

MISCELLANEOUS CIVIL.

1915
January, 19.

Before Mr Justice Chamier and Mr. Justice Piggott.

MUNICIPAL BOARD OF AJMERE (DEFENDANT) v. KIFAYATULLAH
(PLAINTIFF)*

*Regulation No. V of 1886 (Ajmere Municipalities), sections 85 and 141—
Municipal Board—Powers of Board in respect of erection of buildings—
Suit against Municipal Board—Jurisdiction.*

One Kifayat-ullah served the Municipal Board of Ajmere with notice of his intention to rebuild a certain wall. He received no reply to this notice within a month, and thereafter commenced to build. The Municipal Board then required him to stop the building and submit a fresh application. The applicant stopped the building, but did not present a fresh application, and some months later sued the Board for damages on account of the stoppage of the building. The Board failed to prove that the notice first given by Kifayat-ullah was not in accordance with law.

Held that in the circumstances the original notice must be considered as a good notice under section 85 of the Ajmere Regulation, I of 1877, and that section 140 of the Regulation, if it applied at all, did not oust the jurisdiction of the Civil Court to try the suit for damages.

THIS was a reference made by the Commissioner, Ajmere-Merwara, under section 18 of the Ajmere Courts Regulation, I of 1877. The facts are fully set forth in the judgement. Shortly stated, they were as follows:—The plaintiff, wishing to rebuild a wall of his cattle-shed situate within the Ajmere Municipality, gave the notice required by section 85 (1) of the Ajmere Municipal Regulation (V of 1886). Not hearing anything from the Municipality within a month thereafter, he proceeded to re-build the wall. Afterwards the Municipality issued a notice to him saying that he had commenced to build in contravention of section 85 (1) and he must stop the work. He stopped the work accordingly, and then sued the Municipality for a declaration that the notice issued by it was illegal, and for Rs. 30 as damages. The Municipality pleaded, *inter alia*, that the suit was not maintainable in the Civil Courts. The suit was decreed and the decree was upheld in appeal by the Commissioner (also District Judge). The defendant Municipality then applied for and obtained a reference to the High Court of the question whether the suit was maintainable.

Babu *Sarat Chandra Chaudhri*, for the defendant applicant:—

The matter in suit being one within the special and peculiar discretion of the Municipal Board and they not having exercised

*Civil Miscellaneous No. 252 of 1914.

this discretion, the Civil Courts have no power to interfere with this exercise of the absolute discretion vested in them. The heading of the chapter in which section 85 occurs shows that it is a matter of sanitation and public safety and convenience; these matters are regulated by the Municipality and their jurisdiction should not be encroached upon by the Civil Courts. The words "within one month" in section 85, clause (1), refer to the words "shall obey." Even if they be construed to refer to the words "directions, . . . given by the Committee" that would not mean that if the Municipality did not issue any directions within a month the person wishing to build would have an absolute right to build in any way he pleased. There is no provision in the Ajmere Municipal Regulation that if the Municipality does not give any reply within one month then it should be deemed to have approved of the proposed building absolutely. Section 141 provides a special remedy in cases where the Municipality has exceeded its powers and acted illegally. In such cases the matter is to be decided by the Commissioner or District Magistrate; when this special remedy is provided by the Act the ordinary courts have no jurisdiction in such matters.

Munshi *Damodar Das*, for the plaintiff opposite party, was not heard.

CHAMIER and PIGGOTT, JJ.—This is a reference by the Commissioner of Ajmere-Merwara, under section 18 of the Ajmere Courts Regulation I of 1877. The facts stated in the reference are that one Kifayatullah on the 23rd of July, 1907, gave the Municipal Committee of Ajmere notice in writing of his intention to re-erect a certain building within the limits of the Ajmere Municipality and with his application submitted a certain plan. On the 2nd of October, 1907, the Municipal Committee issued a notice to Kifayatullah to the effect that he had contravened the provisions of section 85 of the Municipal Regulation by beginning to re-erect without permission, and required him to stop the work at once and submit an application for permission to build along with a plan. He was further told not to resume building until he received the orders of the Committee, for, if the Committee found that the proposed building was objectionable, it would have to be removed. On receipt of this notice Kifayatullah stopped the

