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in execution for a month and a half before his objections had been finally heard. The attachment was effected in the manner most prejudicial to the reputation of the defendant by the open seizure of the goods in his shop. It has been held, however, by the lower Courts that although the provisions of the Code have been violated to the great prejudice of the defendant, it is a mere irregularity and the proceedings in attachment should not be set aside. We cannot agree in this view. The legislature has provided in express terms that the decree shall not be executed until the objections have been heard. One of the modes provided by the Code for execution of decrees is by attachment and sale of the property. The execution of the decree had commenced by the attachment. We think that this was unlawful and not merely irregular as the objections of the judgment-debtor had not been heard.

We, therefore, set aside the order of the lower appellate Court and dismiss the *darkhast* with costs throughout upon the decree-holder.

Order set aside.

G. B. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

THE AHMEDABAD MUNICIPALITY (ORIGINAL DEFENDANT), APPELLANT, *v.* RAMJI KUBER (ORIGINAL PLAINTIFF), RESPONDENT.*

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District Municipal Act (Bom. Act III of 1901), section 96, sub-sections (2), (3) (a), (4) (a) (ii) and (5)(1)*—Application to Municipality to reconstruct a house, building balconies—"Permission note" to rebuild the house—Permission to build balconies indefinitely delayed—Building of balconies—Indefinite delay inconsistent with the District Municipal Act (Bom. Act III of 1901).*

On the 3rd July 1903 the plaintiff applied to the Ahmedabad Municipality for permission to reconstruct his house, building balconies on its two sides. On the

* Second Appeal No. 909 of 1909.

(1) Section 96, sub-sections (2), (3) (*a*), (4) (*a*) (ii) and (5) of the District Municipal Act (Bom. Act III of 1901) :—

96. (1) Before beginning to erect any building, or to alter externally or add to any existing building, or to reconstruct any projecting portions of a building in

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25th July 1903 the Municipality issued a "permission note" giving the plaintiff permission to rebuild his house and informing him that as regards the building of the balconies his application was placed before the Managing Committee and that until the permission was granted he must not do any work in that respect. The plaintiff not having heard from the Municipality, he built the balconies. On the 4th August 1904 the Municipality called upon the plaintiff to remove the balconies, and his application to the Municipality to reconsider their decision having failed, he brought a suit against the Municipality for an injunction restraining them from removing his balconies.

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respect of which the Municipality is empowered by section 92 to enforce a removal or set-back, the person intending so to build, alter or add shall give to the Municipality notice thereof in writing, and shall furnish to them, at the same time if required by a by-law or by a special order to do so,

(*a*) the sanad, if any * * * * * *

(*b*) a plan showing the levels * * * * * *

(2) The Municipality may issue such orders not inconsistent with this Act as they think proper with reference to the work proposed in such notice, and may either give permission to erect or alter or add to the building according to the plan and information furnished, or may impose in writing such conditions as to level, drainage, sanitation, materials or to the dimensions and cubical contents of rooms, doors, windows and apertures for ventilation, or with reference to the location of the building in relation to any street existing or projected, as they think proper, or may direct that the work shall not be proceeded with unless and until all questions connected with the respective location of the building and any such street have been decided to their satisfaction.

(3) Before issuing any orders under sub-section (2) the Municipality may, within one month from the receipt of such notice, either issue,

(*a*) a provisional order directing that for a period, which shall not be longer than one month from the date of such order, the intended work shall not be proceeded with, or

(*b*) may demand further particulars.

(4) A building proposed in a notice given under sub-section (1) may be proceeded with in such manner, as may have been specified in such notice, as is not inconsistent with any provision of this Act or of any by-law for the time being in force thereunder in the following cases, that is to say :—

(*a*) in case the Municipality, within one month from the receipt of the notice given under sub-section (1), have neither

(i) * * * * * * * *

(ii) issued under sub-section (3) any provisional order or any demand for further particulars.

