificate. Since the Municipal

Council did not refuse permission for construction of the aforesaid gallery, within thirty days of the notice of construction given by the plaintiff by his application dated 12-3-1962, referred to above, by virtue of the provisions placed in section 187 of the Act, the plaintiff acquired right to proceed with and proceeded with the work proposed in the notice in the last week of May or beginning of June, 1962, i. e. constructing the gallery, and completed its construction within a period of one month. Thereafter the Chief Municipal Officer of the Municipal Council issued a notice No. 376, dated 25-8-1962, calling upon the plaintiff to stop the work of construction of the gallery, failing which action will be taken against him in accordance with section 187 of the Act. The plaintiff by his reply dated 27-8-1962 submitted that the gallery has already been constructed some two months back and that the notice issued by the Municipal Council is illegal and void. The plaintiff also submitted an application for compromise in the matter to the Municipal Council, but the Municipal Council rejected the offer of compromise so made by the plaintiff. Aggrieved by which the plaintiff preferred an appeal to the Collector, Dhar. The Collector, Dhar, rejected the appeal vide order dated 31st December, 1962 (Ex. D/27). In the meanwhile; another notice was issued by the Municipal Council dated 17-9-1962 (Ex. P/31) calling upon the plaintiff to remove the encroachment made in the shape of gallery within three days of its receipt, failing which the encroachment will be removed in accordance with the provisions of section 323(2) of the Act and the expenses of such removal will be recovered from the plaintiff. Ultimately all moves at the instance of the plaintiff to get the matter compromised having been rejected, the Municipal Council demolished the gallery on 28-1-1964 and expenses of such removal in an amount of Rs. 63.50 were recovered from the plaintiff.. After giving notice the plaintiff has brought the suit claiming nine reliefs, as detailed in plaint para 35(a) to (i), namely: (a) that it be declared that the defendant Council had no right to demolish the gallery in question; (b) that the plaintiff has right to reconstruct the gallery as it was on 28-1-1964 when the same was demolished by the defendant Council and the defendant has no right to obstruct the plaintiff from reconstructing the same; (c) that Rs. 1000 should be awarded as costs which the reconstruction of the gallery will involve; (d) that a decree for Rs. 1936.50 paise should be granted in favour of the plaintiff against the defendant in respect of material of the gallery, which was taken away by the employees of the Municipal Council, which has been rendered unfit for being used in the reconstruction; (e) that a decree for refund of Rs. 63.50 paise, recovered as expenses for demolition from the plaintiff along with interest at the rate of annas eight per cent per mensem should be passed; (f) that Rs. 1000 should be awarded by way of damages in respect of mental agony occasioned as a result of demolition of the gallery; (g) that Rs. 500 should be awarded as damages for trespass made by the defendant in the house of the plaintiff; (h) that Rs. 2000 should be awarded as damages for the damage caused by the act of demolition to the house of the plaintiff, and (i) that damages in an amount of Rs. 8600 for defamation and lowering down of the prestige of the plaintiff and members of his family in the eyes of general public. Thus, in all a decree for Rs.

20,000 was claimed by way of damages.

This claim was resisted by the defendant-Municipal Council inter alia on the grounds that no permission was ever granted to the plaintiff to construct the gallery in question; that the plaintiff did not acquire any right to proceed with construction of the gallery by virtue of any provision placed in section 187: that construction of the gallery was started nearabout 24 8-1962 and had not been completed two months prior to the service of the aforesaid notice by the Municipal Council on the plaintiff; that the gallery in question was unauthorisedly constructed; that the gallery in question projected over a public lane; that the plaintiff having failed to demolish the gallery in spite of being required by the Municipal Council to remove the same, the Municipal Council acted within their rights to demolish it; that the action of the Municipal Council was in good faith and that employees of the Municipal Council did not commit any trespass nor caused any inconvenience or nuisance or defamation or created terror to the plaintiff or members of his family, as alleged by him; that members of the plaintiff's family had taken away the marble stones and other stones left on demolition and that the plaintiff has no right to recover damages claimed. It was also contended that the plaintiff having been the President of the Municipal Council, ought not to have constructed the gallery without obtaining permission and since the gallery was constructed without permission, the defendant Council acting u/s 223(2) of the Act, demolished the gallery in question. As such, the plaintiff has no right to maintain the suit.

