

(1920) 08 BOM CK 0007
In the Bombay High Court
Case No : Appeal No. 59 of 1919

The Ahmedabad Municipality

APPELLANT

Vs

Manilal Chhaganlal Shah

RESPONDENT

Date of Decision : 20-08-1920

Acts Referred:

Bombay District Municipal Act, 1901 — Section 96

Citation : (1921) 23 BOMLR 193

Hon'ble Judges : Norman Macleod, J; Fawcett, J

Bench : Division Bench

Judgement

Norman Macleod, Kt., C.J.—This is an appeal under the Letters Patent from a decision of Heaton J.

2. The plaintiff filed a suit in the Court of the First Class Subordinate Judge at Ahmedabad praying for an injunction restraining the defendant, the Ahmedabad Municipality, from cutting off" or removing the projection in dispute of his house. A decree was passed in the plaintiff's favour. On appeal to the District Judge the suit was dismissed with costs throughout. In second appeal the decree of the trial Court was restored.

3. The original owner of the suit house Tarbhovan Saochand had applied to the Municipality in 1897 for permission to make a projection (dakhli) and to put a tin sheet roof (Khapeda) over it. Permission was given on the 4th October 1897 to make a dakhli of two feet in breadth and to put a khapeda of one foot in breadth over it. It is suggested that the application was made and the permission was given u/s 33 of the Bombay District Municipal Act VI of 1873. Tarbhovan made the projection four feet five inches in breadth in contravention of the permission given. He was then prosecuted u/s 33, but the Magistrate found him not guilty. Thereupon he applied to the Municipality to cancel the notice which had been served upon him to remove the projection, but the consideration of this application was adjourned as a Sub-Committee had been appointed to inquire into projections of that nature. It was not until the 23rd July 1914 that the

Municipality issued the notice complained of on the plaintiff who had purchased the house from Hirachand Pitamber, the purchaser from Tarbhovan.

4. It runs as follows :?

The northern part of the house purchased by you from Vakil Hirachand pitamber measuring 15 feet 3 inches in length is in your possession. In point thereof towards the east side you have built a projection thereof measuring a feet on the upper storey and above that on the third storey you have built a projection 1 foot 3 inches protruding beyond the limit of the house, and above that you have put leaves of iron sheets, that is the bamboo splits protruding by 1 foot 2 inches overhanging the projection below. You built the same without permission from the Municipality in the year 1858 and as which time the Municipality had decided that the projections might be allowed to remain until the rules were revised. It was for that reason that the projection was allowed to remain, but now the rules of the Municipality have been revised and the projections of bamboo splits and eaves being more than 4 feet the building thereof is against the Municipal Law and the same cannot be allowed even according to new rules. You should therefore as required by the Municipal Act, Section 113/96 and Clauses 3/6 remove a portion of the excluded eaves 9 inches at the northern end and 8 inches at the southern end which is constructed against the rules within seven days of the receipt of this notice. If you fail to do so, the same will be done departmentally and the cost will be recovered from you.

5. This notice is based on sections 96 and 113 of Bombay Act III of 1901. Admitting that the owner of a building who Wishes to put up Verandahs, balconies or rooms projecting from the upper stories of the building may give notice to the Municipality u/s 96 or apply for permission u/s 113, if permission is given and its terms are infringed by the owner, the powers of the Municipality under the two sections vary considerably.

6. The result of the ambiguity of the notice has resulted in the Conflicting decisions in this suit. The Subordinate Judge appears to have thought that Section 113 was the dominant section in the notice and as the projection was not an obstruction to the safe and convenient passage along the street held that it could not be removed.

