

Matwal Chand vs District Magistrate, Budaun And Ors. on 5 May, 1953

Equivalent citations: AIR1953ALL681, AIR 1953 ALLAHABAD 681

JUDGMENT

Mootham, J.

1. This is a petition under Article 226 of the Constitution wherein the petitioner prays for the issue of a writ of Mandamus to direct the opposite parties to refrain from interfering with the further progress of the building by the petitioner of a temple. The facts upon which reliance is placed by the petitioner can be shortly stated. The petitioner is a Sikh who, together with a number of other members of his community, migrated to India from what is now West Punjab at the time of the partition. These persons were provided with accommodation in a mohalla in the city of Budaun which had been predominantly a Muslim locality. In 1952 the petitioner, in his capacity as Secretary of the "Punjabis Sanatan Dharam Sabha, Budaun" purchased a vacant plot of land for the purpose of constructing a temple, reading room and a 'dharamshala'. On 4-8-1952, he applied under Section 178, U. P. Municipalities Act, 1916, for permission to erect these buildings on the land which he had purchased, and on 5-9-1952, sanction to do so was given to him by the Executive Officer on behalf of the Municipal Board. Work on the construction of the temple was begun, and it is said that about Rs. 20,000/- has already been spent.

2. Immediately to the west of the plot of land purchased by the petitioner is a mosque which the petitioner says was, at the time he purchased the land, partly in ruins and not in use. The construction of the temple in close proximity to the mosque became a matter of concern to the other Mohammedan inhabitants of Budaun, and on 13-11-1952, the District Magistrate wrote to the President of the Municipal Board a letter in which he expressed the view that the existence of a temple adjacent to the mosque was not desirable from the point of view of law and order, and enquired whether this aspect of the matter had been considered by the Municipal Board. Presumably as a result of this letter a notice was, on 14-11-1952, served by the Board on the petitioner informing him that the sanction had been revoked. That letter has not been produced before us, but according to the petitioner it was stated therein that the sanction had been granted under a mistake as the proposed construction contravened the provisions of Building Bye-law No. 7 which is in the following terms :

"7. No mosque, temple, church or other sacred or religious building shall be erected (a) unless the frontage is at least 15 feet from the centre of the street on which it abuts and (b) unless it is situated at a distance of not less than 100 yards from any other sacred or religious building or another sect or religion."

3. On behalf of the Municipal Board a lengthy affidavit has been filed a large part of which is hearsay. The case for the Board is that the Executive Officer of the Board sanctioned the plans submitted by the petitioner without applying his mind to the matter, that the plans submitted by the petitioner were not in accordance with Building Bye-laws Nos. 2 and 3, and that the sanction of the Board had been obtained by fraud and misrepresentation on the part of the petitioner. These however are not matters which we can examine in a petition under Article 226, nor in the view which we take is it necessary to do so.

4. The petitioner's contention is that the Municipal Board having once sanctioned the plan submitted to it had no power subsequently to revoke that sanction. To this it is answered that as the Board's power to sanction the construction of a building is, under Sub-section (1) of Section 180, U. P. Municipalities Act, "subject to the provisions of any by-law" the alleged sanction upon which reliance is placed by the petitioner was in law no sanction at all an argument which the petitioner seeks to refute on the ground that the Municipal Board had power to dispense with the requirements of its own bye-laws and that in this case it had done so.

5. The relevant portion of Section 180 of the Act is in these terms :

"180. 'Sanction of work by board -- (1) Subject to the provisions of any bye-law, the board may either refuse to sanction any work of which notice has been given under Section 178 or may sanction it absolutely or subject to certain written directions that it may think fit to issue."

6. Mr. A. P. Pandey, who appeared for the petitioner, has argued that the use of word 'may' in this sub-section gives the Municipal Board power to ignore the provisions of its bye-laws if it so chooses. No authority has been cited in support of this proposition which would appear to involve construing the expression 'subject to' as the equivalent of 'notwithstanding'. In our opinion the word 'may' has reference to the power to sanction and does not control the opening words of the sub-section.

