

**(1944) 05 AHC CK 0014****Allahabad High Court****Case No:** None

Somnath Pandya

APPELLANT

Vs

Municipal Board

RESPONDENT

**Date of Decision:** May 8, 1944**Citation:** AIR 1944 All 235 : (1944) 14 AWR 174**Hon'ble Judges:** Malik, J**Bench:** Division Bench**Final Decision:** Allowed**Judgement**

Malik, J.

This appeal is connected with second appeal No. 222 of 1940. The facts of this case are slightly different. On 26th April 1933 the plaintiff applied for permission to construct certain projections in his house. The Executive Officer of the Board exercising the powers and functions of the Board refused sanction for two projections on 23rd June 1937. The plaintiff then appealed to the Board, which by its resolution dated 23rd November 1937, allowed the appeal and sanctioned the construction of the projections. The resolution along with other resolutions was put up before the Commissioner who by his order dated 19th February 1938 suspended the resolution of the Board and issued directions u/s 34(4) of the Act. The Courts below have found that the offending projections were completed before the resolution of the Board was vacated. The only question for consideration is whether u/s 34(4) the Board is entitled to remove the constructions which were constructed with the sanction of the Board and were completed before the resolution was vacated. Section 34(1) empowers the Commissioner to prohibit the execution or further execution of a resolution or order passed by the Board.... It does not say anything with regard to resolutions that have been executed or constructions that have been made in conformity with the sanction and during the subsistence of the sanction. In the present case the Board wants to demolish a construction which it had expressly sanctioned. There is no provision in the Act directing the applicants to

await the final order of the Commissioner. Once the Board has sanctioned the construction for building, the party concerned is entitled to act upon that sanction. The subsequent order of the Commissioner cannot and should not affect the constructions that have already been completed. The expression "execution or further execution" of the resolution clearly indicates that it has no reference to acts done in compliance with the resolution of the Board. Our attention has not been drawn to any case of this Court but learned Counsel for the appellant has referred to the following cases of the Lahore High Court which support the view of law we have taken : Mohommad Husain v. Municipal Committee, Sialkot ("36) 23 AIR 1936 Lah. 689 Municipal Committee, Lahore v. Mrs. Chaudhri ("37) 24 AIR 1937 Lah. 201 and Administrator, Lahore Municipality v. Jagan Nath ("39) 26 AIR 1939 Lah. 581.

2. Learned Counsel for the respondent has argued that the Board is empowered to direct demolition of a projection u/s 211 of the Act. We are not called upon to express an opinion with regard to the powers of the Board under other sections of the Act. It is conceded that no notice u/s 211 was given prior to the institution of the suit. In our judgment the Board is not competent to demolish the constructions in pursuance of Section 34(4) of the Act. Learned Counsel for the respondent further contends that the order of the Commissioner is final and cannot be questioned by any authority except that provided in the Act. It is perfectly correct that the order of the Commissioner cannot be questioned by the civil Court but, the contention of the appellant is that the Board is exceeding the power vested in it u/s 34(4) and to that extent relief may be granted by the civil" Court. In our opinion the contention is sound. We, therefore, allow the appeal with costs, set aside the decree of the Court below and restore that of the Court of first instance.