After recording evidence the trial Court partly decreed the suit: (a) by declaring that the defendant had no right to demolish the gallery in question without prosecuting the plaintiff in the matter; (b) by declaring that the plaintiff has a right to rebuild the gallery after obtaining necessary permission from the defendant, and (c) has decreed the suit for refund of Rs. 63.50 paise and awarded Rs. 2000 by way of costs of reconstruction of the gallery. Thus, in all a decree for Rs. 2063.50 has been passed against the defendant with liability to pay proportionate costs to the plaintiff. Aggrieved by this judgment and decree the defendant has preferred this appeal claiming dismissal of the suit. The plaintiff-respondent has also preferred a cross-objection seeking reversal of that part of the judgment and decree by which the rest of his claim was dismissed.

In this appeal it was contended by Shri S. D. Sanghi, learned counsel for the defendant-appellant that the trial Court has acted illegally in holding that the Council had no power to demolish the gallery in question; that sections 187, 194, 223 and/or section 298 of the Act authorise the Municipal Council to remove the gallery, which the plaintiff had constructed without permission and failed to remove although required by the Municipal Council to demolish the same; that the Council is not liable to pay any damages to the plaintiff decreed and /or claimed and for the same reason no decree for refund of (costs) expenses for removal can be passed.

Shri K. M. Sundecha, learned counsel for the plaintiff-respondent argued in

support of the finding recorded by the trial Court that the Municipal Council had no power to demolish the gallery in question and contended that the decree for refund of expenses recovered and for damages awarded, deserves to be maintained and in addition the reliefs refused by the trial Court also deserve to be granted by allowing the cross-objections.

Having heard the learned counsel for the parties, I have come to the conclusion that the appeal as well as the cross-objections deserve to be dismissed.

In this case the contention of the plaintiff is that the gallery in question should be deemed to have been constructed in accordance with the right which accrued to him by virtue of the provisions placed in section 187(6) of the Act. To appreciate this contention, provisions placed in section 187 of the Act will have to be kept in mind, which read as under:

S. 187. -Notice of new buildings.- (1) No person shall erect or re-erect or construct or build or commence to erect or re-erect or construct or build any building without the sanction of the Council.

(2) Before beginning to erect any building, or to alter externally or add to any existing building, or to construct or reconstruct any projecting portion of a building in respect of which the Council is empowered by section 184, to enforce a removal of set-back, the person intending so to build, alter, add or reconstruct shall give to the Council notice thereof in writing and shall, if required by a bye-law or by special order to do so furnish along with such notice a plan showing the levels, at which the foundation and lowest floor of such building are proposed to be laid, by reference to some level known to the Council and all such information as may be required regarding the limits, design, ventilation and materials of the proposed building, and the intended situation and construction of the drains, sewers, privies, water-closets and cesspools, if any, to be used in connection therewith and the location of the building with reference to any existing or projected streets and the purpose for which the building will be used.

(a) overhangs or juts into or in any way projects or encroaches upon any public street, so as to be an obstruction to safe and convenient passage along such street; or

(b) projects and encroaches into or upon any uncovered aqueduct, drain or sewer in such street so as to obstruct or interfere with such aqueduct, drain or sewer, or the proper working thereof:

Provided that the Council shall, if such projection, encroachment, or obstruction shall have been made in any place before the date on which such place became part of a Municipality, or after such date with written permission of the Council, make reasonable compensation to every person who suffers damage by such removal or alteration; and if any such dispute shall arise touching the amount of such compensation, the same shall be ascertained and determined in the manner provided in section 303." (Emphasis supplied) In the instant case the gallery in

question was not constructed by the plaintiff, in pursuance of any written permission granted under this section. It was constructed contrary to the permission granted, vide Ex. P/2, as discussed above. In such a situation, by virtue of sub section (2) of section 194, the Municipal Council could have prosecuted the plaintiff for making the construction of the aforesaid projection without permission. But this course was not adopted. In the instant case, the Municipal Council appears to have issued written notices requiring the plaintiff to remove the gallery, which had been constructed without permission of the Council. This action can be regarded to be under clause (b) of sub-section (2) of section 194 of the Act. However, beyond permitting issuance of a written notice for the aforesaid purpose, the section does not proceed further to authorise the Council to demolish the projection on failure to comply with the notice.