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work. On the 10th of March, 1908, Kifayatullah brought a suit for recovery of Rs. 30, on account of damage which he alleged he had suffered in consequence of the Municipal Committee having stopped the work and for a declaration that the notice was invalid. The Subordinate Judge gave the plaintiff a decree and his decree was affirmed on appeal by the Commissioner; but on an application made by the Municipal Committee under section 17 of the Ajmere Courts Regulation, the Commissioner has referred to this Court the question whether the suit was maintainable. The contention of the Municipal Committee appears to be that, as it is invested by the Municipal Regulation with a wide discretion in matters of this kind, no suit can be maintained in a Civil Court with regard to them. Section 85 of the Municipal Regulation lays down that every person intending to erect or re-erect any building shall, if required to do so by rules made by the Committee in this behalf, give notice in writing of his intention to the Committee and shall, if required to do so, submit a plan showing the level at which the foundation and the lowest floor are proposed to be laid and a specification of the works intended to be constructed and the materials to be used, and shall obey all written directions consistent with the Regulation given by the Committee within one month after receiving such notice either prohibiting the erection or re-erection or in respect of a number of other matters detailed in the section. An attempt was made in the court of the Commissioner to show that the notice given by Kifayatullah did not comply with the section. The Commissioner declined to allow this point to be taken for the first time in appeal, and we must assume that the notice given in this case complied with the requirements of the law. As we read section 85, if the Municipal Committee wishes to prohibit the erection or the re-erection of a building, or to give directions with respect to any of the matters detailed in the section, it must issue its directions within one month after receiving the notice. In the present case the Municipal Committee allowed more than one month to elapse before communicating with Kifayatullah, and, when it did communicate with him, it did not issue a notice, as it might have done under sub-section (2) of the section, requiring the building to be altered or demolished, but it required him to stop the work and

submit a fresh application. If Kifayatullah gave a notice which did not comply with the law, it should have been regarded as no notice at all and the Municipal Committee could have required him to alter or demolish the building; but as it must be taken that the notice given was in compliance with the law, and as the Municipal Committee did not issue any directions within one month of the receipt of the notice, the Municipal Committee had no authority to take any action under sub-section 2 of section 85. It was suggested that section 141 of the Regulation barred the jurisdiction of the Civil Court in cases of this kind. That section empowers the Commissioner or the District Magistrate to suspend the action taken by a Municipal Committee or to prohibit the doing of an act which is about to be done in pursuance of or under cover of the Regulation in certain cases. It seems to us doubtful whether section 141 was intended to apply to such cases as this. Even if it can be construed so as to cover such cases we cannot treat it as barring the jurisdiction of a Civil Court to entertain a suit for damages at the instance of a person who has been wronged by an illegal action of the Committee. In our opinion the suit was maintainable and this is our answer to the reference. Let the papers be returned.

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APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

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January, 22.

KANHAI RAM (DEFENDANT) v. DURGA PRASAD AND ANOTHER (PLAINTIFFS)*
*Act (Local) No. II of 1901 (Agra Tenancy Act), section 95—Jurisdiction—
Civil and Revenue Courts—Res judicata—Dispute between two rival
claimants to a holding.*

A sued B for ejectment in a Court of Revenue, alleging that B was his sub-tenant, and obtained a decree. B then sued in the Civil Court for a declaration that he was the owner of a certain occupancy holding and for possession if he was found not to be in possession.

Held (1) that B's suit was properly triable by a Civil Court and not by a Court of Revenue and (2) that the previous judgement of the Court of Revenue ejecting B could not operate as *res judicata*.

Neither was the suit barred by section 95 of the Agra Tenancy Act, 1901. That section deals with questions arising between landlord and tenant, and

*Appeal No. 62 of 1914 under section 10 of the Letters Patent.