7. The District Judge considered that Section 96 was the dominant section as it covered the case of an owner who has put up a projection in contravention of orders, and Clause 5 entitled the Municipality to issue a notice on the owner to make the necessary alterations so that the addition made should be brought within the limits prescribed by them. Heaton J. came to the conclusion that this was a case u/s 113 and not u/s 96. He admitted that though Section 96 related in its main purpose to something much more important than the merely putting up balconies, namely, reconstruction or substantial alterations or additions, yet the words used were such that the mere erection of a balcony could be brought within the section. But as Section 113 was a special provision for the erection of

balconies and such like projections and dealt exclusively with matters of that kind, he considered that the ordinary rule of law should be followed, namely, that where there was a special provision for certain specified things and a general provision which, though it may include these things, is mainly directed to cover other things, the special and not the general provision should be applied. The decree of the Subordinate Judge was, therefore, restored.

8. I think there can be no doubt that the owner of a building Who wishes to alter it externally or add to it by erecting a balcony can give notice to the Municipality of his intention under e. 96, and the Municipality could pass orders under the powers given by the section, and if those orders were disobeyed they could take action u/s 5.

9. But projections over a public street are external alterations of a particular nature which cannot be built without special authorization u/s 113, whereas, if the Municipality are silent after due notice has been given to them u/s 96, the person who has given notice can proceed to build or alter according to the plans furnished to the Municipality. It is this difference between the two sections which has not been sufficiently noticed. If a person builds a projection over a public street without asking permission u/s 113 or in contravention of the permission given under the section, he can be fined, and the fine can be continued until he has complied with the orders of the Municipality. But the Municipality have no powers to order him to remove they projection.

10. Clause 3 of Section 113 might more appropriately have been made a separate section as it deals not only with projections overhanging public streets but also projections jutting into public streets. And further in giving the Municipality power to deal with such projections the Legislature has considered them from an entirely different point of view, namely, the convenience of the public who use the streets. u/s 96 the Municipality have to consider whether the plans of the intended building or alterations comply with the provisions of the Act and their own by-laws which are framed for the protection of the inmates of the house in particular and of the inhabitants of the town or city in general. u/s 113(1) the Municipality have to consider encroachments overhanging their own property, the public streets, which would be rather a convenience than otherwise to the passers- by, provided they were not too low. If, then, a person who has given notice u/s 96 and furnishes plans which show the intention to build a balcony overhanging a public street and the Municipality take no action within the time prescribed, so that he is entitled to build according to his plans, can he be prosecuted u/s 113 for building a balcony over a public street without permission. Considering the difference of judicial opinion in cases arising under Sections 33 and 42 of Act VI of 1873 it is unfortunate that more care was not exercised in drafting the corresponding section in Act III of 1901. I

11. In Nagar Valab Narsi v. The Municipality of Dhandhuka I.L.R(1857) Bom. 490, 494 West J. said: " Section 33 of Bombay Act VI of 1873 under which the permission of the Commissioners was sought and refused, is, as the Assistant

Judge has pointed out, perfectly general in its terms." In this case it is not known whether the original permission was sought u/s 33 or s. 42 corresponding to Section 113 of present Act, but as the prosecution was u/s 33 it might be presumed that the permission given was under the same section, but this question is clouded in obscurity and as I shall show hereafter it is more likely that permission was asked for u/s 42.

12. In *Godhra Municipality v. Heptulabhai* (1900) 2 Bom. L.R. 572 the plaintiff Heptulabhai applied to the Municipality for permission to make balconies on the north, south and east sides of his house but permission was given for building them on the south side only. The plaintiff then built the balconies on the north or east side without permission. The Municipality passed an order for the demolition of the balconies so built, and the plaintiff filed the suit for an injunction.

13. The trial Court dismissed the suit. It was found, on remand by the lower appellate Court, that the balconies in question projected over the plaintiff's own land and not over the public street, and as then the lower appellate Court considered that the balconies were not in any way against the provisions of the Municipal Act, the plaintiff's claim was decreed. In Second Appeal Parsons J. thought the order of the defendants was ultra vires as the provisions of Section 33 did not extend to the issue of a prohibition to a person not to build on his own land, but was only intended to ensure that the requirement of the Act or such by-laws as the Municipality might legally have made should not be offended.

