
(1973) 10 GUJ CK 0001
In the Gujarat High Court

Rajnagar Bobbin Works

APPELLANT

Vs

The Ahmedabad Municipal Corporation

RESPONDENT

Date of Decision : 10-10-1973

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 260, 260, 260(1), 260(2)

Citation : (1975) 16 GLR 156

Hon'ble Judges : C.V. Rane, J

Bench : Single Bench

Judgement

C.V. Rane, J.—This judgment will govern the disposal of first Appeal Nos. 702/66, 246/67, 247/67, 218/67, 219/67, 220/67, 221/67, and 222/67, which arise out of the decrees of the learned Judges of the City Civil Court at Ahmedabad in Civil Suit Nos. 903/64, 239/65, 848/65, 193/65, 198/65, 199/65, 230/65 and 315/65 respectively. All these appeals involve a question as to the validity of the notices issued by the Junior Assistant to the Estate and City Improvement Officer, Ahmedabad Municipal Corporation, Ahmedabad, calling upon the plaintiffs in those suits to pull down or remove the structures mentioned in the notices. The notices in all the cases are identical except in respect of the names of the persons and the description of the property to be pulled down or removed. It is, therefore, not necessary to consider in detail the facts of all the suits and the civil suit No. 903/64 may be considered as a sample case for the purpose of these appeals.

2. In the above suit, the notice was issued on 8-1-1964 by the Estate and City Improvement Officer under the provisions of Sub-section (1) of Section 260 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as the Act) calling upon the plaintiff to show cause on or before 15-1-1964 as to why, certain constructions alleged to have been made in contravention of the provisions of the bye-laws should not be pulled down. The plaintiff showed cause on 13-1-1964. As the Estate and City Improvement Officer was not satisfied with the cause shown by the plaintiff, the impugned notice was issued by the Junior

Assistant to the Estate and City Improvement Officer on 18-1-1964 calling upon the plaintiff to pull down or remove the structure as shown in the notice expeditiously or rapidly. According to the plaintiff, the notice was not legal and hence, he filed the suit in the City Civil Court Ahmedabad to obtain a declaration that, the notice was unauthorised and vague and also to obtain an injunction restraining the defendant Municipal Corporation from pulling down the structure in question. The defendant by its written statement Ex. 6 contested the suit. According to it, the notice was legal.

3. The learned trial Judge has dismissed the suit. Two other suits being civil suit Nos. 239/65 and 848/65, the facts of which were, as observed above, similar to those of civil suit No. 903/64, have also been dismissed by the trial court and being aggrieved by the decisions of the trial court, the plaintiffs have come in appeal. (First Appeal Nos. 702/66, 246/67 and 247/ 67).

4. The civil suit Nos. 193/65, 198/65, 199/65, 230/65 and 315/65, the facts of which were also similar to those of the other suits have been decided in favour of the plaintiffs and being aggrieved by the decision in those suits, the Ahmedabad Municipal Corporation has come in appeal. (First Appeal Nos. 218 to 222 of 1967).

5. The notices in question were challenged on various grounds in the trial court but in these appeals Mr. C.M. Trivedi the learned advocate for the plaintiffs, challenges the notices only on the ground that no sufficient time was given for compliance with the notices to the plaintiffs concerned. In the notices in all the cases the plaintiffs have been called upon to pull down or remove the structures in question expeditiously or rapidly. The relevant word in Gujarati which has been used in the notice is "takide". According to Mr. C. M. Trivedi the word "takide" is rather vague as it is likely that that word would be interpreted in different manner by different persons. It is not disputed that, the first notice calling upon the plaintiffs to show cause why the structure should, not be pulled down or removed was issued under Sub-section (1) of Section 260 of the Act which runs as under:

(1). If the erection of any building or the execution of any such work as is described in Section 254 is commenced or carried out contrary to the provisions of the rules or bye-laws, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work u/s 264, shall-

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by

him in that behalf and show sufficient cause why such building or work shall not be removed, altered or pulled down.

Sub-section (2) of the above Section provides:

If such person shall fail to show sufficient cause, to the satisfaction of the Commissioner why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person.

