

grievance, I am afraid, does not call for any decision at this stage, and indeed, it is scarcely necessary to go into it for disposing of the present revision.

For the reasons foregoing, this revision petition fails and is dismissed. The parties will, however, bear their own costs in this Court.

K.S.K.

CIVIL MISCELLANEOUS

Before A. N. Grover, J.

UMRAO SINGH,—*Petitioner*

versus

MUNICIPAL CORPORATION OF DELHI AND ANOTHER,—*Respondents*

Civil Writ No. 784-D of 1965.

March 11, 1966.

Delhi Municipal Corporation Act (LXVI of 1957)—S. 343—Notice of demolition under—Whether must be served on the owner—Appeal to the District Judge—Starting point of period of limitation—Whether the date of service of the notice on the owner.

Held, that the notice of demolition of a building or part of a building under section 343(1) of the Delhi Municipal Corporation Act, 1957, must be delivered to the person who is required to demolish it and not served in the way other notices are served under section 444 of the Act.

Held, that the period of limitation for an appeal to the District Judge under section 343(2) of the Act starts from the date when the notice is actually delivered or proved to be delivered to the person who is required to carry on the demolition.

Petition under Articles 226 and 227 of the Constitution of India, praying that:—

- (a) A writ of certiorari or other appropriate writ be issued calling for the records of the case and quashing the order of the learned District Judge, dated the 14th July, 1965 and directing the learned District Judge to hear the appeal on merits ;

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- (b) A writ in the nature of mandamus or other appropriate writ be granted against the Delhi Municipal Corporation, Respondent No. 1, directing it not to give effect to its order dated the 3rd April, 1965 ;
- (c) Such other or further orders be passed as the Court deems appropriate.

B. C. MISRA WITH G. D. RATTAN, ADVOCATES, for the Petitioner.

R. N. TIKKU, ADVOCATE, for the Respondent.

JUDGMENT

GROVER, J.—This is a petition under Articles 226 and 227 of the Constitution in which the facts may be briefly stated. The petitioner owns a plot of land No. 85, bearing Municipal No. 5967, Ward No. 14, in Basti Harphul Singh, Delhi, which, he says, he purchased in 1963 for a sum of Rs. 26,000. According to his allegations, sanction for the construction of a building on the said plot was accorded by the Delhi Municipal Corporation on 28th July, 1964. He later on wanted some alterations to be made and the same were allowed on 2nd January, 1965. After the building had been erected at a cost of Rs. 43,000 on 27th March, 1965, the Corporation issued a notice saying that the R.C.C. roof for the purpose of opening excessive basement had been erected without sanction and the petitioner was called upon to show cause against demolition within a period of 48 hours under section 343(1) of the Delhi Municipal Corporation Act, 1957 (hereinafter called the Act). On 3rd April, 1965, the Zonal Officer of the Corporation issued an order directing demolition of the roof in question. The petitioner says that this notice was delivered to Banwari Lal, his father. No date was written by the recipient on the notice and the petitioner as well as his father believed and maintained that the notice was served on 17th April, 1965. On 22nd April, 1965, the petitioner filed an appeal before the District Judge under section 343 of the Act against the order of demolition. This appeal was held to be barred by time by one day as it had been filed on 22nd April, 1965 and the learned Judge said that the notice had been served on the petitioner on 16th April, 1965 and not on 17th April, 1965. In the affidavit in reply which was filed on behalf of the respondent Corporation, dated 28th January, 1966, with regard to the notice it was stated that it was not within the knowledge of the respondent Corporation as to whether the petitioner or his father received the notice of demolition but it was wrong and false that it was delivered and served on 17th April, 1965. This notice was served on 16th

April, 1965 and the report of the process-server was also to the same effect. When the matter came before me, the petitioner sought permission to amend the writ petition so as to raise certain points in which new facts were not involved. These are given in paragraph 3 of the petition for leave to amend dated 28th February, 1966. Out of these I can see no objection to allowing the raising of grounds A. X and B. XI and I hereby grant leave to amend in that behalf. I see no reason or justification for allowing the other amendments sought. Mr. B. C. Misra for the petitioner says that the points covered by those grounds have already been raised in the petition. If that be so, then the question of amendment does not arise. The amendment to the extent it has been allowed is allowed only on payment of Rs. 50 as costs which have been paid to the counsel for the respondent Corporation in Court. It may be mentioned that the respondent Corporation has also filed a reply to the petition seeking amendment and in that reply the necessary facts with regard to the grounds on which the permission has been granted have been given. The writ petition can, therefore, be disposed of immediately.