14. Ranade J. held that as the plaintiff had built the balconies without permission the defendants were entitled to order their removal. But he said at p. 576 : " The nejvas in dispute are on the upper storey, and if they overhung the street, permission would have to be obtained u/s 42. As the nejvas have been found to be overlooking respondent-plaintiff's own land, Section 42 does not directly apply, but it is useful as showing that these nejvas must be treated as balconies, etc. in regard to which permission might be necessary under certain circumstances." The Judges having differed the appeal was referred to Candy J. The learned Judge agreed with Ranade J., but for different reasons. As the plaintiff had originally applied for leave to build the balconies as projecting over the public street, the order refusing permission was perfectly legal. The plaintiff could not dispute its legality on the ground that as a matter of fact the proposed balconies were to project over 1920 his own land. The plaintiff could apply in the ordinary way, not to make encroachments on the public road, but to make additions to his building the said additions being within his own premises. The learned Judge certainly there appears to make a distinction between an application to encroach on the Macleod public road and an application in the ordinary way to make additions to a building.

15. In *Tribhovan v. Ahmedabad Municipality* I.L.R (1902) Bom. 221: 5 Bom. L.R. 48 the plaintiff obtained permission to construct a projecting balcony above his Verandah of certain dimensions. The Municipality considered he had exceeded these dimensions and served him with notice requiring him to remove so much of

the balcony as was not in accordance with the permission. The plaintiff sued for an injunction.

16. It was found that the balcony did not project over a public street. The plaintiff's suit having been dismissed in both the lower Courts he appealed to the High Court. Batty J., after pointing out that Section 33 of Bom. Act. VI of 1873 did not contain anything requiring that the permission of the Municipality should be obtained, said :

Clause 3 attaches a penalty and the liability to a requisition by the Municipality for the alteration or demolition of the building in the following circumstances, viz., if the building is begun or made?

(a) Without the notice or information required by Clause 1.

(b) In any manner contrary to the legal orders of the Municipality; or.

(c) In any other respect contrary to the provisions of the Act.

17. Thus to justify the requisition of the Municipality for the demolition of the building, one of these three conditions must be established. There is no contention that the first or the last of these conditions exists ".

18. It may be noted that the conditions prescribed by Clause (5) of Section 96 though differently worded are in effect the same. The learned Judge then considered whether the order of the Municipality was legal and not inconsistent with the Act, and came to the conclusion that they were inconsistent with the provisions of the Act as being in excess of the powers which it authorized the Municipality to exercise. Aston J. came to the opposite conclusion. He said at p. 240 : 1920 The words " not inconsistent with this Act" therefore appear to me to mean " not inconsistent with the aim, scope and Act shown by its provisions, The order complained of seems to be aimed against an evil which the Act has intended to remedy and to fall within the scope and object of the Act and within its remedial purpose " At p. 242 he said : " As to the argument that because Section 42 makes provision for the removal of projections over public streets, therefore it was intended by the Legislature that new projections over "streets not public must be allowed, I think that Section 33 deals with a different set of circumstances, and the maxim *expressio unius est exclusio alterius* cannot apply. On the contrary, it seems to me that Section 42 affords a suggestion how the statutory power conferred by Section 33 can be exercised in respect of new projections over streets not public."

19. The appeal was then referred to Chandavarkar J. He considered that by Section 33 the Legislature had given power to every Municipality to regulate the construction of buildings whether they abutted on a public or a private street. The power should be exercised not capriciously or arbitrarily but reasonably. The learned Judge then considered the argument that as the Legislature had expressly provided against encroachments on public streets by giving the Municipality power to remove them, it must be taken to have denied similar

power as to encroachment on streets which were not public. At p. 254 he said : " Section 42 relates primarily to encroachments [upon or obstructions to public streets, not to buildings. A building may be an encroachment or obstruction, but that is "only an incident, so far as this section is concerned. The thing dealt with or intended to be dealt with as the principal subject-matter of the section is an encroachment or obstruction on a public street.... The mischief intended to be struck at is interfaces with the ownership of the Municipality. Section 33 with a different thing altogether. It deals primarily with the erection of buildings, not with encroachments or obstructions... The mischief intended to be struck at by Section 33 is that arising from the erection of buildings without proper regard to public health and sanitation. To prevent that mischief the Legislature says that the Municipality has the right of regulating the erection. The subject-matter, the object and the scope of Section 42 are different from those of Section 33, and therefore there can be no inconsistency or repugnance between them," The learned Judge came to the conclusion that the orders of the Municipality were not illegal and ultra vires.

