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The Bandra City Municipality Vs Dr. D.A. D''Month

None

Court: Bombay High Court

Date of Decision: Jan. 19, 1923

Acts Referred:
District Municipalities Act â€" Section 90, 96

Citation: AIR 1923 Bom 407 : 76 Ind. Cas. 478

Hon'ble Judges: Norman Macleod, C.J; Crump, J

Bench: Division Bench

Judgement

1. The plaintiff sued to restrain the defendant bya permanent injunction from pulling down any walls or other parts of the house No. 167 mentioned

in paragraph 1 of the plaint. The defendant Municipality had given notice to the plaintiff that the house was in a dilapidated condition, and after

certain correspondence the Municipality agreed to the proposal of the plaintiff that the wall of the house on the west ana east should he

reconstructed and the damaged wood work renewed, ana permission to carry out the proposed alteration was given. The defendant contested the

fact that permission had been given to the plaintiff to erect the eastern and western walls from the foundation; and that was one of the issues upon

which the parties went to trial. It was found that permission had been granted. So far, the plaintiff succeeded. But with regard to the southern wall,

it was never suggested that permission had been given, or even been asked for, to erect a wall from its foundation, and it was contended for the

plaintiff that it was not necessary to ask for permission, so that the 3rd issue raised was whether it was necessary 1 or the plaintiff to have the

permission of the Municipality to rebuild the southern wall of the house. That issue was found in the affirmative by the Trial Court. The learned

Judge said at page 8, ""I o erect a building in Section 96 of the District Municipal Act includes any material alteration, enlargement or reconstruction

of any building, and u/s 3(7) of the District Municipal Act ""Building"" includes walls, erandas, etc., I think that constructing the southern wall from

the foundation is a material alteration or reconstruction of the building.

2. In appeal the learned Appellate Judge said, ""But in my opinion, in the circumstances, the mere rebuilding of the southern wall from its foundation

would not be "erection of a building" within the meaning of Section 90 of the District Municipal Act, and consequently no permission was

necessary. It has not been suggested that any change was effected in the dimension of the old wall. It has been urged that, probably, the

Municipality might have insisted on a larger space being left between the present building of the plaintiff and his other building to the south if the

plaintiff baa gone to the Municipality for permission to build the southern wall. That may be, but there is nothing on the record to justify the

inference that there was a deliberate attempt to offend against the Municipal Laws in this respect.

3. Now, it is difficult, so far as we can see, to realise on what grounds the learned Judge could say that the mere rebuilding of the southern wall

from its foundation would not be ""the erection of a building."" When the old wall was pulled down, then there was nothing left until rebuilding

operations began. The mere fact that an exact replica of the old wall was built cannot prevent the new building from being a "building" within the

meaning of the Act. The point seems to us to be too clear to require elaboration. Really all that the plaintiff can urge is, that it is a hard case, that

the defendant Municipality should object to this wall now that it has been built, although no permission was asked for. But we have nothing to do

with questions of that sort in second appeal. We are merely to decide the question of law whether it was necessary under the Act for the plaintiff to

obtain permission of the Municipality before he rebuilt this southern wall. That was necessary, and, therefore, the plaintiff was not entitled to the

injunction he asked for.

4. The result will be that the appeal is allowed, and the decree of the Trial Court will be restored with costs in this Court ana the Court below.

5. It will now be a matter for adjustment between the parties whether the Municipality should take full advantage of the southern wall having been

built without permission. No doubt, the Municipality will consider our judgment, and the finding of the lower Appellate Court, with which we do

not intend to quarrel, that there was nothing on the record to justify the inference that there was a deliberate attempt to offend against the Municipal

Laws in this respect.