

(1976) 11 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 10564 of 1975

R.N.Chaudhary

APPELLANT

Vs

Municipal Board, Shahjahanpur and others

RESPONDENT

Date of Decision : 03-11-1976

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Municipalities Act, 1916 — Section 221

Citation : (1976) 11 AHC CK 0024

Hon'ble Judges : M.N.Shukla, J and Gopi Nath, J

Final Decision : Allowed

Judgement

M.N. Shukla, J.

This is a petition under Article 226 of the Constitution of India praying for a writ of mandamus commanding the respondents not to demolish the constructions of shops No. 92 to 99 and 191 situate in Mohalla Govindganj, Sadar Bazar, Shahjahanpur.

The respondents arrayed in the writ petition are the Municipal Board, Shahjahanpur, the District Magistrate, Shahjahanpur and the Executive Engineer, Shahjahanpur. The allegations of the petitioner are that on the basis of a duly submitted plan sanctioned by the Municipal Board, Shahjahanpur he built the shops in question about ten years ago, that there is a Municipal Patri and a fairly wide road thereafter and behind the shops there is a Nala. It is alleged that the petitioner had been paying every months to the respondent No. 1, viz. the Board the required rent of the land which had been leased to him, that he made valuable constructions long ago but the employees of the respondent Board had arrived on the spot and made measurement of the same and held out threat to demolish the front portion of the ground floor constructions of the aforesaid, shops, that no notice of any kind had been issued to or served on him.

Two counter affidavits were filed in the case, one on behalf of the District Magistrate, Shahjahanpur which merely stated that the action for demolition of

the constructions if any, was taken by the Municipal Board in exercise of the powers conferred upon it under the provisions of the U.P. Municipalities Act, 1916 (hereinafter referred to as the Act), that no such action was being taken by the respondent No. 2 or at his instance. The other counter affidavit, which was filed on behalf of the Municipal Board, contains a factual reply to the allegations made in the writ petition. It is admitted by the Board that the shops in question were allotted to the petitioner on a nominal rent and in front of those shops an open space Chabutra was left which was neither originally allotted to the petitioner nor was any rent being charged for the same. It was further stated that the demolition sought to be done was only in respect of the portion and projections made beyond the shops which were originally constructed and allotted. It was also stated in the same counter affidavit that the lawful constructions initially made had been unlawfully extended and the Chabutra etc. Made in front of the shops, which were meant for being used for public purposes, had been illegally included in the new constructions raised by the petitioner. As regards the notice, the averments made in paragraph 12 of the counter affidavit of the Board are that the answering respondent duly published their intention to demolish the illegal constructions in the daily Hindi newspaper "Amar Ujala" which had a large circulation in the city of Shahjahanpur. It was added that leaflets were also largely distributed within the Municipal limits of the city in which it was clearly stated that the illegal constructions had already been marked out in the city and they should be removed by the illegal occupants themselves. Besides, it was alleged that cinema slides were exhibited in a local picture hall the same effect and publicity was also made in the city through loud speakers.

It is manifest from the allegations made in the counter affidavit of the Board that if they were accepted, the present case would be one of encroachments and projections covered by section 211 of the U.P. Municipalities Act. For detailed reasons contained in our judgment dated 28101976 in Civil Misc. Writ No. 1854 of 1976 we are of the opinion that on a proper construction the notice issued under section 211 of the

U.P. Municipalities Act for removing projections must be a written notice to the individual owner or occupier of the alleged encroachment or projections.

The next question which arises is as to whether the aforesaid mode of giving notice to the petitioner resorted to by the respondent Board in the instant case satisfied the requirements of the provisions of section 211 of the Act and should be deemed to be sufficient legal notice to the petitioner. We are inclined to give an answer in the negative. In our opinions the provisions of section 211 should be strictly construed inasmuch as they inevitably involve some injury to the individual owner or occupier and his personal interests or rights are directly and materially affected, [t seems to be in conformity with the broad principles of justice and equity that where individual interests as distinguished from mere general or public interest are involved, no prejudicial action should be taken without due notice to the individual concerned. This salutary principle of law

