

# **The Municipal Corporation Of The City Of ... vs Ben Hiraben Manilal on 5 April, 1983**

**Equivalent citations: 1983 AIR 537, 1983 SCR (2) 676, AIR 1983 SUPREME COURT 537, 1984 LAB IC (NOC) 79 (MAD), 1983 (2) 24 GUJLR 1034, 1983 (1) MCC 122, 1983 UJ (SC) 369, 1983 (1) SCJ 382, 1983 (2) SCC 422, (1983) 2 LBLJ 326, (1983) 2 LAB LN 475, (1983) TAC 414, 1983 TLNJ 129, (1983) 96 MAD LW 104, (1983) ACJ 286, (1983) 2 MAD LJ 63, (1983) GUJ LH 581**

**Author: Sabyasachi Mukharji**

**Bench: Sabyasachi Mukharji, D.P. Madon**

PETITIONER:

THE MUNICIPAL CORPORATION OF THE CITY OF AHMEDABAD

Vs.

RESPONDENT:

BEN HIRABEN MANILAL

DATE OF JUDGMENT 05/04/1983

BENCH:

MUKHARJI, SABYASACHI (J)

BENCH:

MUKHARJI, SABYASACHI (J)

MADON, D.P.

CITATION:

1983 AIR 537

1983 SCR (2) 676

1983 SCC (2) 422

1983 SCALE (1) 327

CITATOR INFO :

E 1985 SC1416 (126)

ACT:

Bombay Provincial Municipal Corporation Act, 1949 -  
sections 260 and 478-scope of-No reference made to section  
478 in notice-Notice, if invalid-Wrong reference in show  
cause notice, if would vitiate the notice

Interpretation-language of a provision falls short of  
object of legislature-Court, if could give an extended  
meaning to words.

HEADNOTE:

In response to the notice issued to her under section 260 (1) (a) of the Bombay Provincial Municipal Corporation Act, 1949 the respondent contended that the impugned construction of walls without the sanction of the municipal corporation was in existence when she had purchased the premises. She then filed a suit in the City Civil Court and obtained permanent injunction restraining the corporation from removing the impugned unauthorised construction. The decree of the lower court was affirmed by a single Judge of the High Court in appeal and in further appeal a Division Bench held that the impugned notice was beyond the powers of the Corporation in that a notice under the section could only be issued against the person who had constructed the building or who was constructing the building.

On further appeal to this Court it was contended on behalf of the appellant that section 260(1) (a) read in conjunction with the latter part of section 478 empowered the Corporation to take action for demolition or removal of unauthorised construction both against the person who had commenced or was constructing the building as well as the person who was the owner of the building which had been constructed or erected without permission in violation of the laws.

Allowing the appeal,

^

HELD: Although the impugned notice was not issued under section 478, it cannot be said that the notice was unauthorised or illegal. The question in this case being one of construction of a provision of a statute that construction must be made as to be in conformity with its other provisions and the provisions must be read as a whole. Section 478 can be relied upon in support of the notice under section 260(1) (a). [680 H; 681 A-B]  
677

It is well settled that a wrong reference to the power under which action was taken by the Government would not perse vitiate that action if it could be Justified under some other power under which government can lawfully do that act. [681 D-E]

L. Hazari Mal Kuthiala v. Income Tax officer, Special Circle, Ambala Cantt. & Anr. [1961] 41 I.T.R. 12 @ 16, Hukumchand Mills Ltd. v. State of Madhya Pradesh and Anr. [1964] 52 I.T.R. 583; and Nani Gopal Biswas v. The Municipality of Howrah, [1958] S.C.R. 774 @ 779 relied on.

Pitamber Vajirshet v. Dhondu Navalapa, [1888] I.L.R. 12 Bombay, 486 @ 489, approved.

It is equally well settled that even where the usual meaning of a language falls short of the whole object of the legislature, a more extended meaning may be given to the words if these are fairly susceptible of it. But the construction must not be strained to include cases plainly omitted from the natural meaning of the words. [682 C]

In the instant case if the provisions of section 260

(1) (a) are read in conjunction with the latter part of the provisions of section 478 which stipulates specifically that if the person carrying out such work or doing such things is not the owner at the time of such notice, the owner at the time of giving such notice shall also be liable for carrying out the requisition of the Commissioner, it is clear that the action for demolition or removal can be taken by the Corporation exercising power under the provisions of the Act against persons who had not themselves built the impugned portion. These provisions are devised to regulate the building construction for the safety, health and well-being of the inhabitants of the municipality. It would be anomalous to hold that if a building was constructed illegally or in an unauthorised manner action could only be taken against the person who did the illegal act but that after the construction was passed over to others the building would enjoy immunity from any action in respect of the same. [681 F-H; 682 A & E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 744 of 1978.

Appeal by Special leave from the Judgment and order dated the 18th February, 1976 of the Gujarat High Court in C.A. No. 188 of 1974.

