

Malhoo Mian Abdul Ghani vs State Through Municipal Board, ... on 30 January, 1953

Equivalent citations: AIR1953ALL548, AIR 1953 ALLAHABAD 548

ORDER

Mukerji, J.

(1) Malhoo Mian Abdul Ghani was prosecuted by the Municipal Board of Bahraich under Sections 185, 186 and 265/306, Municipalities Act for having made a Kachcha chabutra in front of his shop. As a result of this prosecution the trial Court awarded a sentence of fine to the extent of Rs. 10/- only on the applicant.

(2) It appears that on 6-6-1951, the Municipal Board of Bahraich served a notice on the applicant to demolish a certain chabutra which he had constructed without permission of the Board and which according to the view of the Municipality was not only a trespass but was also a nuisance. The applicant was required to remove the various constructions within three days of the receipt of the notice. The notice was received by the applicant on 10-6-1952, and on 12th June, the applicant replied, saying that the chabutra in respect of which the notice had been served on him was an old chabutra and that it did not in any manner cause any obstruction nor was it a nuisance. The Municipal Board apparently was not satisfied by the answer which the applicant gave and they chose to prosecute the applicant under the sections which I have already noted earlier in this judgment.

(3) After the applicant had been convicted by the Bench Magistrate of the second class he preferred an appeal to the Sessions Judge of Bahraich. The appeal was heard by the learned Assistant Sessions Judge who found the applicant not guilty of offences under Sections 186 and 265/307 Municipalities Act, but found him guilty of an offence punishable under Section 185 of the Act.

(4) The only question which fell for determination in the case was whether the chabutra in dispute could come within the definition of "a building" or "a part of a building" within the meaning of these words in the Municipalities Act. Section 2(2) of the Act defines "building" in these words:

" 'Building' means a house, hut, shed or other roofed structure, for whatsoever purpose and of whatsoever material constructed) and every part thereof, but shall not include a tent or other such portable temporary shelter".

"Part of a building" has been defined by Section 2(14) and the definition is in these words:

" 'Part of a building' includes any wall, under ground room, or passage, verandah, fixed platform, plinth, staircase or door step attached to, or within the compound of an existing building or constructed on ground which is to be the site or compound of a projected building".

The learned Magistrate Sri Sheo Prasad made a local inspection and had very rightly put the inspection note on the record of this case. From the inspection note it appears that the chabutra in dispute lay in front of the shop of the applicant and it abutted the road. It was a kachcha construction which was made ahead of the pucca chabutra which was adjacent to the applicant's building. From the inspection note it appears that this chabutra could not in any sense be a part of building. This construction was of a purely temporary nature and had been made not inside the compound of an existing building nor on ground which was to be the site or compound of a projected building. It apparently was separate entity raised directly adjacent to the public road. It may have been in the nature of a trespass or a nuisance, but we are not concerned with that aspect of the matter so far as this prosecution goes. In order to incur the penalty prescribed under Section 185, Municipalities Act, the erection or material alteration has got to be made in a building or a part of a building -- if any one makes such an alteration without giving the requisite notice under Section 178 then he becomes liable to punishment under Section 185. Under Section 178 before a person begins a construction within the municipal limits of a building or a new part of a building or starts to re-erect or make a material alteration in the building or wishes to make or enlarge a well, he has to give notice of such intention to the Board. From what I have stated in regard to the topography of the chabutra it appears to me that this construction could not come within any of the things mentioned in Section 178, in respect of which it was obligatory on a person to give notice to the Municipal Board. I may here mention that Rennett J. took a similar view to what I have taken of the chabutra in question in the case of -- 'Brijnandan Prosad v. Emperor', AIR 1945 All 232 (A). Eennett J. pointed out that a chabutra does not come within the definition of Section 2(2) unless it could be considered as a part of the house. He doubted whether a chabutra could ever be considered a part of a house.

(5) In my judgment the conviction of the applicant under Section 185, Municipalities Act was unjustified. I accordingly allow this application, and set aside his conviction and sentence. The fine, if paid, shall be refunded.