20. In Ahmedabad Municipality v. Ramji Kuber I.L.R (1911) Bom. 61 the plaintiff applied for permission to reconstruct his house, building balconies on its two sides, The Municipality gave the plaintiff permission to rebuild his house but informed him that as regards the balconies his application was placed before the Managing Committee and until permission was granted he must not do any work in that respect The plaintiff not having heard from the Municipality built the balconies and a year later he was called upon to remove them. It does not appear that the balconies projected over a public street. The plaintiff sued for an injunction and it was held that as there was no subsisting provisional order referred to in Section 96, sub-section 4(a)(ii) of Bom. Act III of 1901 the plaintiff was entitled to the liberty of proceeding allowed by Section (4) after the expiry of one month, the order as to the balconies was spent and the plaintiff became entitled to proceed with the proposed work.

21. It appears to me that under the Act of 1873 a person desirous of building a new building or reconstructing an old building on land abutting on a public street had to give notice u/s 33, and if his plans included balconies or other structures overhanging the public street it would not be necessary for him to make a separate application u/s 42(3). But if he built such projections without any orders being passed by the Municipality he would do so at his own risk. Again if he wished only to add to an existing building by erecting a balcony overhanging a public street he would either give notice u/s 33 or apply for permission u/s 42(3). If the balconies were to overhang his own land he would have to give notice u/s 33. With regard to balconies overhanging a public street, the power of the Municipality would depend upon whether notice was given u/s 33 or permission was asked for u/s 42(3).

22. It is not clear what Tarbhowan did in 1897, but from the written statement of the defendants it seems that he applied for permission to make the projection,

and if that is correct it must have been u/s 42(3). But the learned trial Judge says that Exhibit 19 shows that he was prosecuted u/s 33. This, however, in the absence of the records, is not conclusive that the notice to remove the projection must have been u/s 33. The matter was then adjourned and nothing further was done until nearly sixteen years later the notice in suit was issued.

23. As pointed out by Heaton J. the defendants must fail unless they can show that they are acting under the powers given to them by Section 96, and the onus lay on them to prove that they were entitled to exercise those powers. Evidently when the notice A was issued it was doubted whether Section 96 applied; and I think that section was mentioned in the notice after Section 113, it may be noted, in the hopes that if their action could not be supported u/s 113 it might be held valid u/s 96. Clearly they cannot compel the plaintiff to remove the projection u/s 113 as it has not been proved that the projection is an obstruction to the safe and convenient passage along the street.

24. As pointed out by Chandavarkar J. in *Tribhovan v. Ahmedabad Municipality* Section 33 dealt primarily with the erection of buildings and so does Section 96. Incidentally if the plans furnished by the applicant show that encroachments or projections on a public street are proposed, the Municipality can deal with the plans under its general powers, and pass orders thereon. It was certainly intended, though no period of limitation was prescribed, that a Municipality having passed orders should exercise its functions with due diligence u/s 96(5). And if the Court is convinced that there has been laches, I think it would be entitled to exercise its own discretion according to circumstances in granting an injunction. There is not the slightest excuse, as far as I see in this case, for the Municipality's delay in taking action. There was no reason why they should not have persisted in their notice of the 13th June 1898 if they thought they were entitled to do so. It is quite possible, though we have no positive information on the point, that the Municipality after the failure of the prosecution u/s 33 realised that permission having been granted u/s 42 they had no power to call upon Turbhowan to remove the projection under that section as it was not an obstruction to the safe and convenient passage along the street.

