The Indian Law Reports

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

HUKAM CHAND JAIN,—*Petitioner.*

versus

THE MUNICIPAL CORPORATION OF DELHI AND OTHERS,—*Respondents.*

Civil Writ No. 125-D of 1958.

1965

January, 19th.

Delhi Municipal Corporation Act (LXVI of 1957)—S. 348—Notice to the owner of the building—When necessary to be given—Order for demolition of the building—Whether can be made—Powers of the Commissioner—Extent of.

Mahajan, J.

Held, that section 348 of the Delhi Municipal Corporation Act, 1957, does not provide that before the authority makes up its mind as to the condition of the building, it must either hear the owner or give him notice to show cause why it should not come to the conclusion that the building is in a ruinous condition or is otherwise dangerous. This matter has to be determined by the Commissioner either by visiting the spot or by evidence collected at his behest or by reason of facts otherwise coming to his knowledge. It is only after the Commissioner has determined that the building is in a ruinous condition or is otherwise dangerous, that he will give notice to the owner either to repair or to demolish the building or otherwise make it secure. It is for the owner to do either of these things, failing which the Commissioner has the power to do these things himself or cause them to be done. When such a notice is given to the owner of the building, he can certainly approach the Commissioner and point out to him that the building is not dangerous or that the determination that the building is dangerous or is otherwise in a ruinous condition is not objectively justified. In case, there is no such notice, the demolition of the building outright by the Commissioner would not be justified.

Held, that there is no yardstick provided in section 348 of the Delhi Municipal Corporation Act, 1957, whereby or on the basis of

which the Commissioner can, in a given case, come to the conclusion whether the building could be secured and the danger prevented therefrom by repairs or by demolition. The object of section 348 of the Act is to confer power on the Commissioner to see that there is no ruinous or dangerous building in existence within the Corporation area. Power is given under this provision to the Commissioner to remove this danger and the modes how the danger could be removed are demolition, repair or to secure that building in such a manner so as to avoid the danger or to remove the ruinous condition of the building. In this situation, an order merely asking the owner to demolish the building would not be justified. It may be that if the owner is asked to repair the building and he refuses to do so and the repairs are so extensive that the Commissioner may deem it fit in that situation to demolish the building, he can proceed to demolish the same. But no absolute discretion has been conferred on the Commissioner to demolish the building on his subjective opinion. The legislature has not conferred an absolute discretion on the Commissioner to order, in every case, the demolition of a building nor has made the Commissioner the judge of the fact whether the building should be repaired or it should be demolished.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of mandamus be issued against the respondents to restrain them from demolishing the building of the petitioner bearing Municipal No. 1254 situate in Gali Gulian and Chah Rahat and evicting the petitioner therefrom in pursuance of notices dated 8th April, 1958 issued under Section 348 and Section 349 of the Delhi Municipal Corporation Act, 66 of 1957, or such other writ, order or direction be issued as may be appropriate to meet the ends of justice.

D. D. CHAWLA, AND M. K. CHAWLA, ADVOCATES, for Petitioner.

BISHAMBER DYAL AND K. DYAL, ADVOCATES, for the Respondent.

ORDER

Mahajan, J. MAHAJAN, J.—Upto a certain extent, there is no dispute of facts in this petition under Article 226 of the Constitution of India, which is directed against the orders of the Municipal Corporation of Delhi Annexures C-1 and C-2, requiring the petitioner to demolish his building. The building in dispute is a three-storeyed house bearing Municipal house Nos. 1251 to 1254 and 1256 to 1258, Ward No. IV, Gali Gullian, Chah Rahat, near Jama Masjid, Delhi, which covers an area of 4,769 square feet. The construction, according to the owner, is pucca in brick with lime and

cement mortar. It is further averred in the petition that the second and the third storeys were constructed in the years 1938 to 1941 with the sanction of the erstwhile Delhi Municipal Committee. This sanction was granted on 2nd June, 1938. There are about sixteen tenants in the building. The petitioner also resides in it. The Municipal Girls School is also housed in this building for the last 18 years. In paragraph 4 of the petition, it is averred that there is a litigation between the tenants and the petitioner regarding the fixation of fair rent and it is further alleged that it is at the instigation of these tenants that the notices C-1 and C-2, were issued to the petitioner. This averment does not stand to reason because if action is taken in pursuance of C-1 and C-2, these tenants would also be thrown out of this building. The fact of the matter remains that in pursuance of a report made by P.A. to the Municipal Engineer (Annexure 'C' to the affidavit to the return of the Municipal Corporation, dated the 8th April, 1958), which is as follows:—

> "As per your instructions I inspected the above cited building which is actually in the imminent danger of collapse. Rough sketch plans of each floor are under preparation and will be submitted along with detailed report. I suggest that in the mean-time notice to C.E.O., be forthwith sent to get the whole building evacuated at once. In my opinion the whole building needs to be demolished. Roof of one room has very dangerously collapsed.".

the Municipal Engineer, on that very day, passed the following order:—

> "I have spoken to you about this. Will you kindly have this building vacated at once ? You may consult D.M.C., to whom I have spoken."