The learned trial Judge Mr. A.H. Ahmedi who dismissed civil suit No. 903 of 1964 has taken the view that "when in the notice, Ex. 13, the plaintiff was asked to comply with the requisition contained therein immediately," it was meant as soon as possible. It is no doubt true that specific number of days have not been given to the plaintiff to comply with the requisition but that does not mean that a reasonable period had not been granted. "According to him, even if it is assumed that, in the notice no reasonable time was given to the plaintiff, that circumstance does not make any difference. His observations in that respect were:

Now assuming for a while in favour of Mr. Sheth that the impugned notice, Ex. 13, does not grant a reasonable period to the plaintiff to comply with the requisition, I do not see how in the instant suit it can make any difference. Even if at that stage the plaintiff was called upon to comply with the requisition "immediately" we can see that till 24th January 1964 when the statutory notice Ex. 14, was addressed to the Corporation no action was taken by the Estate Officer or his department to demolish or remove the construction in question.

On the basis of the above reasoning, he took the view that, as sufficient time had elapsed, the grievance that no reasonable period was granted under the notice did not survive.

6. The learned trial Judge Mr. M.K. Shah who dismissed the suit Nos. 239/65 and 848/65 has taken the view that Section 479 of the Act did not apply to the notice in question and that, there is no provision in Section 260(2) of the Act for issuing any notice to the person concerned before the Commissioner can proceed to take action under that sub-section.

7. The learned Judge Mr. T.U. Mehta who allowed civil suit Nos. 193/65, 198/65, 199/65, 230/65, and 315/65 has observed:

Though this Sub-section (2) of Section 260 does not provide in express terms for the issuance of a notice before the structure is pulled down, it does make such a provision by necessary and inescapable implication. If that" is so, the provisions of Section 479 would apply to such requisitions even if it is believed that the requisition or order contemplated by the first part thereof should be one which is required to be made under the provisions of the Corporations Act or any of its rules and bye-laws.

He has also held that:

Even presuming that Sub-section (2) of Section 260 of the Corporations Act does not contemplate issuance of any notice before the offending structure is pulled down, the Commissioner or his delegatee would none the less be governed by the provisions of Section 479 of the Act, if he chooses to issue any requisition or make any order for pulling down such structure.

As regards the use of the word "takide" in the notices, he has held that the expression "was so vague that it would be difficult to understand whether the compliance of the requisition so to be made within one hour or within one month."

8. It is argued by the learned advocate for the plaintiff that, according to Sub-section (2) of Section 260 of the Act, it is not obligatory on the Commissioner to remove, alter or pull down the building or work and that, in case, he decides not to take such an action, it would be open to him to call upon by a suitable notice or order, the person concerned to remove, alter or pull down such building or work. According to him, in the present case also, the Commissioner or the officer concerned has, instead of proceeding to pull down or remove the structure in question, called upon the plaintiffs by the notices in question to pull down or remove the structure. On the basis of the above reasoning, it is argued by him that the notices in question have been issued by the officer concerned u/s 260(2) of the Act and in that case, the provisions of Section 479(1) of the Act would apply. The above Section provides:

(1). Subject to the provisions of this Act and of the rules, by-laws, regulations and standing orders, when any requisition or order is made under any provision of this Act or of any rule, bye-law, regulation or standing order by written notice by the Commissioner, or by any municipal officer duly empowered in this behalf, a reasonable period shall be prescribed in such notice for carrying such requisition or order into effect and if, within the period so prescribed, such requisition or order or any portion of such requisition or order is not complied with, the Commissioner may take such measures or cause such work to be executed or such thing to be done as shall in his opinion, be necessary for giving due effect to the requisition or order so made; and, unless it is in this Act otherwise expressly provided, the expenses shall be paid by the person or by any one of the persons to whom such requisition or order was addressed.