25. My conclusion, therefore, are :

1. That the Municipality must justify their action.
2. That it has not been proved that Tarbhowan gave notice u/s 33 of Bombay Act VI of 1873, on the contrary, the facts rather point to his having asked for permission u/s 42.
3. That unless Tarbhowan gave notice u/s 33 the Municipality have no power to call upon him to remove the projection.
4. That even if Tarbhowan gave notice u/s 33, the projection which infringes the present Municipal Law is only five inches at a considerable height above the ground, and the Court would consider that a notice to remove such a projection

after the lapse of sixteen years was in the circumstances of the case an arbitrary and capricious exercise of the powers of the Municipality.

5. That the terms of the notice which do not call upon the plaintiff to comply with the permission granted to him in 1897 but to comply with the provisions of Section 113(1) of Bombay Act III of 1901 are sufficient evidence that the Municipality issued the notice u/s 113(3) and the mere fact that they added Section 96(5) cannot enable them to compel the plaintiff to remove a projection which no doubt infringes the original permission, but which does not come within Section 113(3).

26. In my opinion the decision of Heaton J. was correct and the appeal should be dismissed with costs.

Fawcett, J.

27. The first point which arises in this appeal is whether Section 96 of the Bombay District Municipal Act, 1901, can cover the case of a balcony projecting not over the land of the person, who applies for permission to build it, but over a public street. It was contended for the respondent that Section 96 should be strictly confined to buildings, or alterations or additions to buildings, which were on, or projected over, land belonging to the person intending so to build, alter or add; and that Section 113 alone dealt with the case of projections over public streets. This contention appears to have found favour with Mr. Justice Heaton, though he admits that Section 96 is per se wide enough to include the putting up of a balcony. But he considered the case fell under "the ordinary rule of law which is, where you have a special provision for certain specified things, and a general provision, which, though it may include these things, is mainly directed to cover other things, you have to apply the special not the general provision, where the former is appropriate." With due deference, I do not think this application of the maxim "*generalia specialibus non derogant*" is warranted. Strictly speaking this rule of construction does not apply at all. It contemplates the case of an earlier special law, followed by a general later one (see Maxwell on Interpretation of Statutes, 3rd Edition, p. 243). Thus in, Halsbury's Laws of England Vol. XXVII, Article 322 at p. 169, the rule is thus stated : "Where in the same or a subsequent statute a particular enactment is followed by a general enactment, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment is operative, and the general enactment is Municipality taken to affect only those other parts of the particular enactment to which it may properly apply." Here the particular enactment follows the general enactment, and it is, I think, giving un-warrantable extension to the maxim, to say that the prior general enactment, which is wide enough to include the case of a balcony projecting over a public street, is restricted by the later special enactment so as to exclude such a case from its scope. In support of this view, I may refer to *Viramgaum Municipality v. Bhaichand Damodar* I.L.R.(1919) Bom. 198: 22 Bom. 490 where it was held that Section 96 must be construed, entirely irrespective of the question (whether the land to be built on or over was

private land or a public street. It has also been frequently held by this Court that Section 96, or the corresponding Section 33 of Bom. Act VI of 1873, does cover the case of balconies projecting over public and private streets: see *Nagar Valab Narsi v. The Municipality of Dhandhuka* I.L.R.(1887) Bom. 490; *Godhra Municipality v. Heptulabhai* (1900) 2 Bom. L.R. 572; and *Tribhovan v. Ahmedabad Municipality* I.L.R.(1902) Bom. 221.

28. In some of these cases the difference in the scope and object of Section 96 and Section 113 respectively (or the corresponding sections in the Act of 1873) has been pointed out and there seems to me be no legitimate ground for the supposition that the Legislature intended that anything in Section 113 should restrict the general powers conferred on a Municipality by Section 96 except so far as such restriction is enacted expressly or "By necessary implication. The main object of Section 113 clearly is to regulate projections over public streets, and as the Municipality under that section is authorised only to permit balconies, &c. projecting from an upper storey to an extent not exceeding four feet beyond the line of the plinth or basement wall, it is a necessary implication that its general power u/s 96 is, in regard to balconies projecting over public streets, restricted to the same extent. But it seems to me to be a quite unwarranted step to say that, because Section 113 deals with the special case of these balconies, the Legislature meant to exclude them entirely from the purview of Section 96.