Faced with this situation, it was contended by Shri Sanghi, learned counsel for the Municipal Council that the power to demolish has been conferred by section 223 of the Act, which reads as under:

"S. 223. Obstructions and encroachments upon public streets and open spaces-(1) Whoever, in any place after it has become a Municipality, shall have built or set up, or shall build or set up, any wall or any fence, rail, posts, stall, verandah, platform, plinth, step or any projecting structure or thing or other encroachment or obstruction, in any public street or shall deposit or cause to be placed or deposited any box, bale, package or merchandise, or any other thing in such street", or in or over or upon, any open drain, gutter, sewer, or aqueduct in such street, shall be punished with fine which may extend to two hundred and fifty rupees and with further fine which may extend to five rupees for every day on which such projection, encroachment, obstruction or deposit continues after the date of first conviction for such offence.

(2) The Council shall have power to remove any such obstruction or encroachment, and shall have the like power to remove any unauthorised obstruction or encroachment of the like nature in any open space not being private property, whether such space is vested in the Council or not, provided that if the space is vested in the State Government, the permission of the Collector shall have first been obtained and the expense of such removal shall be paid by the person who has caused the said obstruction, or encroachment and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII.

(3) Whoever, not being duly authorised in that behalf, removes earth, sand or other material from, or makes any encroachment in or upon any open space which is not private property, shall be punished with fine which may extend to fifty rupees, and, in the case of an encroachment, with further fine which may extend to ten rupees for every day on which the encroachment continues after the date of first conviction for such offence.

(4) Nothing contained in this section shall prevent the Council from allowing any

temporary occupation or erection in any public street on occasions of festivals and ceremonies, or the piling of fuel in by-streets and spaces for not more than ten days; and in such manner as not to inconvenience the public or any individual, or from allowing the occupation of, or temporary erection of structures on any such streets or spaces for any other purpose in accordance with bye-laws made under this Act.

(5) Nothing contained in this section shall apply to any projection duly authorised under sub-section (1) of section 194.

(Emphasis supplied)

Reliance on the aforesaid provisions for justifying the impugned action of the Municipal Council does not appear to be open. Section 194 concerns itself with projections in public streets from any upper storey; whereas section 223(1) concerns itself with projections, encroachments or obstructions in any public street. Nov/, the expression "in any public street" used in subsection (1) of section 223 is of significance. The word "in" indicates that the postulate of law on the point is that the projection, encroachment or obstruction should be on the surface of the public street. As such, it has no application to a case of overhanging encroachment. This appears to be clear from the use of the word "in" in the aforesaid expression occurring in section 223(1) and use of different expression "in or over or upon" in the same sub-section in the context of any open drain, gutter, sewer or aqueduct in such street. Accordingly, the expression "in any public street" has to be construed in the aforesaid manner and has to be regarded as to exclude a case of overhanging encroachment. Accordingly, the Municipal Council cannot be regarded to have been empowered by section 223 to demolish the gallery in question, as it was over-hanging undisputedly at a height of 20" from the ground level of the public street.