D.V. Patel and R.H.Dhebar for the Appellant. Memo for the Respondent The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. This appeal raises the question as to the scope and ambit of the power of the Municipal authorities under section 260 read with Section 478 of the Bombay Provincial Municipal Corporation Act, 1949. There were four suits out of which gradually four Letters Patent appeals came to be decided by the High Court of Gujarat. Out of these four letters patent appeals, the Municipal Corporation has come up in one of the appeals before us, i.e. Appeal No. 188 of 1974 which arose out of first appeal No. 10 of 1968 which again arose out of the Civil Suit No. 311 of 1966.

The short facts are that on the 26th March, 1960, the plaintiff respondent herein purchased a built-up house. In 1965, there was construction of some walls without the sanction of the Municipal Corporation. On the 21st July, 1965, notice was issued by the Estate officer of the Municipal Corporation under Section 260(1)(a) of the Bombay Provincial Municipal Corporation Act, 1949. In reply to this notice, the plaintiff-respondent contended that the impugned construction was not made by the plaintiff but was in existence when she had purchased the premises. On 6th September, 1965, a suit was instituted before the City Civil Judge, Ahmedabad, claiming permanent injunction restraining the defendant the appellant herein from removing the impugned unauthorised construction and for other incidental reliefs. The learned Judge decreed the suit. There was a first appeal in which the decree was affirmed. Thereafter there was Letters Patent Appeal in which two points were urged namely: (i) whether the notice, in the facts and circumstances of this case, was

valid, and (ii) whether the Commissioner of the Municipal Corporation had delegated the power of issuing notice to the Estate officer. On the second point of the Letters Patent Appeal, it was held in favour of the appellant and this point is not pressed before us. On the first point, it was held that the notice impugned was beyond, in the facts and circumstances of the case, the powers of the Municipal Corporation, Ahmedabad because it was held that the notice under the section could only be issued against the person who had constructed the building or who was constructing the building.

In as much as the notice was issued under Section 260 of the Act, it would be material to set out the relevant provisions of the Act i.e. section 260(1)(a). It provides:

"Proceedings to be taken in respect of building work commenced contrary to rules or by laws:-

(1) If the erection of any building or the execution of any such work as is described in section 254 is commenced or carried out contrary to the provisions of the rules or byelaws, the Commissioner, unless he deems it necessary to take proceeding in respect of such building or work under section 264, shall-

(a) by written notice, require the person who is erecting such building or executing such work or has erected such building or executed such work on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down."

Clause (b) of Section 260 provides that in the contingency specified in sub-section (1) set out herein before, in the alternative the Commissioner shall require the person to show cause why such building and work shall not be removed, altered or pulled down. Sub-section (2) of Section 260 provides that if the person concerned fails to show sufficient cause to the satisfaction of the Commissioner Or the building is not altered or removed, Commissioner may remove, alter or pull down the building the expenses of which shall be paid by the said person. Before us, learned advocate for the appellant, drew our attention to Section 478 of the Act in support of the action taken by the Corporation. Section 260 speaks of erection of any building or the execution of any such work as is described in section 254 "is commenced or carried out contrary to the provisions of the rules or bye-laws." Then it further provides that Commissioner shall require the person "who is erecting such building or executing such work or has executed such building or executed such work" to show cause why the infringing portion shall not be demolished or altered or pulled down. Now section 254 stipulates that notice is to be given to the Commissioner for addition, alteration etc. in the building.

There was no dispute in the instant case that the portion of the building mentioned in the notice of the Corporation was done without the sanction of the Corporation or notice to the Corporation. The expressions used in section 260 by themselves are not quite clear, as to whether it is directed against the person who has commenced or carried out the construction contrary to the provisions of the

bye-laws or the rules or whether in view of the language used in sub-clause (a) of sub-section (1) of section 260 namely "has erected such building" notice could also be issued to any person other than who has actually built the unauthorised building. But it is submitted that if section 260 is read in conjunction with section 478 of the Act and if so read then it contemplates action both against the person who has commenced or is constructing the building as well as the person who is the owner of the building which has been constructed or erected without the permission and in violation of the laws or the rules. Section 478 is as follows:

"Works or thing done without written permission of the Commissioner to be deemed unauthorised:-

(1) If any work or thing requiring the written permission of the Commissioner under any provision of this Act, or any rule, regulation or bye-law is done by any person without obtaining such written permission or if such written permission is subsequently suspended or revoked for any reason by the Commissioner, such work or thing shall be deemed to be unauthorised and, subject to any other provision of this Act, the Commissioner may at any time, by written notice, require that the same shall be removed, pulled down or undone, as the case may be, by the person so carrying out or doing. If the person carrying out such work or doing such thing is not the owner at the time of such notice then the owner at the time of giving such notice shall be liable for carrying out the requisition of the Commissioner.