29. The same applies to the corresponding provisions (ss. 33 and 42) in the former Municipal Act, Bom. Act VI of 1873, which are substantially the same as Sections 96 and 113 in the present Act.

30. I concur, therefore, with the learned Chief Justice in holding Ahmedabad "that Section 33 of Bombay Act VI of 1873 covers, the case of a person wishing to add to an existing building by erecting a balcony overhanging a public street. But I venture to doubt whether in such a case he could dispense with notice u/s 33 and apply for permission only u/s 42. As pointed out in *Nagar Valab Narsi v. The Municipality of Dhandhuka* I.L.R.(1887) Bom. 490 the Section 33 is "perfectly general in its terms;" and it seems to me, with due deference, that the obligation to give notice imposed by that section upon any person intending to add to an existing bungalow, by erecting a balcony overhanging a street, is not removed by the fact that the Municipality has a separate power to give written permission for the erection of such a balcony u/s 42. Under; Section 33 the Municipality had to consider any objection there might be to "the limits design and materials of the proposed? balcony and similar matters that come under the head of building regulation whereas u/s 42 they had to consider any objection there might be to its limits as interfering with the access of light and air to the public street, or obstructing the safe and convenient passage along such street. This follows the view taken by the majority of the Court in *Tribhovan v. Ahmedabad Municipality* I.L.R.(1902) Bom. 221 Aston J, says (at p. 242): "Section 33 is in itself an elastic provision supplying a remedy for evils aimed at in other sections of the Act but not provided against elsewhere in the Act in respect of new buildings not in a

public street but of the nature under consideration. So that the statutory power conferred by Section 33 may be exercised to supplement the explicit provisions elsewhere enacted in the Act, but not in a manner inconsistent with the Act." Chandavarkar J. (at p. 253) points out that the subject-matter and scope of Sections 33 and 42 are different, and that the latter does not affect the former by any justifiable application of the principle of repugnance. Again (at p. 256) he says : "But when a statute gives by one section discretionary power in general terms as to buildings and says that the exercise of that power should be consistent with the provisions of the statute, and in other sections it mentions specifically cases where that power may be exercised, does it necessarily follow that the power given by the former section is exhausted by, and the exercise of it in other cases is inconsistent with, the latter? I do not think it is."

31. In my opinion, therefore, the application made by Tarbhovan in 1897 must be treated as one falling both u/s 33 and Section 42 of Bombay Act VI of 1873; and so far as the Municipality shows that the action complained of has been taken in the exercise of 1 any power conferred upon it by Section 33 it is entitled to do so, subject to any objection of limitation that may be valid. I also think that the fact that Tarbhovan was actually prosecuted u/s 33 is strong evidence that the Municipality in fact purported to pass its orders in the matter u/s 33, rather than u/s 42.

32. But in the present suit we are concerned only with the notice actually issued by the Municipality in 1914 and the action threatened thereon. That notice objection to the projection not on the ground that they had been erected in contravention of 1 the orders of the Municipality u/s 33, but on the ground I that they contravened the Municipal law against such projections 1 extending more than four feet, and were not permissible even "under the new Municipal rules. The notice accordingly requires the plaintiff to remove the portion of the projection "which is constructed against the rules." The objection taken is one that falls u/s 113 of the present Act, and the notice is therefore one which derives most of its legal validity (if it has any) from the provision of that section. This was evidently felt by the drafter of the notice, who gave Section 113 priority over Section 96 in referring to the specific enactments under which it purported to issue. This does not, however, in my opinion, prevent the Municipality also relying on Section 96, so far as it may be applicable and clearly the direction to remove the portion objected to can only be justified under that section. In so far as this portion is contrary to the provisions of Section 113, the case clearly falls under Sub-section (5) of s; 96, as it also would u/s 33, Clause (3), in respect of the contravention of Section 42, Clause (3), of the Act of 1873.

