

REVISIONAL CRIMINAL

Before Mr. Justice Ziaul Hasan

MUSAMMAT KAUSILA (APPLICANT) *v.* KING-EMPEROR
THROUGH THE MUNICIPAL BOARD, SULTANPUR. (COMPLAINANT-
OPPOSITE-PARTY)*

1938
August, 15

United Provinces Municipalities Act (II of 1916), sections 178, 185, 186 and 307—Notice to build under section 178 given—Notice for demolition under section 186 served—Non-compliance with notice—Prosecution and conviction under sections 185 and 307, whether illegal.

Section 186 of the United Provinces Municipalities Act does not require that notice under that section should be given only after orders have been passed on a notice under section 178. That section is quite general and applies to cases in which such a notice has been given to the Board as well as to those in which it has not been so given. Where, therefore, an application for construction under section 178 is made but before any orders are passed on it a notice under section 186 is served upon the applicant for the demolition of the construction and is not complied with a prosecution and conviction under sections 185 and 307 are not illegal.

Mr. K. P. Misra, for the applicant.

The Assistant Government Advocate (Mr. H. K. Ghosh), for the opposite-party.

ZIAUL HASAN, J.:—Musammat Kausila, the applicant in this case, was prosecuted under sections 185 and 307 of the United Provinces Municipalities Act of 1916 by a Magistrate of the first class and convicted and fined Rs.50 and Rs.60 respectively under the two charges. She appealed to the learned Sessions Judge of Fyzabad and the learned Judge while maintaining her convictions reduced the sentences of fine to Rs.5 and Re.1 respectively. She has now come up in revision to this Court.

The facts are that in June 1937, the applicant began to build a wall of her house situated within the Municipality of Sultanpur. It is admitted that she

*Criminal Revision No. 123 of 1937, against the order of S. M. Ahmad Karim, Esq., Sessions Judge of Fyzabad, dated the 19th of October, 1937.

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gave no notice under section 178 of the Municipalities Act to the Municipal Board. On the 18th of June, 1937, the Board sent a notice to her asking her to stop the unauthorised building at once and to show cause within three days why she should not be prosecuted for constructing the wall without the sanction of the Board.

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This notice, it appears from the report of the serving official, the applicant refused to take. Thereupon another notice to the same effect was issued on the same date and it was affixed to the applicant's house. In the evening of the same day the applicant put in an application saying that she was only reconstructing a dilapidated wall inside her house thinking that no sanction of the Board was necessary for its construction but praying that sanction might be accorded if it be considered necessary. As this application was not accompanied by a plan, the applicant was directed to put in a plan of the construction. On the next day, that is, the 19th of June, 1937, another notice was served upon the applicant but this notice was in very vague terms. It only said—

“A copy of the order is being sent to you and you are informed by means of this notice that you should comply with the order, otherwise proper proceedings will be taken.”

On the 21st of June, 1937, the Chairman of the Board ordered that a notice for demolition of the wall be issued to the applicant under section 186 of the Municipalities Act and on the same day such a notice was issued and served upon the applicant by which she was required to demolish the wall within three days. On the 26th of June, 1937, the Chairman of the Board ordered prosecution of the applicant for failure to comply with the notice, dated the 21st of June, 1937.

On these facts the applicant was prosecuted under sections 185 and 307 of the Municipalities Act and convicted as noted above.

The learned trying Magistrate by his order of conviction also ordered the applicant to demolish the new construction within a week.

It is not contended before me that no notice under section 178 was necessary either by reason of the wall not abutting on any public street or place or otherwise. I have also seen the by-laws of the Sultanpur Municipality which make it incumbent to give notice under the aforesaid section for all constructions within the Municipal limits. It is also not denied that the applicant's conviction under section 185 was good. What is contended is that the conviction under section 307 was illegal and should not stand. That section lays down that if a notice has been given under the provisions of the Municipalities Act or under a rule or by-law to a person, requiring him to execute a work in respect of any property, movable or immovable, public or private, or to provide or do or refrain from doing anything within the time specified within the notice, and if such person fails to comply with such notice, then the said person shall be liable on conviction before a Magistrate to a fine which may extend to Rs.500 and in case of a continuing breach, to a further fine which may extend to Rs.5 for every day after the day of the first conviction during which the offender is proved to have persisted in the offence. A notice under section 186 of the Municipalities Act was duly served upon the applicant asking her to demolish the unauthorised construction. It is contended that this notice was illegal as no orders had been passed on the applicant's application for sanction but I do not think that there was any illegality in the notice on that account. Section 186 does not require that notice under that section should be given only after orders have been passed on a notice under section 178. That section is quite general and applies to cases in which such a notice has

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been given to the Board as well as to those in which it has not been given. It runs as follows:

“The Board may at any time by written notice direct the owner or occupier of any land to stop the erection, re-erection or alteration of a building or part of a building or the construction or enlargement of a wall thereon in any case where the Board considers that such erection, re-erection, alteration, construction or enlargement is an offence under section 185 and may, in like manner, direct the alteration or demolition as it deems necessary of the building, part of a building or the wall as the case may be.”

The notice of the 21st of June, 1937, was to my mind a perfectly valid notice and as the applicant failed to comply with that notice, she was liable to be prosecuted and fined under section 307.

Reliance was also placed on section 302 which says that when any notice issued under any section of the Act requires an act to be done for which no time has been fixed by such section, the notice shall specify a reasonable time for doing the same and that it shall rest with the court to determine whether the time so specified was a reasonable time within the meaning of this section. I agree with the view of the learned Sessions Judge that the three days' time given by the notice of the 21st of June, 1937, was not reasonable and it is because of this that the learned Judge has already reduced the applicant's fine under section 307 to a nominal sum.

I see no reason to interfere with the order of the learned Sessions Judge and dismiss this application except in so far as to say that the order of the learned trying Magistrate for demolition of the wall within a week was entirely without jurisdiction.

Application dismissed.