7. The law on the point appears to us to be clear. In -- 'Yabbicom v. King', (1899) 1 Q B 444 (A) a local authority empowered to make bye-laws for the regulation of buildings within its jurisdiction purported to sanction plans which were not in conformity to such bye-laws. In a case cited by the local justices Day J. said:

"The district council could not control the law, and bye-laws properly made have the effect of laws; a public body cannot any more than private persons dispense with laws that have to be administered; they have no dispensing power whatever."

This case was cited with approval in -- 'William Bean & Sons v. Flaxton Rural Council', (1929) 1 K. B. 450 (B) where at p. 467 Sanky L. J said :

"It is clear on the case of '(1899) 1 Q B 444 (A) referred to in the learned judge's judgment, that a local authority has no power to sanction plans in contravention of its own bye-laws properly made."

Mr. Pandey has drawn our attention to certain cases in which the Court has held that a sanction once accorded cannot be revoked namely -- 'Nanak Prasad v. Municipal Board, Rae Bareilly', A. I. R. 1943 Oudh 292 (C), -- 'Vithal Dhonddev v. Alibag Municipality', A. I. R. 1918 Bom 139 (D), -- 'Municipality of Sholapur v. Abdul Wahab', A. I. B. 1921 Bom 489 (E) and -- 'Tullaram v. The Corporation of Calcutta', 30 Cal 317 (F). We do not however think that these cases are of any assistance to him, for in none of them was the sanction which had been accorded by the municipal authority held to be in excess of its power; in each case the sanction was a valid sanction which, it was held, could not be revoked in the absence of express statutory provision. Particular reliance was placed by Mr. Pandey on 'Tullaram's case (F)'. In that case the Corporation had granted to the plaintiff sanction to erect a mill on his giving a certain undertaking to the Corporation. The undertaking not having been complied with the Corporation purported to withdraw its sanction. It was held that the sanction having been validly granted under Section 247, Calcutta Municipal Consolidation Act, it became absolute and the Corporation had its remedy in a civil Court for enforcement of that condition. The case does not therefore, in our opinion, touch upon the question which we have to consider here.

8. Finally it was suggested on behalf of the petitioner that Building Bye-law No. 7 was an unreasonable bye-law and therefore invalid. With this suggestion we are wholly unable to agree. A municipal board has under Sub-section (1) of Section 298 of the Act power to make bye-laws applicable to the whole or part of the municipality consistent with the Act and with any rule, for the purpose of promoting or maintaining the health safety and convenience of the inhabitants of the municipality; and under Sub-section (2) of the same section it has the power given to it by item (g) of List I-A to make bye-laws "prescribing the circumstances in which a mosque, temple, church or other sacred building may or may not be erected, re-erected or altered."

This court will be slow to declare invalid the legislative act of a local authority. The bye-laws of such a body ought to be supported if possible, or as it has been said they ought to be "benevolently" interpreted and credit ought to be given to those who have to administer them that they will be reasonably administered": -- 'Kruse v. Johnson', (1898) 2 Q B 91 (G). Learned counsel for the petitioner conceded that the test was whether the bye-law involved an oppressive interference with the rights of the subject. We are unable to see that this bye-law has any such effect.

9. Although the petitioner has stated that at the time sanction was given to him the adjoining mosque was not in use and neglected an allegation which is strongly denied by the Municipal Board it has not been argued before us that it did not constitute a religious building within the meaning of Building Bye-law No. 7. It is not in dispute that the erection of the proposed temple would constitute a contravention of this bye-law, (assuming that the Bye-law is not invalid as being unreasonable),

and therefore we are of opinion that the sanction which the Executive Officer purported to accord to the petitioner on 5-9-1952, was not a valid sanction in law. In our opinion therefore this petition fails and must be dismissed.

10. During the course of the hearing we granted the parties at their request an adjournment to explore the possibility of arriving at an agreement satisfactory to both parties. Unfortunately no agreement has been reached. Nevertheless the matter appears to us to be eminently one in which the good sense of both parties should, prevail. We understand that the building which is in the course of erection is capable, with only very minor alterations, of being used as a 'Dharamshala', and we understand further that the Municipal Board has no objection to it being constructed and used for this or any other secular purpose. In these circumstances we would like to express the view that now that this case is over, the parties will, in the general interest, be able to arrive at a satisfactory adjustment of their difficulties. In the circumstances we make no order as to costs.