33. But the question of limitation remains to be considered. If Sub-section (6) of Section 96 had not been enacted, there would, I think, be good ground for contending that the notice of 1914 was not barred by limitation. Sub-section (5) contains no limitation, and it has been held in regard to the corresponding provision contained in Section 158 of the Public Health Act, 1875(38 & 39 Vic. c.

55), that where an authority may remove work executed contrary to the by-laws, it may apparently remove it at any time (see *Fairbrass v. Canterbury Corporation* (1902) 77 J.P. 181. Similarly in *Bradley v. Greenwich Board of Works* where an Act authorised the apportionment of the cost of making a sewer, without limiting any time for the purpose, the Court refused to read in the words "within a reasonable time." But "Sub-section (6) of Section 96 provides that ? that Municipality at any time not later than one month after being informed in writing by the person responsible for giving a notice under Sub-section (1) that the erection of the building...has been completed, may by written notice specify any matter in respect of which the" erection of such building...may be in contravention of any provision of this Act or of any by-law made under this Act at the time in force, and require the person...who has erected...such building..., or, if the person who has erected...such building...is not at the time of notice the owner thereof, then the owner of such building...to cause anything done contrary to any such provision or by-law to be amended..." It seems to me that this exactly fits the present case, and that the power to issue the notice in question is subject to the time-limit specified in the sub-section. The word "amended" is a wide one, and must, I think, be held to cover any demolition that may be necessary for the purpose of altering a building so as to make it comply with the provision of the Act or any by-law contravened. In the present case Tarbhovan certainly gave written information to the Municipality that he had completed the balcony, when he made the petition to it in 1898, referred to in para 3 of the defendant's written statement. No doubt the period of limitation prescribed by Sub-section (6) is a special one that can only operate in favour of a person who takes the trouble of writing to the Municipality to inform it of the completion of the building, and to a case where the alleged contravention is one against the provisions of the Act or any by-law in force thereunder, as opposed to an alleged contravention of the legal orders of the Municipality issued u/s 96; but the latter condition applies, and the mere fact that Tarbhovan did not confine his petition to a statement that the building had been completed, or that the Municipality already knew this from other sources, it would not, in my opinion, suffice to take the case out of those contemplated by Sub-section (6). Accordingly I hold that the notice, so far as it is based on Section 96, was invalid as being time-barred u/s 96(6) and consequently the Municipality have no right to get the projection removed by executive action u/s 154(6).

34. I think also that in view of the time-limit fixed in Sub-section (6) of Section 96, there is the strongest ground for supposing that the Legislature intended that action under Sub-section (5) should be taken with due diligence and within a reasonable time. The time-limit of one month prescribed by Sub-sections (3) and (6) supply a clear indication that the proper measure of time to apply to Sub-section (5) is one of months, not years: cf. *Ahmedabad Municipality v. Ramji Kuber* I.L.R.(1911) Bom. 61. In the case of *Fairbrass v. Canterbury Corporation*, the interval between the completion of the work and the notice of the Corporation was only about six months, and probably a different view might have

been taken if it had been six years, In the present case the delay is one of over sixteen years, and is due not to the Municipality being in any way prevented from taking action under Sub-section (5), but (so far as can be seen from the present material) to unnecessary procrastination. I concur, therefore, with the learned Chief Justice in holding that the delay in this case is unreasonable and constitutes a bar to the defendant's compelling the plaintiff by executive action to remove a projection, which admittedly does not come u/s 113(3). The plaintiff is, therefore, entitled to an injunction to restrain the Municipality from taking such action. I would, however, make the injunction subject to any right which the Municipality may be able to establish to get the projection that is objected to removed by suit, as opposed to executive action: cf. Nagar Valab Narsi v. The Municipality of Dhandhuka and Section 55, Specific Relief Act, ill. (b).

35. For these reasons, though I dissent from the reasoning of the Court below, I agree that the appeal should be dismissed with costs.