Mr. Misra has sought to raise a number of points which may be set out below:—

- (1) The appeal before the learned District Judge under section 343 of the Act was not barred by time.
- (2) No opportunity was given by the learned District Judge for providing that the appeal was within time.
- (3) Section 343(2), as amended, is *ultra vires* and unconstitutional on the ground that it is violative of Article 14 of the Constitution.
- (4) The provisions contained in the aforesaid section are directory and not mandatory.

In my opinion, it is unnecessary to decide all the other points raised by Mr. Misra, because the petition must succeed on the first two points. Sub-sections (1) and (2) of section 343 of the Act are as follows:—

“343. (1) Where the erection of any building or execution of any work has been commenced, or is being carried on, or

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has been completed without or contrary to the sanction referred to in section 336 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any of the provisions of this Act or bye-laws made thereunder, the Commissioner may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has been completed, within such period (not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to that person) as may be specified in the order of demolition:

Provided that no order of demolition shall be made unless the person has been given by means of a notice served in such manner as the Commissioner may think fit, a reasonable opportunity of showing cause why such order shall not be made:

Provided further that where the erection or work has not been completed, the Commissioner may, by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso, or at any other time, direct the person to stop the erection or work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under sub-section (2).

(2) Any person aggrieved by any order of the Commissioner made under sub-section (1) may prefer an appeal against the order to the Court of the District Judge of Delhi within the period specified in the order for the demolition of the erection or work to which it relates."

Now, the order of demolition with regard to any erection has to be delivered to the person at whose instance the erection has been commenced or completed and the notice has to be of not less than five days and more than fifteen days from the date on which a copy of the order of demolition, etc., has been delivered to that person. For the appeal also the same period is specified. It is not

disputed in the present case that the notice (Annexure "RA") prescribed a period of five days for compliance with the order from the date on which it was delivered to the addressee who was the petitioner. At the back of this notice it is signed "Banwari Lal" who admittedly is the father of the petitioner. In the writing of the serving officer, it is mentioned that it was served on 16th April, 1965. The language of the statute is quite clear and if the notice had been delivered to the petitioner on 16th April, 1965, then admittedly the appeal to the District Judge would have been barred by time but the District Judge has found that the notice was served personally upon Banwari Lal, the father of the petitioner, on 16th April, 1965, and since the appeal was filed on 22nd April, 1965, it was barred by time.

The contention of Mr. Misra is that there is an error apparent in the order of the learned District Judge because time would begin to run not from the date the notice was served on the father of the petitioner but from the date the notice was actually delivered to the petitioner. According to him, it was the duty of the respondent Corporation to establish that the notice was delivered to the petitioner himself or that the delivery was made to the petitioner by his father on 16th April, 1965, and that until the learned District Judge gave a finding that the notice was delivered to the petitioner on 16th April, 1965, he had no jurisdiction to dismiss the appeal as barred by time. There can be no manner of doubt that service on the father of the petitioner could not be regarded as delivery of the notice to the petitioner until it was shown that the father had delivered the same to the petitioner on 16th April, 1965. No such finding was given by the learned District Judge and until that finding is given, the appeal could not be held to have been barred by time.