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Held, that the plaintiff was entitled to succeed. There being no subsisting provisional order referred to in section 96, sub-section (4) (*a*) (ii) of the District Municipal Act (Bom. Act III of 1901), the plaintiff was entitled to the liberty of proceeding allowed by sub-section (4). After the expiry of one month, the order as to the balconies was spent and the plaintiff became entitled to proceed with the proposed work.

Per Curiam.—Under the District Municipal Act (Bom. Act III of 1901) an applicant is not to be restrained from proceeding with his work merely because a provisional order, which is expressly limited to one month, may have been issued months, or even years, earlier.

An order directing indefinite delay is inconsistent with the District Municipal Act (Bom. Act III of 1901).

SECOND appeal against the decision of D. G. Medhekar, Additional First Class Subordinate Judge of Ahmedabad with appellate powers, reversing the decree of K. K. Sunavala, Additional Joint Subordinate Judge.

The plaintiff sued for an injunction that the defendant Municipality should not remove or cause to be removed the projecting balconies which the plaintiff had attached to his house and costs. The plaintiff alleged that he rebuilt his house after giving notice to the Municipality in 1903 and attached the projecting balconies to its south and east about 16 feet above the ground, that the construction of the balconies was not in any wise opposed to the Municipal Act or its by-laws, that he had obtained permission for the construction of his house which, he understood, included permission for building balconies, that if that had not been so, defendant's Inspector who was present at the building of the balconies would have

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(5) Whoever begins or makes any building or alteration or addition without giving the notice required by sub-section (1), or without furnishing the documents or affording the information above prescribed, or except as provided in sub-section (4), without awaiting, or in any manner contrary to, such legal orders of the Municipality as may be issued under this section, or in any other respect contrary to the provisions of this Act or of any by-law in force thereunder, shall be punished with fine which may extend to one thousand rupees; and the Municipality may

(*a*) direct that the building, alteration, or addition be stopped,

and

(*b*) by written notice require such building, alteration or addition to be altered or demolished, as they may deem necessary,

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advised plaintiff to apply for a separate permission for the balconies and that the defendant was attempting to remove the balconies, hence the suit.

The defendant replied that not only had the plaintiff built the balconies without permission, but he had done so in opposition to the express injunction against building them, that the permission for the building of the house did not include that for the balconies, and the plaintiff could not understand it to be so because the permit given him expressly forbade him from erecting the balconies.

The Subordinate Judge found that the plaintiff's balconies were not legally constructed and that the Municipality was entitled to remove them. He, therefore, dismissed the suit.

On appeal by the plaintiff, the appellate Court reversed the decree and allowed the claim.

The defendant Municipality preferred a second appeal.

L. A. Shah for the appellant (defendant Municipality).

T. R. Desai for the respondent (plaintiff).

BATCHELOR, J. :—On 3rd July 1903 the plaintiff, who is the respondent before us, applied to the defendant Municipality for permission to reconstruct his house, building balconies on the southern and eastern sides. On the 25th July 1903 the Municipality, by the written "permission note," Exhibit 33, gave the plaintiff permission to rebuild his house according to the plan submitted, but in the body of the note no reference was made to the question of the proposed balconies. This omission was, however, supplied by a postscript, which ran as follows :—"As regards the building of balconies, your application is placed before the Managing Committee for decision whether the permission should, or should not, be granted. Therefore until this permission is granted, you must not do any work in this respect." Then for a period of practically one year, *i. e.*, until the 15th July 1904, the Municipality did nothing, having, we are informed, lost or mislaid the papers. At some time during this protracted interval the plaintiff built his balconies as proposed. This was reported to the Munici-

pality on 15th July 1904, and on the 4th August following that body called upon the plaintiff to remove the balconies. After an unsuccessful petition to the Municipality praying them to reconsider their decision, the plaintiff brought this suit in which he seeks for an injunction against the Municipality restraining them from removing his balconies.

In the Court of first instance the suit was dismissed with costs, the Subordinate Judge's decision being based upon the broad ground that the structures had been erected although the Municipality's permission had been expressly withheld. It was inferred that the circumstances justified the application of those powers of demolition which are conferred on the Municipality by sub-section (5) of section 96 of the Bombay District Municipal Act, 1901.