9. The above submission of Mr. Trivedi is supported by the words "may remove" occurring in Sub-section (2) of Section 260 of the Act and also by the object of Section 260. Sub-section (1) of Section 260 of the Act relates to the opportunity to be given to the person concerned to show cause why a building or work should not be altered, removed or pulled down. According to Sub-section (2). If the person concerned fails to show sufficient cause to the satisfaction of the Commissioner why such building or work should not be removed, altered or pulled down the Commissioner may remove, alter or pull down the building or

work and the expenses thereof shall be paid by such person. When the provisions of Section 260 are carefully considered, it is found that, it is obligatory for the Commissioner to give a proper opportunity to the person concerned to show cause why a particular building or should not be removed, altered or pulled down. There is, however, in Sub-section (2) to show that if the person concerned fails to sufficient cause, it is obligatory on the Commissioner to remove, alter or pull down such building or work and the object of Sub-section (2) building or sec 260 of the Act can be achieved even if, such building or removed by the person concerned in compliance with the requisition order of the Commissioner. The main object of Section 260 of the Act seems to be to empower the Commissioner to take appropriate action for the removal, alteration or pulling down of any such building or work as is commenced or carried out contrary to the provi of the rules etc. For the purpose of achieving the above object, it is not necessary that, the Commissioner himself should proceed to remove, alter or pull down such building or work and as observed above, that bit can be satisfactorily achieved even, by calling upon the person concerned to remove, alter or pull down such building or work. It is needless to add that, once the Commissioner decides under Sub-section (2) of Section 260 of the Act to call upon the person concerned to remove, Her o pull down the building or work, he can do so by making a requisition or appropriate order in the matter and it appears that in the present the Commissioner has followed the above course. This shows that the notices in question have been issued in pursuance of Section 260(2) of the Act.

10. It is however, argued by the learned advocate for the Ahmedabad, vinal Corporation that, there is no provision in Sub-section (2) of 960 of the Act for issuing any notice. In this connection, it should be second that Sub-section (2) of Section 260 relates to the actual action alteration or pulling down of any building or work in the event of the failure on the part of the person concerned to show sufficient cause in the matter. Thus, the provisions of the above Sub-section show that, if the Commissioner proceeds to actually remove, alter or pull down any building or work, there may be some scope for saying that, no notice need be issued before taking any such action. If, however, he decides that, no such action should be taken by him personally or by his subordinates, the only alternative in the matter would be to call upon the person concerned to remove, alter or pull down such building or work and it is needless to add that, for the purpose of calling upon the person concerned to do so, the Commissioner will have to make a requisition or order by a written notice, which would be a notice under Sub-section (2) of Section 260 of the Act.

11. The learned advocate for the Corporation has further argued that, whenever any action is required to be taken by the Commissioner himself, no notice is contemplated in any of the provisions of the Act. In support of his above argument he has referred to Sections 231, 239(3) and 334(1) of the Act. According to Section 231, the Commissioner is empowered to remove without notice anything erected, deposited or hawked or exposed or sale in contravention of the provisions of the Act. Similarly, Sub-section (3) of Section 239 empowers

the Commissioner to remove any building materials etc. in any street if no reply has been sent to the applicant within 7 days from the date of the application under Sub-section (1). Section 334(1) empowers the Commissioner to expel from any municipal market slaughter house or stockyard any person who or whose servant has been convicted of contravening any rule, bye-law or standing order in force and also to prevent such person by himself or his servant from further carrying on any trade or business in such market, slaughter house or stock-yard. The provisions of the aforesaid three Sections are different from those of Section 260 of the Act. Merely because, there is no provision as regards the issuance of a notice in the aforesaid Sections of the Act, it cannot be said that, no notice can ever be issued u/s 260(2) of the Act. On the contrary, as observed above, it is not only permissible but is absolutely necessary to issue a notice to the person concerned, if the Commissioner instead of proceeding to remove etc. a building or work decides to get such building or work removed by the person concerned.

12. The learned advocate for the Corporation has further pointed out that, whenever the Act contemplates a proper opportunity to be given to the person concerned for the removal etc. of the building or work, before the Commissioner can proceed to take suitable action in the matter, a clear provision to that effect has been made in the relevant sections. According to him, the relevant Sections on the point are Section 212(2), (3) and Section 263A(2) of the Act. He has also referred to certain other Sections of the Act, according to which, the Commissioner can call upon the person concerned to take appropriate action but, in the event of his failure to do so, he himself cannot carry out that work. By way of an instance on the point, he has referred to Sections 232, 246(3) and 299(1) read with Section 300(4) of the Act. As the provisions of Section 260 of the Act are clear, it is not necessary to refer to the aforesaid other Sections of the Act for the purpose of interpretation of Section 260. In the present case I have already pointed out that, it is competent for the Commissioner under Sub-section (2) of Section 260 of the Act, to call upon the person concerned by a notice or order to remove, alter or pull down any building or work, and hence, no useful purpose would be served by considering the provisions of the Sections referred to by the learned advocate for the Corporation.

