

State vs Amulya Kumar on 8 December, 1952

Equivalent citations: AIR1953ALL369, AIR 1953 ALLAHABAD 369

JUDGMENT

Agarwala, J.

1. This is a Government appeal against the acquittal of Amulya Kumar Banerji who was prosecuted under Section 79, U. P. Town Improvement Act, 1919, read with Section 34 (A) enacted by the U. P. Town Improvement (Adaptation) Act, 1948. The facts briefly stated are as follows :

2. The respondent obtained permission from the Municipal Board of Banaras to construct a house on his land on Lajpat Rai Road, Banaras, sometime in September 1948. He started making constructions in accordance with the permission granted by the Municipal Board. While he was doing so, by the notification dated 19-1-1949, the Government brought into force the Town Improvement (Adaptation) Act, 1948 (U. P. Act 47 of 1948), in the whole of Banaras Municipality with immediate effect. On 5-4-1949 the Banaras Improvement Trust resolved that a master plan for the whole of the city of Banaras be prepared for the improvement of the city. The Trust then requested the Government to issue a notification under Section 34 (A). Accordingly, the Government issued a notification dated 4-6-1949 declaring that the Banaras Improvement Trust had decided to enforce an Improvement Scheme in the areas specified in the notification excluding the areas under the control and power of the Cantonment and Railway authorities. In this specification the area of the entire city of Banaras was shown.

3. As the respondent continued making constructions which he had started in pursuance of the permission obtained by him from the Municipal Board, he was asked by the Secretary of the Trust not to do so. The respondent asserted that he had simply filled in the foundations and was not making any constructions worth the name. On 22-8-1949 the Trust passed a resolution that the Deferred Street Scheme in respect of certain streets be taken up in hand. Amongst the streets mentioned in the resolution was the street abutting which the house of the respondent was being constructed. The resolution provided that no one was to make constructions within 7 1/2 ft. of the alignment of the streets. On 5-10-1949 the Investigator of the Trust reported that the respondent was making constructions contrary to the resolution of the Trust. There was some correspondence between the Secretary of the Trust and the respondent, and the respondent again asserted that he had not contravened any resolution of the Trust.

4. On 11.10-1949 the Secretary of the Trust filed a complaint in the Court of the City Magistrate, Banaras. In the complaint it was stated that it appeared from the report of the Investigator dated 23-6-1949 that the accused had continued the construction of his house without the fresh permission of the Trust, that the accused was served with a notice and was directed to stop the

constructions at once but that he paid no heed to the notice and did not stop the constructions. It was, therefore, alleged that the respondent had been guilty under Section 79, Improvement Trust Act. The learned City Magistrate found the respondent guilty and sentenced him to a fine of RS. 100. The respondent appealed to the learned Sessions Judge who acquitted him holding that the complaint having been filed by the Secretary and not by the Chairman of the Improvement Trust could not be taken cognizance of by the Court and that the notification of the Government declaring the intention of the Trust to prepare an improvement scheme, being in respect of the whole of the city of Banaras and not in respect of any particular portion thereof, was invalid not being contemplated by law.

5. In this appeal it has been strongly contended by learned counsel for the State that the learned Sessions Judge erred in the interpretation of law on both the points and further that the evidence on the record established that the respondent did in fact contravene the provisions of law and was guilty of the offence for which he was tried.

6. As regards the question whether the complaint filed by the Secretary of the Improvement Trust can be taken cognizance of by the criminal Court, one has to refer to Section 94, U. P. Town Improvement Act. This section lays down :

"Unless otherwise expressly provided, no Court shall take cognizance of any offence punishable under this Act, except on the complaint of, or upon information received from, the Trust or some person authorised by the Trust by general or special orders in this behalf"

It is conceded that there was no general or special order of the Trust authorising the Secretary to make the complaint. It was, however, pointed out that the Trust passed a resolution on 16-7-1949 empowering the Chairman to exercise the powers vested in the Trust under several sections of the Improvement Trust Act, including Section 94, and that the Chairman in his turn by an order dated 7-10-1949 authorised the Secretary to file complaints under Section 94. It was urged that under Section 21, the Chairman could delegate his powers to any officer of the Trust. This argument, however, is not tenable. The resolution of the Board empowering the Chairman to exercise the powers vested in the Trust under Section 94 did not empower the Chairman to delegate his powers to the Secretary, Under Section 21 the Chairman by general or special order in writing is empowered to delegate to any officer of the Trust any of his powers, duties or functions under the Act or any rule made thereunder, except these conferred or imposed upon or vested in him by Sections 31, 16, 22, 46 and 95. No doubt Section 94 is not one of the sections covered by the exception, but at the same time it by itself does not confer any powers on the Chairman. Therefore, it follows that the Chairman of a Trust may by general or special order in writing delegate to any officer of the Trust the performance of the powers, duties or functions of the Trust under Section 94, if he has been empowered by any rule made under the Act to exercise those powers. Rules under the Act are made under Section 73. These rules can be made only "with the previous sanction of the State Government.". Even if we consider the resolution of the Trust dated 16-7-1949 to be a rule, there must be the sanction of the State Government for the same. No such previous sanction has been produced in the case. It follows, therefore, that the Chairman was not empowered to delegate his powers to the

Secretary.

