

(1983) 02 GUJ CK 0017
In the Gujarat High Court

Case No : Letters Patent Appeal No. 323 of 1977

The Municipal Corporation

APPELLANT

Vs

Bhagvandas Parumal

RESPONDENT

Date of Decision : 28-02-1983

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 253, 254, 260, 260(1), 260(1)
Constitution of India, 1950 — Article 14, 19

Citation : AIR 1984 Guj 1 : (1983) 1 GLR 763

Hon'ble Judges : B.K. Mehta, J;A.S. Qureshi, J

Bench : Division Bench

Advocate : G.N. Desai, for the Appellant;

Judgement

B.K. Mehta, J.—The respondent claims himself to be a tenant in the open plot being Final Plot No. 461 of Ellis-bridge Town Planning Scheme No. 3 within the city of Ahmedabad. It appears that the appellant-Corporation, original defendant, had issued a notice dt. Aug, 6, 1969 in exercise of its powers under S. 260 (1) of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as "the Corporation Act") calling upon the plaintiff to show cause why the structure which he had put up should not be removed since it was put up without the necessary permission under the Corporation Act. The plaintiff by his reply of Aug. 14, 1969 submitted the cause which did not impress the Corporation with the result that by the notice of Aug. 30, 1969 which was served upon the plaintiff on or about 1st Sept. 1969, the plaintiff was called upon to remove the structure within three days of the receipt of the notice failing which the Corporation would take appropriate action to remove the same. The plaintiff, therefore, filed the suit being Civil Suit No. 716 of 1970 in the City Civil Court at Ahmedabad praying for a declaration that the impugned notice of Aug. 6, 1969 was ultra vires, bad in law and, therefore, null and void, and for consequential relief of permanent injunction restraining the Corporation its servants, agents and officers from enforcing the impugned notice. The impugned notice was challenged in the plaint

on diverse grounds. Shortly stated, they were as under:

- (1) No action could have been initiated under the Corporation Act for the breach or contravention of any Town Planning Scheme.
- (2) Since the discretion is with the Corporation as to under which Act, namely, the Town Planning Act, 1954, or the Corporation Act, the action should be initiated, it is arbitrary, uncanalized and, therefore, violative of Art. 14 of the Constitution, inasmuch as there is no guideline provided under the Corporation Act as to under what circumstances the discretion should be exercised.
- (3) The relevant Bye-laws providing for building regulations were not validly applied to the area in which the alleged offending structures is situated.
- (4) The impugned notice was clearly in excess of the power and authority of the Deputy Town Development Officer since the power of the Commissioner under S. 260(1) of the Corporation Act could be delegated to Municipal Officers alone and the Deputy Town Development Officer was not a Municipal Officer.
- (5) The alleged offending structure is an old structure and is not one as specified under S. 254 of the Corporation Act and therefore, would not be within the mischief of S. 260 of the Corporation Act.
- (6) The impugned notice is imprecise and vague.
- (7) Non-application of mind to the cause submitted by the plaintiff.
- (8) The impugned notice is contrary to the resolution of the Corporation which has resolved not to demolish such works.

The plaintiff, therefore, prayed for the declaration and the consequential reliefs as above.

2. The suit was resisted by the Corporation by justifying the validity and legality of the impugned notice.

3. On the aforesaid pleadings of the parties, the learned City Civil Judge raised issues whether S. 260 of the Corporation Act is violative of Arts. 14 and 19 of the Constitution, and whether the impugned notice was ultra vires, bad in law and void, and whether the suit in the form in which it was brought was legally maintainable.

4. Before the learned City Civil Judge, the challenge under Art. 19 was not pressed. The learned Judge did not decide the challenge under Art. 14 in view of his finding that the impugned notice was otherwise bad in law and void. The reasons which weighed with the learned City Civil Judge were twofold. In the first place, he held that the authority conferred on the Deputy Town Development Officer under S. 69(1) of the Corporation Act on Feb. 26, 1966 was prior to the creation of the post of Deputy Town Development Officer, which came into existence only on 5th July, 1966. In other words, the authority could not have been conferred in anticipation of the creation of the post. Secondly, the contents

of the impugned notice were imprecise and vague which, therefore, deprived the plaintiff of the adequate opportunity of hearing. The learned Judge, therefore, by his judgment and order of April 29, 1973 granted the declaration and permanent injunction as prayed for.