The learned counsel for the respondent Corporation maintains that the petitioner has not taken up a consistent stand about the date when the notice was delivered to him in the memorandum of appeal before the learned District Judge and in the present writ petition. In the memorandum before the learned District Judge it was stated in ground No. 6 that the demolition order was received by the petitioner on 17th April, 1965. In the writ petition it was stated in a vague manner in paragraph 7 that the petitioner as well as his father believed that the notice was served on 17th April, 1965. In ground No. II of paragraph 13, however, it was stated that the father gave the notice to the petitioner on 18th

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April, 1965. Mr. Misra has explained that this discrepancy is due to the fact that probably some mistake was made in the date given in the memorandum of appeal before the learned District Judge, but, in any case, it was a question of fact which had to be determined by the learned District Judge as to when the notice of demolition was actually delivered to the petitioner, and until that matter was decided, the appeal should not have been thrown out merely on the ground that the father of the petitioner had been served on 16th April, 1965. It is pointed out by Mr. Misra that the learned District Judge was apparently under the erroneous impression that under section 343 notice had to be served in the manner required by section 444 which lays down the procedure for service of notices, etc. It is clear that the procedure prescribed by section 343 in the matter of notice of demolition is different from and independent of the procedure laid down in section 444 and the counsel for the respondent Corporation has not been able to satisfy me how the delivery of such a notice, as required by section 343, could be made in the manner in which the service is to be effected under section 444. I am satisfied that the learned District Judge did not apply his mind to the provisions of section 343 and until he gave a finding that the notice had been delivered to the petitioner on 16th April, 1965, he could not dismiss the appeal as barred by time. There is thus an error apparent in the order which would justify interference in this petition. Demolition of a building or part of a building is a serious matter and entails a good deal of loss to the person who has made the construction. The Legislature, therefore, in its wisdom provided that notice of demolition must be delivered to that person and cannot merely be served in the way other notices can be served under section 444. If delivery is not necessary and service is effected in the manner provided by section 444, a notice of demolition which is of a very short duration may result in the building being demolished in the absence of the owner if, for instance, he has gone out of station and there is no means of communicating the orders of the respondent to him or if he does not receive in time the communication about the same even if service has been effected in accordance with the procedure prescribed by section 444. I have, therefore, no manner of doubt that it was necessary that the notice of demolition under section 343 should have been shown to have been delivered to the petitioner on a particular date and only then limitation would start to run for the purpose of the appeal. I, therefore, allow this petition and quash the order of the learned District Judge and further in exercise of powers under Article 226 direct that he should rehear and redecide the question of

limitation and then dispose of the appeal in accordance with law. In the circumstances, there will be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Prem Chand Pandit, J.

MUNICIPAL COMMITTEE, JAGADHRI,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2929 of 1965.

March 11, 1966.

Punjab Town Improvement Act (IV of 1922)—Ss. 4 and 7—Trustees elected by the Municipal Committee—Tenure of—Whether expires with the term of the members of the Municipal Committee.

Held, that the term of office of the trustees elected by the Municipal Committee is three years. The term of office of the members of the Municipal Committee is also three years and it is for this reason that the tenure of the trustees is fixed at three years. It means that whenever after the expiry of three years, a new Committee is constituted, the old members of the said Committee cease to be its members. Likewise, the tenure of the old trustees elected by the Municipal Committee comes to an end and their place has to be taken by the new members elected by the newly constituted committee. In the instant case, respondents 2 and 3 and Shri Chaman Lal were the trustees appointed by the State Government under the provisions of section 4 of the Town Improvement Act on 17th March, 1964. These persons were the members of the old Municipal Committee, which was constituted prior to 1947. Fresh elections to this Committee were held in May, 1964 and the newly elected members took their oath of office on 29th July, 1964. On this date, the old members of the Committee ceased to exist. Respondents Nos. 2 and 3 and Shri Chaman Lal, therefore, ceased to be trustees on this date. The Committee was, therefore, competent and entitled to elect three members as trustees.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of mandamus, certiorari, or any other appropriate writ, order or direction be issued quashing the Notification, dated 23rd June, 1965, issued by respondent No. 1 appointing respondent No. 4, as a trustee of Jagadhri Improvement Trust, Jagadhri and commanding respondent No. 1 to allow the petitioner to elect 3