7. We may here note an argument that was pressed upon by the learned counsel for the respondent. It was urged that in no circumstance could the Chairman delegate his powers to institute a criminal complaint to the Secretary, even if there were a rule to that effect, with the previous sanction of the Government. The reasoning was that Section 21, prohibits delegation of powers conferred on a Chairman under Section 95, which section it was contended relates to the institution of all kinds of legal proceedings civil or criminal, including those relating to offences committed under the Act. There is a fallacy in this argument. Section 95 deals with the powers of the Chairman. It is a general article empowering the Chairman, subject to the control of the Trust, to institute, defend or withdraw from legal proceedings under the Act, to compound any offence against the Act, to admit, compromise or withdraw any claim made under the Act, and to obtain such legal advice and assistance-as he may from time to time think it necessary or expedient to obtain, etc. Section 94 specifically deals with offences under the Act and empowers only the Trust or a person authorised by it to institute complaints regarding them. If Section 95 were to include criminal complaints mentioned in Section 94, the Chairman and not the Trust would be the principal person to institute them. This would be contrary to the express language of Section 94. The proper interpretation of Section 95 is that it does not include the institution of complaints in connection with offences punishable under the Act, but deals with all other legal proceedings. Clause (b) of Section 95-speaks of compounding 'of any offence against this Act' and does not speak of institution of complaints therefor. This also supports the above-view. Therefore, if there had been a rule properly made under Section 73 empowering the Chairman to institute complaints for offences under the Act the Chairman could have delegated his power to another officer of the Trust under Section 21. As, however, there was no such rule, the complaint filed in the present case was wholly unauthorised and conferred no jurisdiction on the criminal Court to take cognisance of it.

8. On behalf of the State it was urged that this was merely an irregularity which could be cured under Section 100 (e), Improvement Trust Act. This section provides that 'no act done or proceeding taken under this Act shall be questioned on the ground merely, of

(e) any omission, defect or irregularity not affecting the merits of the case."

It was urged that the fact that the Secretary instituted the complaint without proper authority was merely an irregularity which did not affect the merits of the case. the institution of a complaint or other legal proceeding by a competent person is the basis of the jurisdiction of the Court. No Court can take cognisance of a complaint or other legal proceeding unless it has been properly-instituted or unless the defect has been cured in accordance with the provisions of law. If there was no jurisdiction to take cognisance of the complaint as provided in Section 94, the whole proceedings were ultra vires and void in the eye of law. The omission, defect or irregularity mentioned in Clause (e) of Section 100 has no reference to an illegality of this kind.

9. In this view of the matter, it is not necessary to decide the other point raised in the case, namely, whether the notification of the State-Government proclaiming that the Improvement Trust of Banaras had decided to enforce an Improvement Scheme in the whole of the city of Banaras was

valid or not. It has, however, been urged before us by learned counsel for the State-that the present appeal has been filed as a test case requiring a determination of this question. As learned counsel on both sides have addressed us on the point at length we may briefly indicate our views upon it.

10. The notification was issued under Section 34A, Improvement Trust Act, as amended by U. P. Act 47 of 1948. Section 34A reads :

"(1) Whenever the Trust decides to frame an improvement scheme for any area, the State Government may, at the request of the Trust, issue a notification specifying such area, and declaring that the Trust has decided to propose an improvement scheme for such area.

(2) A notification under Sub-section (1) shall remain in force for six months from the publication thereof and during this period no buildings shall be erected, re-erected, altered, or added to within the said area without the written sanction of the Trust.

Provided that the State Government may for sufficient reasons extend the said period by a further period not exceeding six months.

(3) If an improvement scheme is notified in accordance with Section 42 in respect of such area before the expiry of the notification the notification shall continue in force until the scheme is carried out or is abandoned."

It was urged by learned counsel for the respondent that the words "for any area" in Clause (1) of the section refer to a specified locality out of the jurisdiction of the Trust and that it did not refer to the entire area under its jurisdiction. Reference was made to Sections 24 to 32 in connection with this argument. Section 24 describes the various kinds of improvement schemes. Sections 25 to 32 deal in detail with the various improvement schemes mentioned in Section 24. All of them refer to 'area' leaving the impression on one's mind that normally the Trust would propose a scheme for a specific locality, within its jurisdiction. The extent of the area, however is not limited either in Section 34A or in any other provision of the Act. In the absence of any such limit, it seems to us that there is nothing to prevent an Improvement Trust from including the whole of the area under its jurisdiction in any particular scheme. No doubt normally the Trust would not go to the length of proposing a scheme for the whole of a city and bringing all constructions within the city to a standstill, yet we are unable to say that in law it has no such power if it thought it wise or prudent to take that course. The notification in question must, therefore, be held to be valid.

11. The appeal, however, fails on the first point decided by us. The result is that we dismiss this appeal.