Annexure 'D' is the report of the Assistant Engineer and is again, dated the 8th April, 1958. In pursuance of this report, the impugned notices Annexure C-1 and C-2, were issued to the petitioner. The petitioner straightaway moved this Court under Article 226 of the Constitution of India and by an order, dated 11th April, 1958, passed by Falshaw, J. (as he then was) and Mehar Singh, J., obtained

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an order staying demolition and evacuation from the building in dispute. It is curious that inspite of the notices C-1 and C-2, the Municipal Corporation did not deem it fit to vacate the school premises. On the contrary, the school has functioned in these premises and every year, the Headmaster has been writing to the owner to repair the premises and the owner has been repairing the premises in pursuance of the Headmaster's demand. The correspondence in this connection is Annexures A-1 to A-6 and a letter produced today, which bears the date 28th June, 1963.

The contentions of the learned counsel for the petitioner are—

(1) That before the Commissioner could decide whether the building is or is not in a dangerous state under section 348 of the Delhi Municipal Corporation Act, it was incumbent on him to issue a notice to the owners of the building and as there is no such notice issued in this case, the entire proceedings taken under section 348 of the Act are void.

(2) That, in any case, there is no power in the Commissioner to direct outright the demolition of the building. The only authority conferred by Statute on him is to determine the state of the building whether it is dangerous or not so as to prevent all cause of danger therefrom. Therefore, if the danger could be averted by effecting repairs on the building, the Commissioner could not direct the owner to demolish the building. In any event, no inquiry was conducted as to whether, in the present case, the danger could be averted by merely effecting repairs or it was absolutely essential to demolish the building; and

(3) That the Commissioner never made up his mind by inspecting the spot and he has merely depended on the reports and come to the conclusion that the building is in a ruinous condition or is likely to fall or is dangerous to persons occupying it or passing by it or to other buildings or places in the neighbourhood, thereof.

So far as the first contention is concerned, Mr. Chawala, relies on the decisions in *Cooper* v. *The Board*

of Works (1) *and Hopkings and another* v. *Smethwick Local Board of Health* (2), for his contention that the Commissioner before making up his mind as to the nature of the building was bound to issue notice to the petitioner. I am, however, unable to agree with this contention. Whether a building is or is not in a ruinous condition or is otherwise dangerous is a matter which the Commissioner has to determine and to come to this determination, there is no provision in section 348 whereby he must hear the owner on the matter or give notice to the owner before arriving at that determination. Under section 348, the Commissioner has certainly to give notice to the owner before the owner is asked either to repair or to demolish the building or otherwise make it secure. It is for the owner to do either of these things, failing which the Commissioner has the power to do these things himself or cause them to be done. When such a notice is given to the owner of the building, he can certainly approach the Commissioner and point out to him that the building is not dangerous or that the determination that the building is dangerous or is otherwise in a ruinous condition is not objectively justified. In case, there is no such notice, the demolition of the building outright by the Commissioner would not be justified. The authorities quoted by the learned counsel were in cases where an unauthorized construction was put up by the owner and without notice to the owner, the authority demolished the building. In this situation, it was held that the demolition even of unauthorised structure was bad in law because no demolition of private property was justified without a prior notice to the owner to show cause why the building should not be demolished. There can be no quarrel on this demolition. So far as this matter is concerned, there is ample provision in section 348. But there is no such provision in section 348, as is contended for by the learned counsel for the petitioner, namely, that before the authority makes up its mind as to the condition of the building, it must either hear the owner or give him notice to show cause why it should not come to the conclusion that the building is in a ruinous condition or is otherwise dangerous.

For the reasons given above, I see no force in the first contention of the learned counsel.

(1) 135 P.R. 643.
(2) 24 Q.B.D. 712.

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So far as the second contention is concerned, it has merit. There is no yardstick provided in section 348 whereby or on the basis of which the Commissioner can, in a given case, come to the conclusion whether the building could be secured and the danger prevented therefrom by repairs or by demolition. The object of section 348 of the Act is to confer power on the Commissioner to see that there is no ruinous or dangerous building in existence within the Corporation area. Power is given under this provision to the Commissioner to remove this danger and the modes, how the danger could be removed are demolition, repair or to secure that building in such a manner so as to avoid the danger or to remove the ruinous condition of the building. In this situation, an order merely asking the owner to demolish the building would not be justified. It may be that if the owner is asked to repair the building and he refuses to do so and the repairs are so extensive that the Commissioner may deem it fit in that situation to demolish the building, he can proceed to demolish the same. But to hold that an absolute discretion has been conferred on the Commissioner to demolish the building on his subjective opinion is a contention to which I cannot accede. Moreover, this matter is not *res integra*. A similar provision in the Punjab Municipal Act (section 114) came for consideration before the Punjab Chief Court in *Petman* Versus *Emperor* (3) and in *Hazuri Mal* versus *Emperor* (4).