As a last resort, placing reliance on the provisions of section 298(1) of the Act, it was contended by Shri Sanghi that the expression "any work is required to be executed" and "in execution of such work" used therein are wide enough to cover the act of demolition by the Municipal Council on failure of the owner of the building to comply with the requirement by the Council in that behalf. Section 298(1) reads thus :

S. 298.-Council in default of owner or occupier may execute works and recover expenses.-(1) Where under the provisions of this Act any work is required to be executed by the owner or occupier of any building or land default is made in execution of such work, the Council whether any penalty is or is not provided for such default, may cause such work to be executed; and the expenses thereby incurred shall, unless otherwise expressly provided in this Act, be paid to it by the person by whom such work ought to have been executed, and shall be recoverable in the same manner as an amount claimed on account of any tax recoverable under Chapter VIII either in one sum or by instalment as the Council may deem fit:

Provided that-

(a) Where any Drainage Scheme or Water Works Scheme has been commenced by any Council, it shall be lawful for the Council, without prejudice to its power u/s 201 of any other provision of this Act, to make a special agreement with the owner of any building or land as to the manner in which the Drainage and water connection thereof shall be carried out, and the pecuniary or other assistance, if any, which the Council shall render, and any payment, agreed upon by the owner shall be recovered in accordance with the terms of such agreement or in default, in the manner prescribed in sub-sections (2) and (3);

(b) where an order or requisition has been passed under sub-section (1) of section 180, sub-section (3) of section 187, or u/s 200, 203, 208 or 209, or where permission has been given u/s 207 or where an arrangement has been made under clause (a) the Council may, without-prejudice to any other powers under this Act, if it thinks fit, declare any expenses incurred by the Council, in the execution of order or in the carrying out of such requisition, permission or arrangement to be improvement expenses. Improvement expenses shall be charged upon the premises or land, and shall be levied in such instalments as the Council may decide including interest at the rate of 6% per cent per annum, and shall be recoverable in the manner prescribed in sub-sections (2) and (3).

In order that the provisions of sub-section (1) of section 298 may come into operation, it is necessary to show co-existence of the following conditions: (i) the owner or occupier of any building or land should be shown to have been required to execute any work; (ii) this requirement should be under the provisions of the Act, and (iii) the owner or occupier of the building or land should have made default in execution of such work. On proof of the aforesaid conditions, the Council will be regarded to have acquired right to cause such work to be executed and to recover expenses thereby incurred from the person and in the manner specified therein.

Now, the word "work" used in the aforesaid expression appears to convey positive concept. It appears to connote a phenomenon of constructive character. This is apparent from the provisos (a) and (b) to the enacting part of the aforesaid sub-section. The provisos appear to have taken out certain specific instances of execution of work falling within the generality of the expression and to have dealt them in a special manner. The constructions envisaged by section 201 and/or sections 187(3), 200, 203, 207, 208 and 209 have to be carried out in the manner specified therein. Such work may relate to levelling, paving, metalling, flagging, channelling, draining, lighting or cleaning of any street or may pertain to cover all sewers, drains, privies, water-closets, house-gallies and cesspools with proper traps etc., as specified in the aforesaid sections.

It is a cardinal rule of interpretation", observed Bhagwati, J. in *Ram Narain Sons Ltd. Vs. Asst. Commissioner of Sales Tax and Others*, , "that a proviso to a particular provision of a statute only embraces the field which is covered by the

main provision to which it has been enacted as a proviso and to no other." So construed, the aforesaid expressions connote something positive required to be done by the Council under the provisions of the Act. However, they do not include the power to include within their pale any act of demolition of any existing work. The connotation of the word "work" as used in the various sub-sections of section 187 of the Act appears to be the same and, at any rate, does not appear to mean and connote an act of demolition. As such, reliance on section 187 as an aid to construction of section 298 is of no avail.

Reliance was placed on the Dictionary meaning of the words "execution" and "work" as given in the Webster's New World Dictionary (1976 print) which is as under :-

"Execution"-I.-the act of executing; specific... (a) carrying out, doing etc., (b) a putting to death in accordance with a legally imposed sentence. 2- the manner of doing or producing something, as of performing a piece of music. 3-Law, a writ, issued by a Court; giving authority to put a judgment into effect."

"Work" I-physical or mental effort exerted to do or make something; labour, toil. 2-employment as a job (out of work); 3 -Occupation, profession, business, trade, craft etc., 4-something one is making, doing or acting upon; task (to take work home), the amount of this (a day's work); 5-something that has been made or done; specific; (a) an act, deed, usually used in pi. (good works); (b) collected writings; (v) engineering structures, as bridges, dams, etc., (d) a fortification, needlework, embroidery, (f) same as work of Art."

