

Bohrey Mathura Prasad vs Rex Through Notified Area Committee on 21 March, 1950

Equivalent citations: AIR1950ALL458

ORDER

Harish Chandra, J.

1. This is an application by one Bohrey Mathura Prasad against his conviction and sentence under Section 307, U. P. Municipalities Act (Act No. II [2] of 1916) by a Magistrate of the Second Class in the Mathura District which conviction and sentence were confirmed on appeal by the learned Sessions Judge of Mathura. The applicant lives in the Notified Area of Kasi Kalan and sought the permission of the Notified Area to build a shop. The charge against him was that he did not construct it according to the permission granted to him by the Notified Area and did not leave four feet of land between his shop and the public road. A notice was thereupon served upon him under Section 186, Municipalities Act, on 11th February 1917, But he took no steps and did not appeal to the District Magistrate under Section 318 of the Act. Thereafter, he was prosecuted under Section 307, Municipalities Act and convicted and sentenced to a fine of Rs. 50. It would appear that there is bye-law of the Notified Area according to which a space of four feet must be left between any building that may be erected within the Notified Area and the public road. Admittedly, the applicant left only two feet of land between his newly constructed shop and the public road and he, therefore, committed a breach of the bye-law.

2. One of the points for consideration before the Court below was whether on the assumption that the construction had been made in accordance with the sanction granted by the Notified Area the applicant was or was not liable for a breach of the bye-law in question under Section 185, Municipalities Act. The view taken by the Court below is that he is so liable. The section runs as follows:

"185. Whoever begins, continues or completes the erection or re-creation of, or any material alteration in a building or part of a building or the construction or enlargement of a well without giving the notice required by Section 178, or in contravention of the provisions of Section 180, Sub-section (5) or of an order of the board refusing sanction or any written directions made by the board under Section 180 or any bye-law, shall be liable upon conviction to a fine which may extend to five hundred rupees."

3. The view of the learned Sessions Judge is that a person is liable under Section 185 when he acts in contravention of (1) any written directions made by the board under Section 180 or (2) any bye-law. The contention of learned counsel for the applicant is that the words "any bye law" occurring in the

section must be read with the preceding words and that the "written directions" referred to in the section are written directions made by the board either under Section 180 or any bye-law and that a person who acts in accordance with the written directions of the board will not be liable if in doing so he commits a breach of any bye-law of the Notified Area or the Municipality concerned. In my view this is the correct interpretation of Section 185 and the commas occurring in that section of the Act as printed in the "Collection of Acts passed by the Lieut. Governor of the U. P. of Agra and Oudh in the year 1916" would lead to the same conclusion. No doubt, in interpreting a section much importance cannot be attached to the marks of punctuation occurring in it. But in this case the commas are in conformity with the general sense of the language actually used in the section. It will be noted that Sub-section (1) of Section 184 would seem to imply that a sanction given or deemed to have been given under Section 180 does in fact exempt the person to whom the sanction is given or deemed to have been given from any penalty or consequence to which he would otherwise be liable under Section 185 and if the intention of Section 185 is that if a person in acting in accordance with any written directions made by the board commits a breach of any bye-law he would be liable under that section, the exemption from liability contemplated in Sub-section (1) of Section 184 would have no meaning. A similar conclusion may be drawn from Sub-section (4) of Section 180. Sub-section (3) of that section deals with cases in which the board neglects or omits for a period of one month after the receipt of a valid notice under Section 178 to make and deliver to the person giving such notice the sanction contemplated in Sub-section (1) of that section. In that case the person giving the notice is deemed to have been given a sanction to execute any work of which notice has been given by him under Section 178. Sub-section (4) runs as follows :

"Provided that nothing in Sub-section (3) shall be construed to authorize any person to act in contravention of this Act or of any bye law."

4. The reference in the sub-section to Sub-section (3) alone would seem to indicate that if a person acts in accordance with the sanction given by the board under Sub-section (1) he will not be liable if in doing so he acts "in contravention of this Act or of any bye-law."

5. It would thus appear that if the applicant in the present case has acted in accordance with the sanction given by the board, he cannot be held liable for a breach of the bye law requiring that a space of four feet should be left between any building and the public road.

6. In regard to the facts, it would appear that the lower Court did not enter into them except superficially in view of the interpretation put by it upon Section 185 of the Act. The only reference to the merits of the case is contained in the following words occurring in the judgment.

"It is no doubt true that the sanction granted to the appellant did not contain any direction"

7. I accordingly sent for the record of the case. But, somehow, it appears that the record has been weeded out. I do not know in what circumstances the record of this case was weeded out within a year of its disposal by the lower appellate Court and I would suggest that the learned District Magistrate of Mathura may look into the matter and take such steps to prevent such thing

happening again in future as he may consider fit. When the record was not available I asked the trial Court to take further evidence on the question whether the applicant was given the sanction to build without leaving an open space not less than four feet in width along the entire frontage of the building. The evidence was duly recorded and has been certified to this Court by the learned Tahsildar Magistrate of Chhata. (After discussing the evidence, his Lord-ship concluded :) It would thus appear that the applicant made the construction in question in contravention of the written directions made by the board under a bye-law that a space of four feet was to be left between the building and the public street.

8. The applicant has, in my view, been rightly convicted and the application is accordingly dismissed.

9. The order staying the realisation of the fine is discharged.