The plaintiff appealed to the District Court, where the learned Subordinate Judge, A. P., made a decree in his favour, being of opinion that the Municipality's order of 25th July 1903 must be considered as a provisional order issued under sub-section (3) (*a*) of section 96, and, in consequence, not valid beyond a period of one month from the date of its issue.

Against this decree the present appeal is brought by the Municipality, and on their behalf it is contended that the order of 25th July 1903 should be referred to sub-section (2), and not to sub-section (3) (*a*) of section 96. We are, however, of opinion that the order is not one which could have been issued under sub-section (2). That sub-section provides for a variety of orders which may be passed by the Municipality; but the only words in the sub-section which, we think, could conceivably be invoked in aid of the particular order in question are those which empower the Municipality to issue "such orders not inconsistent with this Act as they think proper with reference to the work proposed." But in our opinion an order directing an indefinite delay—in this case a delay extending to one year—is inconsistent with the Act. That, we think, is made clear by sub-sections (3) and (5) which, in allowing the issue of a provisional order, strictly limit its duration to one month, and penalise only a person who begins to build without

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awaiting the legal orders of the Municipality issued under section 96. Reading the section as a whole, we have no doubt that one of the objects of the Legislature was to discountenance just the kind of unreasonable dilatoriness which this case illustrates.

Then it was argued for the Municipality that the order of 25th July 1903, even if it does not fall within sub-section (2), certainly cannot be ascribed to sub-section (3) (*a*) because the provisional orders contemplated by this latter sub-section must be passed by the Municipality "before issuing any orders under sub-section (2)," whereas in this case we have but a single set of orders embodied in the "permission note" of 25th July. Even if this argument were sound, however, it would be no answer to the plaintiff, for the only result would be that the orders would be invalid as falling outside the provisions of the Act altogether. But it appears to us that the argument is not sound. We think the true view of these orders, and the view most favourable to the Municipality, is to regard them as consisting of two distinct and severable parts. The main body of the communication may rightly be referred to sub-section (2) inasmuch as it conveys permission to reconstruct the house according to the plan, subject to certain conditions. But the question of the balconies was treated by the Municipality as a separate matter, and their order in this respect must be referred to sub-section (3) (*a*) if it is to be regarded as possessing any legal validity at all under the Act. It is a temporary or provisional order directing that the intended work shall not be proceeded with until the Managing Committee have come to a decision; and the only authority discoverable in the Act for such an order is sub-section (3) (*a*), which provides for the issue of "a provisional order directing that for a period, which shall not be longer than one month from the date of such order, the intended work shall not be proceeded with."

No difficulty is created by the fact that a provisional order must precede the issue of any order under sub-section (2) because no order under sub-section (2) was issued in regard to

the balconies. It follows, therefore, that after the expiry of one month, this order as to the balconies was spent, and under sub-section (4) the plaintiff thereupon became entitled to *proceed with the proposed work; for sub-section* (4) *enacts* that an applicant shall be entitled to proceed with his intended work in case the Municipality, within one month from the receipt of the notice or application, have neither passed orders under sub-section (2) nor issued under sub-section (3) any provisional order. No orders under sub-section (2) were passed as to these balconies, and though, no doubt, a provisional order had been issued a year previously, we cannot think that that order had, under the section, any power to restrain the plaintiff *from building. For by the very nature of it as defined in* sub-section (3) (*a*), its operation was limited to the period of one month, and sub-section (5), which deals with cases where an applicant is bound to await further orders, is careful to provide that such orders must be legal orders. We take it, therefore, that under the Act an applicant is not to be restrained from proceeding with his work merely because a provisional order, which is expressly limited to one month, may have been issued months, or even years, earlier. Thus, in order to avoid a *plain contradiction*, and to give effect to the section as a whole, we must read the words "any provisional order" in sub-section (4) (*a*) (ii) as referring only to a subsisting provisional order. There was no such order in this case, and therefore the plaintiff was entitled to the liberty of proceeding allowed by sub-section (4).

We affirm the decree of the Court below and dismiss this appeal with costs.

Decree affirmed.

G. B. R.