Reliance on the aforesaid Dictionary meaning of the words "execution" and ""work" does not appear to be useful for construction of those words as used in the aforesaid expression. The Courts are not supposed to act under the dictatorship of Dictionaries, but have to construe the words having regard to the object which a provision seeks to achieve and the setting in which a particular word has been used. So construed, an "act of demolition" cannot be regarded as "execution of work".

(3) Save as otherwise provided in this Act or the rules and bye-laws made thereunder, the Council may either refuse to give permission or give permission to erect, alter, add to or reconstruct the building according to the plan and information furnished or may impose, in writing, such conditions as to level, drainage, sanitation, materials or to the dimensions and cubical contents of rooms, doors, windows and apertures for ventilation or to the number of storeys to be erected or with reference to the location of the building in relation to any street existing or projected or the purpose for which the building is to be used as they think proper or may direct that the work shall not be proceeded with unless and until all questions connected with the respective location of the building and any such street have been decided to its satisfaction.

(4) The Council may before any work has been commenced in pursuance of any permission granted under sub-section (3) revoke such permission and may give

fresh permission in lieu thereof on such conditions, in accordance with this Act and the rules, and bye-laws made thereunder, with reference to the matters mentioned in the said sub-section, as it thinks proper, and may direct that the work shall not be proceeded with unless and until all questions connected with the respective location of the building and any such street have been decided to its satisfaction.

(5) Before issuing any orders under sub-section (3), the Council may, within one month from the receipt of such notice, either issue -

(a) a provisional order directing that for a period not exceeding one month from the issue thereof the intended work shall not be proceeded with; or

(b) may demand further particulars.

(6) A work proposed in a notice given under sub-section (2) may be proceeded with in the manner specified in such notice, provided that such manner is not inconsistent with any provision of this Act, or of any bye-law for the time being in force thereunder, in the following cases namely :-

(a) in case the Council, within one month from receipt of such notice, has neither-

(i) passed orders under sub-section (3) and served notice thereof in respect of the intended work; nor

(ii) issued under sub-section (5) any provisional order or any demand for further particulars;

(b) in case the Council having issued such demand for and having received such further particulars, has issued no further orders within one month from the receipt of such particulars.

(7) No person who becomes entitled under sub-section (3) or subsection (6) to proceed with any intended work of which notice is required by sub-section (2) shall commence such work after the expiry of the period of one year from the date on which he first became entitled so to proceed therewith, unless he shall have again become so entitled by fresh compliance with the provisions of the preceding sub-section.

(8) Whoever begins any construction, alteration, addition or reconstruction without obtaining permission or giving the notice required by sub-section (2) or without furnishing the documents or affording information above prescribed, or in any manner contrary to such orders of the Council as may be issued under this section or contrary to the provisions of sub-section (7), or in any other respect contrary to the provisions of this Act or any bye-laws in force thereunder, shall be punished with fine which may extend to one thousand rupees; and in the case of continuing contravention of any of the aforesaid provision, with an additional fine which may extend to ten rupees for each day during which such contravention continues after conviction for the first such contravention; and the Council may, before conviction, direct that the building, alteration, addition or reconstructs n

be stopped and on conviction under this sub-section may, by written notice, require such construction, alteration, addition or reconstruction to be altered or demolished in accordance with the provisions of such notice.

(9) The Council or any officer deputed by it may, at any time, inspect the erection of any building and at any time during the erection of building or the execution of any such work as aforesaid or at any time not later than one month after being informed, in writing by the person responsible for giving a notice under sub-section (2) that the erection of the building, or the execution of any such work as aforesaid has been completed, may be in contravention of any provision of this Act or any bye-laws made under this Act at the time in force, and require the person erecting or executing, or who has erected or executed, such building or work or if the person who has erected or executed such building or work, is not at the time of notice the owner thereof, then the owner of such building or work to cause anything which is contrary to any such provision or bye-law to be altered or to execute such work, which may be required to be executed by him in accordance with such provision or bye-law.