5. The Corporation, therefore, carried the matter in appeal before this Court being First Appeal No. 532 of 1974. It appears that the said appeal reached hearing before the learned single Judge of this Court (Coram: N.H. Bhatt, J.) along with other similar companion matters, namely First Appeals Nos. 918/73, 1000/73, 1008/73 and 164-74, 426/74, 467/ 74 and 384/74. The learned single Judge by his common order of Aug. 9, 1977 dismissed all these appeals filed at the instance of the Corporation on the short ground that the impugned respective notices were imprecise and vague and, therefore, did not furnish adequate opportunity to the aggrieved parties of hearing. The learned Judge did not, however, go into the question as to whether the authority was validly and legally conferred on the Deputy Town Development Officer. The Corporation, therefore, carried the matter further by filing Letters Patent Appeals from that common order by which the aforesaid companion appeals which were as many as seven before the Division Bench of this Court. The Corporation has also filed from the said order in First Appeal No. 532/74 the present Letters Patent Appeal No. 323/77. The other Letters Patent Appeals from those companion First Appeals reached hearing before the Division Bench of this Court (Coram: S.H. Sheth and G.T. Nanavati, JJ.) and by the order of the Division Bench of Aug. 13, 1979 the Letters Patent Appeals from the aforesaid seven companion First Appeals were allowed and the order of the learned single Judge was set aside and the matters were remanded.

6. At the time of hearing of this appeal, the learned Advocate for the appellant-Corporation urged the following two contentions before us in support of the appeal:

(1) The view of the learned single Judge in the common order by which the aforesaid first appeal including First Appeal No. 532/74 out of which this Letters Patent Appeal arises, that the impugned notice was imprecise and vague and, therefore, confirming the judgment and decree of the trial Court and setting aside the impugned notices and granting the permanent injunction has not been affirmed by the Division Bench which has found as a matter of fact that the impugned notice precisely and squarely set out the facts which constituted the municipal offence viz. putting up unauthorised structure without necessary permission in that behalf.

(2) Though the learned single Judge has not gone into the question as to whether the authority conferred on the Deputy Town Development Officer was not legal and valid, the view of the trial Court is clearly erroneous since it has failed to appreciate that the post of Deputy Town Development Officer was very much in existence since long and, therefore, the conferment of the authority by the Municipal Commissioner vide his office order No. 1079 of Feb. 26, 1966 was

perfectly valid and legal.

7. We are of the opinion that this appeal must be allowed obviously for the following reasons: Apart from the fact that the Division Bench in Letters Patent Appeals Nos. 321 to 328 of 1977 decided on Aug. 13, 1977 has held that the notices in identical terms in the said Letters Patent Appeals from the aforesaid companion first appeals were precise and specific and did not suffer from the infirmity of vagueness and, therefore the view of the trial Court as affirmed by the learned single Judge was not correct. The impugned notice dt. Aug. 6, 1969 is to be found at page 3 of the Corporation's proceedings in the matter of removal of the structure of the plaintiff Ex. 18. On mere perusal of the impugned notice, it is manifest that the charge of the Municipal Corporation was that the offending structure had been put up without the permission as prescribed under Rule 6 of the Building Regulations under the Corporation Act. We do not, therefore, agree with the learned single Judge affirming the view of the learned City Civil Judge that the impugned notice was imprecise or vague in its necessary particulars which deprived the plaintiff of sufficient opportunity of hearing. It is no doubt true that in the body of the notice, it has been stated, after setting out the description, of the offending structure as shown in the sketch as contrary to the Rules and Bye-laws. The plaintiff was, therefore, called upon by the Deputy Town Development Officer, in exercise of the powers under S. 260(1) of the Corporation Act to show cause why the offending structure be not removed or demolished by a date specified therein, and if no satisfactory reasons were given, or the plaintiff failed to produce necessary evidence in support of the reasons, necessary steps would be taken for removal thereof at the cost and consequences of the plaintiff. The Division Bench has also considered these particulars precise enough to give proper notice to the plaintiff to show cause why necessary action be not taken for removal under S. 260(1) of the Corporation Act. The Division Bench has expressed its opinion in the following terms regarding this contention:

The first contention which Mr. Trivedi has raised on behalf of the Municipal Corporation is that the finding recorded by the learned single Judge that notice impugned in each case is vague is wholly unsustainable. He has invited our attention to the notice impugned in each case. According to the learned single Judge, all these notices were invalid because the number of the bye-law which was contravened by the unlawful structures constructed by the plaintiffs was not mentioned in those notices. We have read all these notices. Each one of the notices states two grounds. It firstly states that the structure which is ordered to be demolished by the Corporation has been constructed without obtaining the permission of the Corporation. It also states that the unauthorized construction in question has been put up in violation of the bye-law. It is true that the number of the bye-law has not been specified in each one of these notices. These notices, however, in term state that all the structures in question have been constructed without obtaining the permission of the Ahmedabad Municipal Corporation. In our opinion, the statement of fact that all the structures have

been constructed without obtaining the permission of the Ahmedabad Municipal Corporation is a specific ground which the Corporation has stated in support of its notice. This ground falls within the ambit of S. 253 of the Bombay Provincial Municipal Corporations Act, 1949. Therefore, there is nothing vague in the notice. Whether a particular bye-law was mentioned or not is immaterial when the ground stated in each one of these notices was specific and fell within the ambit of Sec. 253. Therefore, it could not be said that notice impugned in each case and issued under S. 260 of the Bombay Provincial Municipal Corporations Act was vague. The finding recorded by the Courts below in that behalf is, therefore, set aside and we hold that the notice impugned in each case was not invalid on the ground that it was vague.

The first contention urged here before us must therefore be upheld and the finding of the learned single Judge affirming the view of the learned City Civil Judge should be reversed and set aside.

8. The second contention is also well founded. It should be stated at the outset that the learned single Judge has not gone into this question as to whether the conferment of the authority on the Deputy Town Development Officer was not valid and legal. We have also examined the position since the judgment of the learned single Judge can also be supported on this ground which has found favour with the learned City Civil Judge. In the opinion of the learned City Civil Judge inasmuch as the conferment of the authority for exercise of the power under S. 260(1) of the Corporation Act was made by the Office order No. 1079 of Feb. 26, 1966 on an officer whose post has not come into existence, the authority was not validly and legally conferred. The learned City Civil Judge has found that the post of Deputy Town Development Officer was created for the first time by the Municipal Corporation somewhere on July 5, 1966 when the Municipal Corporation sanctioned the post of Deputy Town Development Officer as per entry No. 179 shown in the statement annexed to the letter of the Municipal Commissioner addressed to the Secretary of the Corporation on 28-6-1966 as required by S. 51(2) read with S. 45 of the Corporation Act. In our opinion, with respect to the learned City Civil Judge, his view that this post has been created for the first time somewhere in July, 1966 does not appear to be correct. It is no doubt true that in the statement annexed to the letter of the Municipal Commissioner dt. June 28, 1966 addressed to the Secretary, the post of Deputy Town Development Officer has been shown at Sr. No. 179. Now the purpose of this statement is to furnish the particulars to the Standing Committee for purposes of determining the number, designations, grades, salaries, fees and allowances of the other officers and servants besides those specified in sub-sec. (1) of S. 51 who should, in his opinion, be maintained, and the amount and the nature of the salaries, fees and allowances, which he proposes should be paid to each of them. It, therefore, cannot be said that by inclusion of the post of Deputy Town Development Officer at Sr. No. 179 in the statement annexed to the aforesaid letter, the post was sought to be created for the first time. As a matter of fact, in the first paragraph of the aforesaid letter, it has been stated that the

