

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Candy.

DAVE HARISHANKAR AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, v. THE TOWN MUNICIPALITY OF UMRETH (ORIGINAL DEFENDANT), RESPONDENT.*

1893.
December 15.

Municipality—Municipal Act (VI of 1873), Sec. 33, Cl. 1—Notice of proposed building—Want of such notice—Want of permission to build—Demolition of building.

On the 18th August, 1890, plaintiffs sent a notice to the Town Municipality of Umreth, intimating their intention to erect a building on their land, and giving a rough sketch plan of the land intended to be built upon. In this notice plaintiffs did not expressly state their intention to build the wall in dispute.

On the 28th August, 1890, the Municipality wrote to the plaintiffs, requiring them to furnish a plan showing the design of the proposed building with its measurements.

On 30th September, 1890, the plaintiffs, without furnishing the plan as required, built a wall on their land. Thereupon the Municipality gave a notice to the plaintiffs requiring them to pull it down, as it had been built without their permission. The plaintiffs having failed to comply with this notice, the wall was demolished, and its materials were carried away by the municipal servants. Thereupon the plaintiffs sued the Municipality to recover damages for the wrongful demolition of the wall.

Held, that the plaintiffs had contravened the provisions of clause I of section 33 of Bombay Act VI of 1873, inasmuch as they had built the wall without giving any notice, or (if they did give notice) without affording the information required by the Municipality. The Municipality were, therefore, justified in ordering the wall to be demolished.

SECOND appeal from the decision of G. McCorkell, District Judge of Ahmedabad, in Appeal No. 271 of 1891 of the District file.

This action was instituted by plaintiffs to recover damages from the Town Municipality of Umreth for the wrongful removal of a wall erected by them on their private ground.

The undisputed facts of the case were as follows :—

On the 18th August, 1890, the plaintiffs sent a notice to the municipal secretary, intimating their intention to erect a building upon their land, and giving a rough sketch plan of the land intended to be built upon.

* Second Appeal, No. 459 of 1892.

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On the 28th August, 1890, the municipal secretary wrote, in reply, that the plaintiffs should within ten days produce the title-deeds of their property, and a plan showing the form of the intended building with its measurements and should abstain from constructing any work until permission was granted.

On the 7th September, 1890, the plaintiffs informed the Municipality that they had sent a copy of their title-deeds with a municipal karkun, and that the form of the proposed building together with its measurements had been sufficiently set forth in their notice of the 18th August, 1890.

On the 30th September, 1890, plaintiffs erected the wall in question upon their land.

On the 9th October, 1890, the managing committee passed a resolution to the effect that as the wall had been built without permission, a notice should be given to demolish the wall within ten days. A notice was accordingly given to the plaintiffs to pull down the wall.

On the 16th November, 1890, the wall was demolished, and its materials were carried away, by municipal workmen.

The plaintiffs thereupon filed the present suit to recover damages from the Municipality for the wrongful removal of their wall.

The Municipality pleaded (*inter alia*) that the plaintiffs had been required under section 33 of the Bombay District Municipal Act (VI of 1873) to furnish a plan showing the limits and the form of the proposed building; that they did not comply with this notice; and that they were not entitled to build without permission.

The Subordinate Judge held that the wall had been built without notice, and without furnishing the information required by the Municipality under clause 1 of section 33 of Bombay Act VI of 1873, and that the Municipality under section 78 had a right to demolish it. The plaintiffs' claim was, therefore, rejected with costs.

On appeal, the District Judge was of opinion that the plaintiffs had no authority to build without fulfilling the conditions laid down by the Municipality. The Municipality were, there-

fore, justified in ordering the removal of the wall under section 48 of Bombay Act VI of 1873. The decree of the Subordinate Judge was confirmed with costs.

Against this decision the plaintiffs appealed to the High Court.

Nagindás Tulsidás (with him *G. K. Parekh*) for appellants (plaintiffs):—The lower Court erred in treating this case as one of encroachment in a public street. Neither party to this suit contends that the wall in dispute encroached on a public street. Section 48 of Bombay Act VI of 1873 has, therefore, no application. The action of the Municipality can only be justified under section 33 of the Act. But we have complied with the requirements of that section.

G. M. Tripáthi for respondents:—The plaintiffs have not acted in accordance with section 33 of the Act. They have neither obtained permission to build, nor furnished the information required by the Municipality. In their first notice, there is not a word about their intention to build the wall in question. There was, therefore, no notice of the building of this wall. But assuming that the wall was a part of the proposed building, they refused to furnish the plan as required by the Municipality. We were, therefore, justified in pulling down the wall.

PARSONS, J.:—Both the lower Courts agree that under section 33 of the District Municipal Act the defendants had the power to require the wall built by the plaintiffs to be demolished. Both, however, have quoted a wrong section as justifying the demolition. The District Judge says: "Build, however, they did without showing their title to the land, and consequently the Municipality removed the building under the provisions of section 48. In this action they were acting within their legal rights." As, however, there was no finding, and no allegation even, that the plaintiffs built their wall in a public street, the District Judge was wrong in holding that the defendants were justified under section 48 of the District Municipal Act in removing it.