Explanation. -The expression "to construct a building" throughout this chapter includes-(omitted as of no relevance here)" In order that right to proceed with the proposed work may be regarded to have accrued to a person giving notice as envisaged by sub-section (6) of section 187, it is necessary that the notice must be in accordance with the requirements of sub-section (2) of the said section. In this case, the plaintiff served the notice of proposed construction by submitting an application dated 12-3-1962 (Ex. P-1) merely. It was not accompanied by requisite plans to the scale in duplicate showing the proposed construction in red colour. As such, it cannot be regarded that the plaintiff had served on the Municipal Council a notice as required by law. No doubt, in his application the plaintiff had inter alia sought permission to construct the gallery measuring 3"x26" at a height of 20"from the ground level, yet in absence of the requisite plan, it cannot be regarded that he had given notice u/s 187(2) of the Act. Accordingly, it cannot be regarded that he had acquired right to proceed with the construction in the manner specified in his application. That apart, before a right envisaged by section 187(6) of the Act can be regarded to have accrued in favour of the plaintiff, there should be failure on the part of the Municipal Council to act within one month from the date of such notice. In the instant case by special orders dated 22-3-1962 (Exs. D-1 and D-2), the Municipal Council had required the plaintiff to furnish plans in duplicate prepared to the scale showing the proposed construction in red ink. Such power is, in terms conferred on the Municipal Council by sub-section (2) of section 187 and the plaintiff had in fact thereafter submitted the requisite \ plans. Ultimately, certificate of permission dated 21-4-1962 (Ex. P-2) and the sanctioned plan, as per Ex. D-6, were issued and sent to the plaintiff by Municipal Council. The certificate of permission shows that permission to construct items 1 to 7 was granted and it was clearly specified in the Note appended to it that no construction should be made contrary to the terms. In the plan, which was submitted by the plaintiff showing the proposed

construction and which was sanctioned as per Ex. D-6, the gallery in question is not shown. Accordingly, construction of the gallery in question was contrary to the permission granted. That apart, the provisions of section 187 apply to those cases where a private person wants to make construction on his own land. In this case the land on which the gallery in question projected and overhanged is not proved by the plaintiff to belong to him. There is no documentary evidence showing that the land over which the gallery in question overhangs, belongs to the plaintiff. In the plan, Ex. D-6, submitted on behalf of the plaintiff by his father, the lane in question, in which the projection overhanged, has been shown to be a Municipal lane. Oral evidence led by the plaintiff has been found to be insufficient to outweigh the aforesaid admission and nothing conclusive could be brought out by the plaintiff by cross-examination from the statement of the witnesses examined on behalf of the defendant on the basis of which it may be regarded that the lane over which the projection in question overhanged belonged to the plaintiff. For this reason also the provisions of section 187 of the Act cannot be invoked by the plaintiff.

Accordingly, in view of the discussion aforesaid, it has to be held that the gallery in question was constructed without permission, rather contrary to the permission granted by the Municipal Council, vide Ex. P-2, read with Ex. D-6 to the plaintiff and that the lane over which the gallery overhanged was a public street, as defined in section 3(28) of the Act.

A feeble attempt was made by Shri Sundecha, learned counsel for the plaintiff-respondent to contend that the lane being a blind lane, cannot be regarded to be a public street within the contemplation of the aforesaid provision. Section 3(28) of the Act, reads as under:

S. 3.-Definitions.-In" this Act unless the context otherwise requires,-

(28) Public street means any street- (a) over which the public have a right of way; or

(b) which has been heretofore levelled, paved, metalled, asphalted, channelled, sewerer or repaired out of municipal or other public funds; or

(c) which under the provisions of this Act becomes a public street; and includes-

(i) the roadway over any public bridge or causeway; (ii) the footway attached to any such street; (iii) public bridge or causeway, and the drains attached to any such street, public bridge or causeway." The fact that certain other houses also open into the aforesaid lane and that the lane is used by persons residing in those houses, is no longer in dispute between the parties. Accordingly, the aforesaid lane, though blind, has to be regarded as a public street within the contemplation of section 3(28) of the Act. The trial Court appears to be right in concluding so.

