

## APPELLATE CIVIL

Falshaw, J.

Before Bhandari, C.J.

MUNICIPAL COMMITTEE, DELHI,—Appellant

versus

JANKI DASS,—Plaintiff-Respondent

Regular Second Appeal No. 26-D of 1952

1953

Dec. 14th

*Punjab Municipal Act (III of 1911) Section 195—Expression “erect” or “re-erect” meaning of—Replacement of a tin roof by a pucca structure, whether offends section 195 of the Act.*

Held, that the mere re-roofing a building cannot be said to fall within the ambit of the expression “erect or re-erect any building” unless the premises are materially altered or enlarged. The replacement of a tin roof by a pucca structure does not amount to erection or re-erection of the building and does not offend section 195 of the Act.

*Second Appeal from the decree of Shri Tek Chand Vih, Senior Sub-Judge with enhanced appellate powers Delhi, dated the 22nd day of November 1951, affirming that of Shri Ram Lal, Sub-Judge, 1st Class, Delhi, dated the 15th January 1951, granting the plaintiff a decree for a permanent injunction restraining the defendant from demolishing the roof of the barsati and dismissing the plaintiff's suit with regard to the staircase and leaving the parties to bear their own costs throughout.*

BISHAN NARAIN, for—Appellant.

PARKASH CHANDAR, for—Respondent.

## JUDGMENT

A. N. BHANDARI, C. J. This second appeal raises the question whether roofing or re-roofing of a A. N. Bhandari,  
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building falls within the ambit of the expression "erect or re-erect" appearing in section 195 of the Punjab Municipal Act, 1911,

On the 22nd September 1949, the Municipal Committee of Delhi issued a notice to the plaintiff under section 195 of the Punjab Municipal Act, 1911, requiring him to remove a roof which had been constructed without the permission of the Committee. On the 22nd November 1949, the plaintiff brought an action for the issue of an injunction restraining the Municipal Committee from demolishing the roof. The trial Court found in favour of the plaintiff and the decree passed by it was upheld by the Senior Subordinate Judge in appeal. The Municipal Committee is dissatisfied with the order and has come to this Court in second appeal.

It is common ground that the plaintiff removed the tin roof of a *barsati* and replaced it by a roof made of cement. Section 195 of the Act of 1911, empowers a Municipal Committee to issue notice to the owner requiring him to demolish the building if it is satisfied that the building has been erected or re-erected without the sanction of the Committee. The expression "erect or re-erect any building" as defined in section 3 of the Municipal Act includes any material alteration or enlargement of any building and any alteration of a building as materially affects its security. Mr. Bishan Narain, who appears for the Committee, contends that as no structure can be deemed to be a building unless it has a roof, the replacement of a tin roof by a *packka* roof must be deemed to be a material alteration of the building or, at any rate, to be an alteration which materially affects its security. I regret I am unable to concur in this view. In *New Delhi Municipal Committee v. Ram Bai* (1) Skemp, J., held that repairing the walls of a shed and putting thereon an iron corrugated roof *prima facie* does not come within the words "begun, erected or

re-erected" as the term "erection" implies causing to stand upright and does not amount to a material alteration within the meaning of section 3(5)(a) of the Act of 1911. In *Administrator, Corporation of City of Lahore v. Sampuran Singh Chawla and another* (1) Abdur Rahman, J., expressed the view that although the definition of the expression "erect or re-erect any building" is not exhaustive, the mere re-roofing of a building cannot be said to fall within the ambit thereof unless the premises are materially altered or enlarged. In arriving at this decision the learned Judge was influenced to an extent by a resolution passed by the Municipal Committee of Lahore in the year 1922 in which it was stated that re-roofing would not amount to reconstruction. These two authorities make it quite clear that the replacement of a tin roof by a *pakka* structure has never been regarded as falling within the ambit of the expression "erect or re-erect". The principle, therefore, that a person can re-roof a building without the permission of the Municipal Committee and without contravening the provisions of the Municipal Act has been firmly established.

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The Municipal Committee of Delhi, whom Mr. Bishan Narain represents, appears to have placed a similar construction on the statute, for as long ago as the year 1916 it passed a resolution the relevant portion of which runs as follows:—

"1. 'Repairs' shall be deemed to include:—

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\* \* \* \* \*

\* \* \*

6. Re-roofing and renewal of roof beams.

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7. Replacing fallen bricks, stones, beams, etc.

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2. Such will not come under the definition of 'erection or re-erection' and the sanction of the Committee will not be required.

3. It must be noted, however, that all repairs to external projections need the sanction of the Committee."

It will be seen from the above that according to the Municipal Committee itself 're-roofing' does not fall under the definition of "erection or re-erection" and the sanction of the Committee is not required. This interpretation is not binding on the Courts, but the Courts are at liberty to accept if they consider it proper to do so.

I would dismiss this appeal on the short ground that this statute has been construed on at least two occasions by the High Court at Lahore and on both the occasions it was held that a person can re-roof a structure without contravening the provisions of the Punjab Municipal Act. In view of the principle of *stare decisis* it is undesirable that a question which has been considered and decided should be reopened and reargued particularly when the interpretation placed on the statute has been accepted and adhered to for many years. It may be that this Court is not bound by the decisions of the High Court at Lahore but it must be remembered that this Court is a successor and a continuation of the Court at Lahore and the decisions of that Court ought to be followed in the application of the principle of *stare decisis*, unless those decisions are manifestly erroneous.

The appeal will be dismissed with costs.