
(1969) 12 AHC CK 0013

Allahabad High Court (Lucknow Bench)

Case No: Criminal A. No. 726 of 1967 connected with Cr. A. No. 727 of 1967

Municipal Board, Sultanpur

APPELLANT

Vs

Abdul Majid alias Banno

RESPONDENT

Date of Decision: Dec. 17, 1969

Acts Referred:

- Uttar Pradesh Municipalities Act, 1916 - Section 2(2)

Citation: (1970) 40 AWR 150

Hon'ble Judges: O.P. Trivedi, J

Bench: Single Bench

Advocate: H.D. Srivastava and S.P. Pathak, for the Appellant; Saghir Ahmad for Respondent., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

O.P. Trivedi, J.

These are two appeals arising out of judgments dated 27-12-1966 passed by the Sub divisional Magistrate, Sadar, Sultanpur, acquitting the Respondent; Abdul Majid of a charge u/s 185 of the UP Municipalities Act. These two appeals have been filed by the Municipal Board, Sultanpur, challenging the order of acquittal passed against the Respondent. As the two appeals raise a common question of law they may be disposed of conveniently by one judgment.

2. The facts briefly are that Abdul Majid has two shops, one of which lies in Mohalla Parkinsganj, on Sultanpur Road and another shop lies in Mohalla Civil Lines in the town of Sultanpur. In June, 1966 he put up shelters made of reeds or Sirki in front of these two shops without obtaining permission of the Municipal Board for doing so and without serving upon them a notice before putting up these shelters as required by the bye laws. According to the prosecution he had thereby incurred liability for prosecution u/s 185 of the UP Municipalities Act. The Magistrate having

come to the opinion that the shelters which were described in the complaints as Chhappars were temporary in character as they could hardly be treated as a material alteration to the shops and held that they were not covered by Section 185 of the UP Municipalities Act. The sole question which arises in these appeals is whether the shed or Chhappart whatever the projection of Sirki which had been placed by Abdul Majid may be called amounted to a building or not so as to attract the provision contained in Section 185 of the UP Municipalities Act. "Building" has been defined in Section 2(2) of the UP Municipalities Act as follows:

"Building" means a house, out-house, stable, shed, hut or other enclosure or structure whether of masonry bricks, wood, mud, metal or any other material whatsoever, whether used as a human dwelling or otherwise and includes any verandah, platform, plinth, staircase, door step, wall including compound wall other than a boundary wall of a garden or agricultural land or appurtenant to a house but does not include a tent or other such portable temporary shelter.

It is submitted by learned Counsel for the Appellant that the Chhappar in question must be treated as building, it being a shed. To my mind this submission cannot be accepted because, having regard to the evidence produced in the two cases, it was clear that the Chhappars had been put up by the Respondent in front of his shops to provide him protection against such elements as sun, rain and wind. These Chhappars were made of reeds, popularly called Sirki and having regard to the object which they were intended to serve namely to provide protection against sun and rain, to my mind, there is no doubt that they must be treated as shelters. Now, under the definition of "building" given in Section 2(2) a tent or other such portable temporary shelters are excluded from the definition. Having regard to the material of which they were made these so called Chhappars which I hold as shelters are also temporary. The only other question which arises is whether these Chhappars which were put in front of the two shops by the Respondent could be reasonably regarded as portable in character. In the case of Bala Prasad, Secretary Municipal Board, Orai v. Muzammil Husain AIR 1934 AIL 190 : 1934 (4) AWR 569 also one Muzammil Husain had spread a reed screen (Sirki ka Pal) in front of his building to provide him protection against sun and rain. The question arose whether such a structure was a portable temporary shelter and was excluded by the definition of "building". In that connection observation made by Niamatullah, J. are pertinent for the present discussion. Observed his Lordship:

Having regard to the purpose for which it has been erected, there is no reason to believe that it is so big as not to be easily portable without materially affecting its condition. It is meant to afford protection from sun and rain to the wooden materials belonging to the contractor.

Before these observations the learned Judge had remarked that "if the whole or a major part of the site which is 30 x 30", is covered by the chappar in question it should be considered to be building, as defined in Section 2(2)". The observations

made by the learned Judge in that case clearly implied that if a temporary shelter made of Sirki, such as in the present case, is spread or put up in front of a shop to afford protection against sun and rain and if it is of a small size so that it can be removed without damage or materially affecting its condition then it must be regarded as portable in character. It is in evidence that the two shelters in question were 10" x 6" and 10" x 4" only in dimensions. I am of the opinion therefore agreeing with the trial court that these two Chappars of Sirki were so small in size that they could be easily removed in tact and must therefore be regarded as portable. As there is no doubt that they were temporary shelters being in this way portable they were excepted from the definition of building. That being so the Respondent was under no legal obligation to serve the Municipal Board with a notice before putting them up or for seeking prior permission. The order of acquittal upon these considerations will appear to be correct in law.

3. These appeals are without any substance and must therefore fail. They are accordingly dismissed. This judgment shall govern the aforesaid criminal appeals.