names etc. of such officers, who exercise at present the powers and perform the duties subject to and in accordance with the Corporation Act and who have been treated till then as Municipal Officers, and who will be treated hereafter as such, are shown in the statement annexed to the letter. It, therefore, cannot be said that the post of the officers whose particulars are included in the statement annexed to the said letter were created for the first time. As a matter of fact, our attention has been invited by the learned Advocate Mr. Desai appearing for the Corporation that originally this post of Deputy Town Development Officer was described as Senior Assistant of the Town Development Officer, and by the relevant Municipal Corporation's resolution No. 407 dt. 23rd July. 1965, the designation of Senior Assistant to Town Development Officer is changed to Deputy Town Development Officer, and accordingly in the office order No. 895 delegating the power of the Municipal Commissioner to the Senior Assistant of the Town Development Officer was to be read subject to the correction as directed by the office order No. 1019 of the Municipal Commissioner dt. Aug. 12, 1965. The Office order No. 895 and the Office order No. 1019 are to be found in the Ahmedabad Municipal Corporation Manual, Volume IV, Book No. II published in 1966. Office Order No. 1019 which is relevant for our purposes reads as under:

The designation of Senior Assistant to Town Development Officer as mentioned in the delegation office order No. 895 dt. 22-10-1964 and 1010 dt. 10-7-65 should now be read as Deputy Town Development Officer in view of the Municipal Corporation Reso. No. 407 dt. 23-7-65.

Sd/- S.K. Gangopadhyay Municipal Commissioner

Dated: 12-8-1965.

The office order No. 1079 which has been relied upon by the learned City Civil Judge in support of his view that since the authority has been conferred somewhere in Feb. 1966 on an officer whose post was created subsequently, the conferment of the authority would be bad and ineffective. The said office order is to be found at page 171 of the said book which provides as under:

In supersession of all previous office orders regarding delegations of powers etc. under S. 69(1) of the B.P.M.C. Act 1949 to the Town Development Officer and Dy. T.D.U., the Municipal Commissioner, Municipal Corporation of the city of Ahmedabad, under S. 69(1) of the said Act, hereby empowers, subject to his revision and general control, the Town Development Officer and other subordinate officers of the Town Development Department to exercise, perform or discharge the powers, duties or functions conferred, imposed upon or vested in the Municipal Commissioner by or under the said Act, as shown against their respective designations as per the schedule appended hereto and signed by him. This order shall come into operation from the 1st day of Mar. 1966.

Sd/- S.K. Gangopadhyay Municipal Commissioner

Dated: 26-2-66.

This very office order clearly indicates that it was issued in supersession of all the previous office orders regarding delegation of the powers of the Municipal Commissioner to the Town Development Officer. By necessary implication, it is clear that the post of Town Development Officer was in existence since it was so designated from 12-8-65 and there was no warrant to read as is sought to be done by the learned City Civil Judge that the post of Deputy Town Development Officer was constituted for the first time in July 1966. In that view of the matter, therefore, the learned Advocate for the appellant-Corporation was perfectly justified in urging that the reliefs granted in the suit were not justified inasmuch as both the findings of the learned City Civil Judge about the imprecise nature of the impugned notice as well as invalidity of the conferment of the power are not well founded. We entirely agree with the learned Advocate for the appellant-Corporation and we are of the opinion that the second contention must prevail and the view of the learned City Civil Judge that the conferment of the authority was not validly and legally made is erroneous.

9. Another ground which was urged before the learned City Civil Judge was that S. 260 (1) of the Corporation Act was violative of Art. 14 of the Constitution. This ground was taken in the plaint as ground No. (c) in para 6. However, in the relief clause in para 9 the first declaration sought by the plaintiff in Cl. (a) that S. 260 is illegal and ultra vires Art. 14 of the Constitution, appears to have been deleted in the original plaint as filed in the Court and all the allegations made in the plaint, including this deletion, appear to have been initialled. However, at the final stage of hearing of the arguments by the Advocates of the parties before the learned City Civil Judge, the contention regarding violation of Art. 14 was reiterated. We, therefore, do not think that this plea is open to the plaintiff since no relief has been claimed in that behalf in the plaint. The result is that there are no contentions worthwhile which can be pressed into service against the impugned action of the Corporation. We, therefore, do not see any purpose in remanding the matter. This Letters Patent Appeal is, therefore, allowed and the judgment of the learned single Judge confirming the judgment of the learned City Civil Judge is set aside and the suit of the plaintiff is dismissed. There would be no order as to costs having regard to the facts and circumstances of this case.