(2) If within the period specified in such written notice the requisitions contained there in are not carried out by the person or owner, as the case may be, the Commissioner may remove or alter such work or undo such thing and the expenses thereof shall be paid by such person or owner, as the case may be."

It is true that the notice impugned in this case was not issued under section 478. This section was also not placed for consideration by the learned Trial Judge or the First Appellate Court or in the Letters Patent Appeal before the High Court. But the question being one of construction of a provision of a statute, in our opinion, that construction must be so made as to be in conformity with the other provisions of that particular statute and the provisions must be read as a whole. This being a question of law, this section can be relied upon in support of the notice under section 260(1)(a). If indeed section 478 comprehends both the owner or the occupier who has actually constructed and as well as the owner or occupier of the building which has been unauthorisedly constructed, then the action of the Corporation can be supported. It is well settled that the exercise of a power, if there is indeed a power, will be referable to a jurisdiction, when the validity of the exercise of that power is in issue, which confers validity upon it and not to a jurisdiction under which it would be nugatory, though the section was not referred, and a different or a wrong section of different provisions was mentioned. See in this connection the observations in *Pitamber Vajirshet v. Dhondu Navalapa*.<sup>(1)</sup> See in this connection also the observations of this Court in the case of *L. Hazari Mal Kuthiala v. Income-tax Officer, Special Circle, Ambala Contt. & Another*.<sup>(2)</sup> This point has again been reiterated by this Court in the case of *Hukumchand Mills Ltd. v. State of Madhya Pradesh and another*.<sup>(3)</sup> where it was observed that it was well settled that a wrong reference to the power under which

action was taken by the Government would per se vitiate that action if it could be justified under some other power under which Government could lawfully do that act. See also the observations of the Supreme Court in the case of Nani Gopal Biswas v. The Municipality of Howrah.<sup>(4)</sup> The question that, therefore, falls for consideration is, whether section 260(1)(a) of the Act read in conjunction with section 478 of the Act of 1949 empowers the Municipal Corporation to take action for demolition or removal of unauthorised construction. Even though the expressions in section 260 are not quite explicit, but if the provisions of section 260(1)(a) are read in conjunction with the latter part of the provisions of section 478 which stipulates specifically that if the person carrying out such work or doing such things is not the owner at the time of such notice, the owner at the time of giving such notice shall also be liable for carrying out the requisition of the Commissioner, makes it clear that the action for demolition or removal can be taken by the Corporation or Municipal authorities exercising power under provisions of the said Act against persons who had not themselves built the infringing portion.

Chapter XV of the Bombay Provincial Municipal Corporation Act, 1949 as applicable to the area concerned, deals with the building regulations and includes section 260 of the Act. These provisions are to regulate the building construction for the safety, health and well-being of the inhabitants of the particular municipality or corporation. Therefore the provisions should be read broadly which will effectuate the intention of the Legislature and prevent the mischief which was intended to be remedied or avoided by the provisions. It is well-settled that when a problem of construction comes before a court, the intention of the legislature must be given effect to as expressed in the language of the provisions. Where the language is explicit, no problem arises. Even where the usual meaning of a language falls short of the whole object of the legislature, a more extended meaning may be given to the words if they are fairly susceptible of it. The construction must not, however, be strained to include cases plainly omitted from the natural meaning of the words. It has been said very often that it is the duty of a judge to make such construction of a statute as shall suppress the mischief and advance the remedy. (See in this connection the observations of Maxwell on The Interpretation of Statutes, 10th Edition p. 68, under the heading "Beneficial Construction.") If we keep in mind purpose of these regulations and the object of these regulations, i.e. regulating the building construction in a municipal statute, it appears that it will be anomalous result if it be said that if a building is constructed illegally or in an unauthorised manner, action can only be taken against the person who is doing the unauthorised act or illegal act but after the construction of the building is passed over to others, the construction of the building enjoys immunity from any action in respect of the same. That it appears, could not be a proper construction particularly in this case in view of the specific language used in the latter part of sub-section (1) of section 478 of the Act set out herein before. Keeping in background the facts of this case and the said provisions, in our opinion, the action taken by the Corporation was warranted by the provisions of the Act. Therefore it cannot be said that the notice issued by the Municipal Corporation was unauthorised or illegal. In that view of the matter, the judgment and order of the High Court of Gujarat impugned in this case must be set aside on this aspect of the matter and the appeal is thus allowed and the respondent's suit dismissed. We express no opinion on the other point of delegation. The parties will bear, in the facts and circumstances of the case, their own costs throughout.

We have proceeded on the construction of the powers of the Municipality in the situation mentioned herein before. We must, however, observe that learned Advocate for the appellant assured us that in view of the fact that the infringement in question was not of a very significant nature, i.e. building certain railings or walls, if it could be regularised on a proper application by the respondent, the Corporation or the Municipality concerned will see that the same is done and the railings or the walls on the infringing part are not removed or demolished.

P.B.R.

Appeal allowed.