appears to have been consistently kept in mind by the legislature while enacting the U.P. Municipalities Act. It runs like a subterranean current throughout the relevant provisions of the Act, whenever the Legislature dealt with a matter which was predominantly of public interest alone, it made provision merely for a public notice. On the contrary, whenever private or personal interest of an individual was likely to be in jeopardy, the Legislature amply safeguarded it by enjoining on the authorities either explicitly or by necessary implication, the duty of giving an individual and written notice. This analysis of the Act and the rationale of its various provisions can be best illustrated by referring to section 257 of the U.P. Municipalities Act which combines the features of both categories of cases and accordingly makes a provision for public notice as well as individual, written notice according as interests of the public at large or the private interests of an individual are at stake. Subsection (1) thereof deals with the kind of structures which shall not be made or renewed with highly inflammable material without consent of the Board in writing. Obviously this was a matter of public policy that inflammable structures should not be permitted. On the other hand, subsection (2) of section 257 provides the mode in which the owner of a building may be required to remove a building, which has an external roof or wall made of any such material as aforesaid, within the time specified in the notice. Since the removal of structures raised by a person affects his personal property he should not suffer demolition or removal of the same without being fully apprised of the situation and its consequences. That is why subsection (2) has eschewed the words "public notice" occurring in subsection (1) and has instead employed the expression "written notice". It is a well accepted canon of interpretation of statutes that where the Legislature has advisedly used one particular expression in one context and omitted the same and employed a different expression in the same or identical context elsewhere in the statute, the intention must be presumed to have been to provide for one procedure in one case and a different procedure in another case. The omission or employment of particular words or language is not otiose but has a definite significance. The same distinction can be illustrated by referring to several other provisions of the Act. Thus, sections 221, 222 (1), 239, 273 (1) (c), 285, 286 etc. of the U. P. Municipalities Act expressly speak of public notice whereas the other provisions such as 87A (2), 186, 217 (1) (c), 224 (a), 260 etc. provide for a written notice. Section 211 does not use the words "public notice". Considering the context and object of the provision there is no manner of doubt that for taking action under section 211 of the Act a written notice to the individual owner or occupier with regard to the removal of the encroachment or projection is necessary.

The notice given by the respondent Board in the instant case, as we have already pointed out, consisted of publication of the same in a Hindi newspaper, distribution of pamphlets and exhibiting of cinema slides in a cinema hall in the city of Shahjahanpur. The list of the aforesaid modes of notice, though impressive, falls short of the requirements of law. None of the modes referred to above amounts to a written notice to the individual owner or occupier which in

our opinion is a "sine qua non" of an action detrimental to the personal interest of an owner or occupier of a property. That object appears to be enshrined in section 303 of the Act which prescribes the mode of service of individual notice and runs as follows:

"303. Service of notice(1) Every notice or bill issued or prepared under any section of this Act or under any rule or byelaw shall, unless it is in such section or rule or byelaw otherwise expressly provided, be served or presented,

(a) By giving or tendering the notice or bill, or sending it by post, to the person to whom it is addressed, or

(b) If such person is not found, then by leaving the notice or bill at his last known place of abode, if within municipal limits, or by giving or tendering the notice or bill to some adult male member or servant of his family, or by causing the notice or bill to be fixed on some conspicuous part of the building or land (if any) to which the notice or bill relates.

(2) When a notice under this Act or under a rule or a byelaw is required or permitted by or under this Act, or under a rule or a byelaw to be served upon an owner or occupier of a building or land, it shall not be necessary to name the owner or occupier therein, and the service thereof, in cases not otherwise specially provided for in this Act, shall be effected either

(a) By giving or tendering the notice or sending it by post, to the owner or occupier, or if there be more owners or occupiers the one, any one of them, or

(b) If no such owner or occupier is found, then by giving or tendering the notice to an adult male member or servant of his family, or by causing the notice to be fixed on some conspicuous part of the building or land to which the same relates.

(3) Whenever the person on whom a notice or bill is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family shall be deemed to be service upon the minor."

Admittedly none of the above modes of service of notice was employed in the present in case. We are, therefore, of the opinion that such notice as the one which is alleged to have been given by the respondent Board in the instant case, was not written individual notice to the petitioner. We cannot also refrain from observing that even the various modes of public notice claimed by the respondent Board do not amount to a compliance with the modes prescribed by the statute itself for giving public notice we may advert in this connection to the provisions of section 304 of the Act. It enjoins two distinct modes of service of notice, namely, by publication in some local English or vernacular paper and posted upon a notice board to be exhibited for public information at the building in which the meetings of the Board are ordinarily held. Both conditions are essential, they are no alternatives of each other. In the present case there was obviously no compliance of the second mode.

Thus, the conclusion becomes irresistible that the petitioner was not served with the requisite notice under law and, therefore, the contemplated action for demolition of the constructions in dispute was illegal and the petitioner is entitled to the relief claimed.

In the result this writ petition is allowed with costs and a writ of mandamus shall issue to the respondents commanding them not to demolish the constructions made by the petitioner, except in accordance with the law and after giving him a written notice as contemplated by section 211 of the Act.