13. In order to show that, according to Sub-section (2) of Section 260 of the Act the person concerned cannot be allowed to carry out the work which according to that Sub-section is expected to be done by the Commissioner, it is argued by the learned advocate for the Corporation that if the person concerned was asked to alter any building or structure he would not be able to do so without first getting the plan incorporating the alteration approved by the appropriate authority or committee and in that case there would be delay in taking action under that section. I am, however, unable to agree with the above submission of the learned advocate for the Corporation for the simple reason that, once the Commissioner indicates in the notice or order as to what alteration was or what action the person concerned has to take in the matter, he would be able to carry

out his instructions and in that case, it would not be necessary for him to get any plan prepared or approved by the authority or committee concerned of the Corporation. Even in the present case, the officer concerned of the Corporation has called upon the plaintiffs to remove or null down the structures as pointed out in the notices. Under these circumstances, it is not open to the learned advocate for the Corporation to say that under Sub-section (2) of Section 260 of the Act, the plaintiffs cannot be called upon to do any act which by that Sub-section is required to be done by the Commissioner. I, therefore, hold that, the notices in question have been issued under the provisions of Sub-section (2) of Section 260 of the Act. Even if it is assumed for the sake of argument that, no notice is contemplated under Sub-section (2), looking to the provisions of that sub-section and the circumstances of the case, it can reasonably be held that, while issuing the notices in question the officer concerned purported to act under Sub-section (2) of Section 260.

14. It cannot be disputed that, once it is held that, the notices in question are issued u/s 260(2) of the Act they should be in accordance with the provisions of Section 479(1) of the Act, which has been reproduced earlier. Sub-section (1) of that Section inter alia provides that whenever any requisition or order is made under any provision of the Act or of any rule etc. by a written notice by the Commissioner or by any other officer, a reasonable period shall be prescribed in such notices for carrying such requisition or order into effect, and if, within the period so prescribed, such requisition or order or any portion of such order or requisition is not complied with, the Commissioner may take appropriate steps in the matter. In the present case, however, no reasonable time is prescribed in the notices for complying with the directions contained therein. The dictionary meaning of the word "takide" is expeditiously or rapidly. It is needless to add that, there is likely to be a divergence of opinion on the question as to what is meant by "expeditiously" or "rapidly" in a particular case and in that event complications would arise. Considering all these circumstances, it is found that, the notices are vague on the point and not in keeping with the provisions of Sub-section (1) of Section 479 of the Act, according to which reasonable period should be given to the person concerned to comply with the requisition or order. As observed above, Sub-section (1) of Section 479 of the Act, further provides that, further action in the matter is to be taken by the Commissioner or by other municipal officer duly empowered in that behalf only, in the event of failure on the part of the person concerned to comply with the order or requisition within the reasonable period prescribed in the notice.

15. In the present case, the plaintiffs have been informed that in case they failed to remove or pull down the structure or building, as the case may be, that particular work would be got done by the Corporation and the expenses in that respect would be recovered from the plaintiffs. As no reasonable period has been prescribed in any of the notices, it would not be permissible for the Corporation to take any action as indicated in the notices. Thus, considering from all points of view, I find that, the notices are vague and hence, it would be rather difficult for

the plaintiffs to comply with those notices. The learned trial Judges concerned have not considered all the above aspects of the case while dismissing civil suits Nos. 903/64, 239/65 and 848/65 and hence, their findings on the point cannot be sustained. As I have taken the view that, the notices in question are not in keeping with the provisions of the Act, they are not valid. Under these circumstances, the aforesaid three suits should be allowed.

16. In the result, First Appeal Nos. 702/66, 246/67 and 247/67 are allowed. It is declared that, the notice referred to in each of the suit Nos. 903/64, 239/65 and 848/65 being contrary to the provisions of the Act is not valid. A permanent injunction is issued in each of the above suits against the Ahmedabad Municipal Corporation restraining it from taking any action in pursuance of the notice in question. First Appeal Nos. 218/67 to 222/67 are dismissed. As regards costs, however, in view of the peculiar circumstances of the case, the proper order would be that, the parties should bear their own costs throughout.