The Subordinate Judge says that "the wall in question was built without notice, and also without affording the information

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required by the managing committee under clause 1 of section 33. The defendant Municipality had, therefore, power to require the plaintiffs to demolish it. That not having been done, they were empowered by law under section 78 to have it demolished." Section 78, however, only enacts that the occupier, in default of the owner, may execute works, and it has no bearing on the case at all. It is the second clause of section 75 which applies to the case of non-compliance with a notice under section 33 as expressly therein stated.

The effect, however, of both the decisions is the same. They both support a demolition, the illegality of which is alleged by the plaintiffs. The facts are these. The plaintiffs sent the defendants a notice of their intended building on the 18th August, 1890. In that they gave a rough sketch plan of the land intended to be built on, but they did not show the wall in question, or state any intention of building it. On the 28th August the defendants asked the plaintiffs to furnish their title-deeds and a full plan showing the form of the intended building with its measurements, and to abstain from building until their permission was granted. On the 7th September the plaintiffs sent a copy of one deed of title, and said that sufficient information of the building had been given in their first notice. No notice of that letter was taken by the defendants, and on the 30th September the plaintiffs erected the wall in question. This having come to the knowledge of the defendants, a notice was on the 9th October given to the plaintiffs requiring them to demolish the wall within ten days, as it was built without permission. The plaintiffs ineffectually remonstrated against this order and failed to obey it. On the 16th November the defendants demolished the wall.

The point, therefore, is, whether in building the wall the plaintiffs contravened the provisions of section 33 so as to justify the action of the defendants in demolishing it. It is clear that the defendants had no right to ask the plaintiffs for any title-deeds—*In re Jamnádás Dulabádás*⁽¹⁾. They had a right, however, to ask for a plan and to refuse permission to build till the plan was furnished. Whether, had the plaintiffs built after the expiry of a month from the date of their letter of the 30th Sep-

(1) I. L. R., 15 Bom., 516.

tember, they would have been within their rights, is not a point that need be considered in the present case, because they began to build their wall before the month had expired. By so building it is clear that they contravened the section if any notice at all was required. It is not a part of the plaintiffs' case that no notice was required. It is evident from the pleadings that the wall either was a part of the building which the plaintiffs proposed to erect, or was a building in itself as defined in the Act. The plaintiffs rely on the assertion that the notice they gave was a sufficient one, but both the Courts below have found against them on this point, and we think that they were quite right in that decision. For these reasons we confirm the decree with costs.

CANDY, J.:—The District Judge was mistaken in thinking that the Municipality removed the wall in question under section 48 of the Bombay District Municipal Act. That section (as the District Judge remarked) empowers a Municipality to remove all obstructions in any public street. But neither side in the present case alleged that the wall was erected in a public street.

However, the facts, as to which there is no dispute, are sufficient to support the finding recorded by the District Judge on the only issue raised before him, *viz.*, whether the Municipality had authority to remove the wall erected by the plaintiffs. The decision of that issue depends upon the question whether in building the wall the plaintiffs contravened the provisions of section 33 of the Municipal Act, so as to justify the Municipality in issuing the notice, dated 9th October, requiring the plaintiffs to demolish the wall within ten days, as it was built without permission. If that notice was according to law, then, on the plaintiffs refusing to comply with its terms, the Municipality under clause 2 of section 75 of the Act had power to demolish the wall.

It is evident from the pleadings that the wall either was a part of the building which the plaintiffs proposed to erect, or was a building in itself as defined in the Act. If the former, then the Municipality were justified by their notice of 28th August, 1890, in calling for a plan giving the requisite informa-

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tion with regard to the proposed building; and the fact that a demand was also made for documentary proof of plaintiffs' ownership of the land—a demand which would not be justified—*In re Jamnaddás Dulabdás*⁽¹⁾—would not invalidate the notice calling for a plan. On the other hand, if the wall was a building distinct from the building which plaintiffs by their original notice proposed to erect, then due notice of the same was never given. In either case the plaintiffs began or made a building without the requisite notice or without affording the information legally demanded from them. The action of the Municipality was, therefore, justified, and the present claim was rightly dismissed. We must confirm the decree with costs.

Decree confirmed.

(1) I. L. R., 15 Bom., 516.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

1893.

December 19.

GANGA'RA'M KUSHA'BA RANGOLE (ORIGINAL PLAINTIFF), APPLICANT,
v. NA'PA'YAN BA'BA'JI RANGOLE (ORIGINAL DEFENDANT), OPPONENT.*

Stamp—Letters submitting to arbitration.

Letters written by parties authorizing arbitrators to arbitrate between them do not require to be stamped.

THIS was an application under the extraordinary jurisdiction of the High Court against the decision of Ráo Bahádúr Jayasatya Bodhráo Tirmalráo, First Class Subordinate Judge of Sátára.

The plaintiff and the defendant agreed to refer their differences to certain arbitrators, and they did so by two separate letters which were addressed to the same arbitrators, and which were exactly in the same terms, except that one was signed by the plaintiff and the other was signed by the defendant. The arbitrators made their award, and the plaintiff applied to the Court to have it filed. The Subordinate Judge declined to file the award, holding that the letters of submission required to be stamped as an agreement, and that not being so stamped, the arbitrators had no authority to act.

*Application No. 110 of 1893 under extraordinary jurisdiction.