
(1956) 07 MP CK 0003
In the Madhya Pradesh High Court
Case No : C.S.A. No. 202 of 1954

Municipality Indore

APPELLANT

Vs

Hatim Ali

RESPONDENT

Date of Decision : 30-07-1956

Acts Referred:

Indore City Municipal Act, 1909 — Section 45(5)

Citation : (1957) JLI 37

Hon'ble Judges : Chaturvedi, J

Bench : Single Bench

Advocate : Jhanjaria, for the Appellant; Avadhoot, for the Respondent

Final Decision : Allowed

Judgement

Chaturvedi, J.—This is a second appeal from a judgment of the second Additional District Judge, Indore, confirming the judgment of the Additional City Civil Judge, Indore, in Original Suit No. 664 of 1951.

2. The brief facts are that the plaintiff Hatim Ali had constructed a house with the sanction of the Municipal Commissioner but the latter objected to certain structures which were not according to the sanction. A notice was given to the plaintiff to remove those structures which were not according to the sanction. The plaintiff's contention was that all structures were according to sanction and should not be removed. The plaintiff, therefore, came to the court and filed a suit for granting permanent injunction restraining the Municipal Commissioner from demolishing those structures. Both the courts have held that the structures in question were not according to the sanction of the authorities, but have expressed the opinion that the order of demolition of those structures is a very harsh one and the Municipal Commissioner would be justified in compounding the case and accepting compensation from the plaintiff. Merely on this ground the suit has been decreed by the trial court and curiously enough, its judgment has been confirmed in first appeal.

3. Both the courts have placed reliance on a Punjab case, AIR 1940 185 (Lahore) wherein Din Mohammad J. took the view that the power to demolish a building is vested in the Municipal Committee only to meet extreme cases of defiance or cases in which encroachments are made on Municipal Lands or rules framed by the Committee on hygienic or sanitary grounds are flagrantly ignored. Where this is not the case and the only infringement of the law is a disregard of the provision requiring every person not to erect any building without the sanction of the Committee, it was held that the law provides an alternative remedy that is to penalise the offender in such sum as the Committee may deem reasonable.

4. This view has not been accepted by any High Court in India and it was clearly overruled by a Division Bench of the Punjab High Court consisting of Harries C.J. and Mahajan J. (as he then was) in AIR 1945 151 (Lahore) (Administrator, Corporation of Lahore vs. Mangal Sen). The Division Bench in this ruling discussed the provisions of S. 195 of the Punjab Municipal Act (3 of 1911) and came to the conclusion that the language of that section makes it clear that when it is proved that a building has been erected without proper sanction, the discretion is that of the Committee whether to order demolition or to take compensation. It was observed that the court cannot substitute itself for the Committee and decide whether or not a demolition order should be made or whether compensation should be demanded. It was added that there is no power in a court to compel the Committee to accept compensation. The Legislature has given choice to the Committee to take one course or the other and the quantum of compensation is also within the sole discretion of the Committee.

5. This opinion seems to be sound and I respectfully concur in It.

6. Clause (5) of S. 45 of the Indore Municipal Act (No. IV of 1909) runs as follows--

Where any such work is begun or executed without sanction or contrary to the terms of the sanction or in contravention of any written direction of the Commissioner issued under sub-section (1), or after sanction has elapsed, the Commissioner may, by notice given within reasonable time, require the building to be altered or demolished as he deems necessary.

It will be obvious that the Legislature has vested discretion in the Municipal Commissioner.

7. Mr. Avadhoot says that even in discretionary matters Civil Court can interfere and cites certain rulings which are not relevant. The only cases in which such discretion of local boards or authorities have been interfered with are where there were allegations of mala fides or where it was found that though the order made was under guise of exercising discretion, it was a colourable performance and tantamount to a refusal to exercise the discretion entrusted to them by the law. There are no allegations of this sort in this case in the plaint and no findings to that effect by the Courts below. Hence those rulings would not apply to the present case.

8. I would, therefore, allow the appeal, set aside the decrees and judgments of the Courts below and order that the suit be dismissed with costs throughout. I do not think it proper to express any opinion on the point whether the new Madhya Bharat Municipalities Act (1 of 1954) would or would not now govern the removal of the structures in this case.