As a sequel to the discussion aforesaid, the act of demolition of the gallery in question on the part of the Municipal Council, cannot be regarded to have been

done in pursuance of the provisions of section 187 of the Act, as it overhanged in a public street. The provisions applicable to cases of projection in public street are those placed in section 194 of the Act which reads as under:

-Permission necessary for certain projections:-(1) The Council may, subject to any bye-laws made under the provisions of this Act, give written permission to the owner or occupiers of buildings in public street to put upon verandahs, balconies or rooms, to project from any upper storey thereof, at such height from the surface of the street as the Council may fix and to an extent not exceeding four feet beyond the line of plinth or basement wall, and may prescribe the extent to which and the conditions subject to which, roof caves, weather boards, dasses, shop boards and the like may be allowed to project over such streets.

(2)(a) Any such owner or occupier putting up any such projections as aforesaid without such permission or in contravention of such orders, shall be punished with fine which may extend to two hundred and fifty rupees and if any such owner or occupier fails to remove any such projection as aforesaid in respect of which he has been convicted under this section, he shall be punished with further fine which may extend to five rupees for each day on which such failure or neglect continues.

(b) Notwithstanding any proceedings which may be taken under clause (a), the Council may, by written notice, require the owner or occupier of any such building to remove or alter any such projection which has been constructed either without, or contrary in any manner to, the permission or order given or issued by or on behalf of the Council.

(3) The Council may, by written notice, require the owner or the occupier of any building to remove or alter any projections, encroachment or obstructions which, whether erected before or after the site of such building became part of a Municipality, shall have been erected or placed against or in front of such buildings, and which-

Before parting with this point, it has to be noted that non-compliance of the order of the Council has to be followed with prosecution, as envisaged by sections 187(8), 194(2)(a) or section 223(1) in a case falling thereunder. In order to compel performance of the act required to be done by the Municipal Council, a provision for imposition of further fine also appears to have been made. But there appears to have been made no provision authorising the Municipal Council to demolish any projection like the gallery in question constructed without permission, if not removed by the owner in spite of having been so required by the Municipal Council. If the framers of the law have in their wisdom not made any provision authorising the Municipal Council to demolish such a construction, by no process of interpretation or construction such a power could be read into the aforesaid provisions.

In this case, the trial Court has held that the Municipal Council had no power to demolish the gallery in question. The ultimate conclusion so reached by the

learned trial Judge appears to be correct. For the aforesaid added reasons, the finding so reached by the trial Court deserves to be maintained and it is hereby held that the appellant Municipal Council had no power and authority to demolish the gallery in question. As a sequel to this finding, it has to be held further that the Municipal Council had no power to recover Rs. 63.50 as expenses for the demolition.

This brings me to the remaining contentions raised in support of the appeal and the contentions raised on behalf of the plaintiff-respondent in support of his cross-objections. In view of the aforesaid finding, the plaintiff solicited a decree for restoration of the gallery in the condition in which it stood at the time of demolition. In view of the fact that the gallery was constructed without permission, rather contrary to the permission granted vide, Ex. P/2, passing of a decree authorising reconstruction of the gallery as it stood prior to its demolition does not appear to be legally permissible. The trial Court has declared that the plaintiff has right to re-build the gallery in question after obtaining the necessary permission from the defendant Council. In face of the aforesaid decree, it cannot be successfully contended by the plaintiff that he should be authorised to reconstruct a structure, which he had constructed without permission, rather contrary to the permission granted. It is not a case where the unauthorised demolition was of a structure duly constructed. Accordingly, the decree passed by the trial Court on the point appears to be in accordance with law and does not call for any interference. However, the finding recorded by the trial Court that the Municipal Council will be under an obligation to grant permission for reconstruction of the gallery so demolished, does not appear to be in accordance with law. Accordingly, the observations made by the trial Court in this behalf do not appear to be warranted by the provisions of law. Accordingly, it is held that the Municipal Council will be free to consider the application if submitted by the plaintiff for reconstruction of the gallery and decide the same after taking into account considerations, which may be relevant under the law governing the situation. Accordingly, the observations made in para 21 of the impugned judgment will be treated to have no effect and the reasoning employed by the trial Court on the point is hereby reversed.