Both these decisions were again considered by the Judicial Commissioner of Peshawar in *Mian Musharaff Shah* v. *Emperor* (5) and it was held by the learned Judicial Commissioner that the wording of the Act is not extremely clear on the point and in such a case the benefit of any doubt in its construction must be given to the accused. The Municipal Act was not only amended, but was remodelled in the year 1911 and inspite of the decisions of the Punjab Chief Court in *Petman* and *Hazuri Mal*, the Legsilature did not alter the language which had been interpreted as ambiguous by the Chief Court.

In this view of the matter, it is not possible to hold that the Legislature has conferred an absolute discretion on the Commissioner to order in every case the demolition of

(3) 23 P.R. 1905 (Cr.).
(4) 18 P.R. 1908 (Cr.).
(5) A.I.R. 1940 Pesh. 16.

a building or has made the Commissioner the judge of the fact whether the building should be repaired or it should be demolished. As I have already said, the object of the provision is to confer power on the Commissioner to remove danger from the ruinous condition of a building. It also provides the methods, how that danger is to be removed. But then does it make the Commissioner the sole judge of the method? If the intention of the Legislature was to make the Commissioner the sole judge of the method for the removal of the danger, some criterion as to when repairs would be ordered and when demolition, would have been laid down. In the absence of such a criterion, I am not prepared to hold that on any reasonable interpretation of this provision the Commissioner is the sole judge in the matter of ordering an owner to repair or demolish a building. I am, therefore, of the view that the order of the Commissioner directing the demolition of the building is wholly unjustified and not warranted by law.

Apart from what has gone by, it is significant that a building which was held by the Commissioner to be in such a state that its demolition was called for within three days of the notice, has stood intact right up to date without any incident. Besides this, it is rather curious that the Municipal Corporation has not thought it fit to vacate the premises which are occupied by it and in which a Girls School is being run. On the other hand, at the request of the Headmaster, these premises have been repaired every year and have been in the continuous occupation of the Municipal Corporation. This indicates that there was no substance in the notices C-1 and C-2. There was nothing to prevent the Municipal Corporation after the admission of the petition by this Court and after the stay order, to give up its tenancy and shift the school to a safer building inasmuch as the building in dispute was highly dangerous building and was in an imminent danger of collapse. This inaction on the part of the Committee does support the suggestion of the learned counsel to some extent that the notices C-1 and C-2, were, in fact, *mala fide* and were not issued keeping in view the true state of the building.

The last contention of the learned counsel for the petitioner that the Commissioner could not make up his mind under section 348 as to the condition of the building without visiting the spot need not detain me long because there

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is no substance in this contention. The Commissioner can, by evidence collected at his behest or by reason of facts otherwise coming to his knowledge, make up his mind as to the state of the building. It is only after the Commissioner has made up his mind as to the state of the building that he would issue the required notice under section 348 either for the repair of the building or for its demolition or for making it otherwise secure. It is also at that stage that the owner of the building has the right to approach the Commissioner and show that in fact the building is not either in a ruinous condition or so dangerous as to warrant any of the courses. The contention that the Commissioner must inspect the building before issuing the notice is, therefore, not sound.

For the reasons given above, I allow this petition and quash the notices Exhibits C-1 and C-2. The petitioner will have his costs which are assessed at Rs. 100.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

CHANDGI RAM,—*Petitioner*

versus

THE ELECTION TRIBUNAL AND ASSISTANT DEVELOPMENT COMMISSIONER FOR PANCHAYAT ELECTIONS AND OTHERS,—*Respondents*

Civil Writ No. 6-D of 1965.

1965

January, 19th.

Delhi Panchayat Raj Rules (1959)—*Rule* 57—*Acceptance of nomination papers of a person convicted of an offence under S.* 19 *(f) of the Arms Act (XI of* 1878)—*Whether improper—Delhi Land Reforms Act (VIII of* 1954)—*S.* 153—*Conviction of an offence under S.* 19*(f) Arms Act—Whether involves moral turpitude—Words and Phrases—'Moral turpitude'—Meaning of.*

Held, that the possession of an unlicensed fire-arm, which is an offence under section 19(f) of the Indian Arms Act, 1878, is not an offence involving moral turpitude. A person convicted of that offence is not, therefore, disqualified from seeking election to the Gaon Panchayat under section 153 of the Delhi Land Reforms Act,