

(1926) 05 MAD CK 0019
In the Madras High Court

P. Mahadeva Iyer and Others

APPELLANT

Vs

Municipal Council, Kumbakonam

RESPONDENT

Date of Decision : 07-05-1926

Acts Referred:

Citation : AIR 1927 Mad 241 : (1927) 25 LW 329

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The plaintiffs' suit is for a permanent injunction restraining the Municipal Council of Kumbakonam from demolishing a masonry koradu put by them in front of their house. Both the Courts have dismissed the plaintiffs' suit. The plaintiffs have preferred this second appeal. The second appellant died in February or March 1924. An affidavit is filed by the first appellant, husband of the second appellant, that the latter left no issue and that the first appellant is the heir and as such he is competent to prosecute the appeal.

2. The first appellant applied on 7th August 1918 to the Municipal Council of Kumbakonam for sanction to construct a house on a plot of land belonging to him. With that application he submitted a plan in duplicate. The Municipal Council insisted upon the first appellant giving up 15 feet of his land in front of the proposed house for use as a public road and further insisted upon his leaving 7 feet behind his house for being used as a sanitary lane. As the locality was being built on, the Municipality naturally wanted to construct a road for the use of the owners of the houses and stipulated that persons building houses in that locality should leave 15 feet in front of their houses so that the 15 feet left by the owners of the northern row of houses together with the 15 feet left by the owners of the southern row of houses may be made into a road 30 feet wide. The first appellant undertook to leave 15 feet in front of his house for being used as a roadway. Upon that condition the Municipal Council sanctioned the construction of the building according to the plan. The case for the defendant Council is that the first appellant has encroached about 5 feet on the portion left

by him in front of his house. Both the lower Courts have come to the conclusion that the masonry platform in front of his house is on 5 feet of land agreed to be set apart by him for use as road. The contention of the Municipal Council is that inasmuch as the sanction to build was given on the specific condition that 15 feet of land was to be left in front of the house for use as a public road, the first appellant was not entitled to build on any portion of it and, therefore, the Municipal Council is entitled to remove any structure on it. This contention of the Council is bound to fail. Under the District Municipalities Act of 1884 the Municipal Council cannot insist upon any person who asks for sanction to put up a building on his own land, leaving a portion of it for the use of the public when it grants the sanction. Whatever may be said of the conduct of the first appellant as against his undertaking to leave 15 feet of land for use of the public and going back upon that promise, the Municipal Council cannot enforce in law the condition which it laid down at the time when it gave the sanction and it is ultra vires for the Municipal Council to insist upon the owner of any plot of land on which he proposes to build that a portion of it should be left vacant or that a portion of it should be given up for public purposes. No doubt, the Municipal Council can insist on sanitary grounds for the convenient enjoyment of the houses to be built on the land to insist upon the owner leaving sufficient space for scavenging or for other purposes. It cannot insist upon any owner leaving any portion of his ground vacant, if the building which he proposes to construe does not offend against any of the rule framed, by it for the purpose. It is bound to sanction it and it is not entitled to impose a condition such as the one which it imposed in this case. This point was considered in *Queen-Empress v. Veerammal* [1893] 16 Mad. 230. In that case one Veerammal applied to the Municipal Council at Periyakulam for license u/s 180 of the Act. The Resolution of the Council was that a piece of land 5 by 33 feet is required for widening a lane; leaving

this portion at the east side of the place on which the building is to be constructed the remaining portion may be built.

3. An endorsement to that effect was made on the petition. But the building was erected on the whole land. Veerammal was prosecuted under Sections 180 and "263 of the District Municipalities Act and convicted. The High Court quashed the conviction on the ground that the condition imposed by the Municipal Council was ultra vires, Best, J., observed

It is clear on a persual of Section 180, that no power is thereby conferred on the Municipal Council of depriving owners of the legitimate use of their land. The object of the section is no other than to ensure the safety and sanitation of buldings to be newly erected. What the Council has to consider under the section is the plan of the proposed building; and the grounds on which the same can be disapproved are such as are stated in Clause 4.

4. Muthuswami Iyer, J., concurred in the view expressed by Best, J. This point therefore, is found against the Municipal Council.

5. The next point is that the koradu or the masonry platform now constructed in front of the house was not shown in the plan and was not sanctioned by the Municipal Council, and, therefore, it is entitled to insist upon that being removed. Both the Courts have considered this point and have come to the conclusion that the plan submitted by the appellant did not show the koradu in front of the house and that the Municipal Council did not sanction the construction of the koradu. Though this is a question of fact yet, inasmuch as the learned Advocate-General has addressed a very elaborate argument on the point, I will briefly notice the grounds upon which I come to the conclusion that the duplicate plan, Exs. V and XV, submitted by the first appellant did not contain any reference to a koradu such as that which has been constructed in front of the first appellant's house.

6. It is urged that this contention of the Municipal Council is an afterthought. No doubt, before the suit was filed, the Municipal Council relied upon the other ground, namely, that the first appellant undertook to leave 15 feet of the space in front of his house for use as road and that he afterwards built a koradu on it and, therefore, encroached upon the land which became the property of the Municipal Council. In the written statement filed by the defendant Council, the same point was elaborately dealt with. But Issue No. 6 covers this point. The Municipal Council relied upon the fact that the koradu or platform was not shown in the plan and, therefore, no sanction could have been given for building it, and it is therefore, entitled to remove it. It cannot be said that the appellant was in any way prejudiced by this contention being raised by the Municipal Council. The matter was elaborately dealt with in the evidence as well as in the judgment of the District Munsif and I do not think that the first appellant can reasonably contend that the Municipal Council has shifted its position or that he is taken by surprise. When the Municipal Council objected to any portion of the building that it was not according to plan, it was the duty of the first appellant to have shown that the plan which he submitted covered the platform now in dispute. (After examining the evidence and finding that the koradu was not shown in the plan the judgment proceeded.) Another contention was raised on behalf of the first appellant, namely, that the Municipal Council did not sanction the construction of the building within six weeks on receipt of the plan and, therefore he was entitled to build it in any way he liked. u/s 180, Clause (5) of the District Municipalities Act if within the period of six weeks the Municipal Council does not grant the license, the applicant can proceed to construct, re-construct or extend a wall or building, as the case may be but such construction must be in accordance with the plan which accompanied his application. The period six weeks is fixed by the Legislature in order to make the Municipal Council prompt in granting or refusing sanction and to prevent such applications being left pending for a long time. The applicant is not entitled to depart from the plan by reason of the laches of the Municipal Council in granting or refusing sanction. If the Municipal Council does not refuse sanction within six weeks the applicant may proceed to construct the building and that only in accordance with the plan submitted for sanction. Granting for argument's sake, that the Municipal Council did not intimate to the

first appellant its intention either to grant or refuse permission, the first appellant is not entitled to construct the platform or koradu which was not shown in the plan which he submitted along with the application. Therefore, the Municipal Council is entitled to deal with such construction u/s 263 of the Municipal Act of 1884. In the result the appeal fails and is dismissed with costs.