This brings me to the question of adequacy of compensation awarded. The defendant-appellant contends that the award of compensation of Rs. 2,000 on the count of reconstruction of the gallery and plastering of the wall is excessive. On behalf of the plaintiff-respondent it is contended, on the other hand, that the claim for compensation rejected by the trial Court, deserves to be decreed. It is true that the plaintiff has claimed by way of labour charges for reconstruction of the gallery Rs. 1000 only,"but the plaintiff has also claimed Rs. 2000 on the count of damage caused to the building of the plaintiff by the demolition. The award of compensation in an amount of Rs. 2000 is on both these counts and appears to be just and proper. The reasoning employed by the learned trial Judge in para 18 of the impugned judgment is not shown to be vitiated by any misreading of evidence, misdirection of law or by perversity. Accordingly, the

finding on the point deserves to be confirmed and is hereby affirmed. So far as the claim of the plaintiff for award of compensation on other counts, summarised by the learned trial Judge in para 2(vii), (c)(ii), (iii), (iv), (v) and (vii) of his judgment and rejected on the basis of the reasoning employed while deciding issue Nos. 12, 13, 14, 18, 19 and 20, is concerned, dismissal of the claim of the plaintiff does not appear to call for any interference. Simply because the act of demolition of the gallery was not authorised by law, the plaintiff does not seem to be justified in claiming damages on the ground that his status is lowered down by the said Act. The plaintiff has also failed to prove that the impugned action was the outcome of any mala-fides. The contention of the plaintiff to the effect that the defendant had demolished the gallery in question in order to create terror or to lower down the plaintiff in estimation of others, is wholly unfounded. The plaintiff has not proved that he was legally entitled to claim any damages for mental agony caused by the act of demolition to him and to members of his family. So also, no facts and circumstances have been brought on record by the plaintiff which may entitle him legally to the award of damages in an amount of Rs. 5,000/- for trespass, said to have been committed by the Municipal Council. So also the plaintiff has failed to sustain his claim for award of Rs. 8,600/- or any amount for his being lowered down in estimation of his caste. The claim of the plaintiff on the aforesaid count is unreal and appears to have been rightly negated by the learned trial Judge. Nothing could be pointed out on the basis of which the finding recorded by the trial Court against the plaintiff on the aforesaid counts may be regarded to be vitiated by any mistake of law or misreading of the evidence. The finding so arrived at by the trial Court is not shown to be such which no reasonable man will arrive at. No material evidence is shown to have been ignored either. This the finding of fact recorded by the trial Court in negating the claim of the plaintiff in respect of compensation on other counts is not shown to be factually incorrect and legally untenable. As such, the cross-objections in that behalf deserve to be dismissed.

In view of the discussion aforesaid, the judgment and decree passed by the trial Court deserve to be affirmed and are hereby confirmed. However, it has been brought to the notice of this Court that the receipt of legal fee has been submitted by the Counsel for the defendant Municipal Council after delivery of the judgment. Accordingly, it could not be included in the costs awarded. However, the same has been shown in the decree under appeal. The plaintiff may move the trial Court for the purpose. In view of the fact that no separate Court-fees has been paid on the aforesaid item, no interference in that behalf appears to be permissible. Accordingly, it is made clear that the plaintiff will be free to submit an application for the aforesaid purpose to the trial Court and the trial Court will consider the same on its merits unhampered by the judgment and decree passed by it and in this appeal.

In the result, the appeal as well as the cross-objections fail and are hereby dismissed subject to the aforesaid observations. Having regard to the nature of the controversy between the parties, I make no order as to costs as incurred in

this Court. The costs in the trial Court will be as directed by it.