APPELLATE CIVIL

Before H. R. Khanna, J.

MUNICIPAL CORPORATION, DELHI,—*Appellant.*

versus

YOGESH VULK MADHOK AND ANOTHER,—*Respondents.*

R.S.A. 124-D of 1958.

March 22, 1966.

Punjab Municipal Act (III of 1911)—Ss. 125, 136, 200 and 222—Municipal Committee constructing latrines in the building of the respondents for the use of their tenants on the respondent's failure to build the same—Latrines built at a place different from that mentioned in the notice—Municipal Committee—Whether entitled to recover cost of building latrines from the respondents.

Held, that the tenants of the respondents are admittedly enjoying the usufruct of the latrines and it would appear that the construction became necessary because of the failure of the respondents to construct the latrines. The latrines are obviously an accretion to the building of the respondents. In the circumstances, it hardly seems just to hold that the appellant was disentitled to claim anything from the respondents because of the change in the site of construction.

Held, that it is not every deviation from the original notice in the execution of the work which would disentitle a Municipal Committee from recovering its cost. In considering this matter the Court would have to look to the facts of the case and all the surrounding circumstances, it may be that in a particular case the specific site on which work has been ordered to be executed, may be of special importance and in such a case the execution of the work on a site different from that specified in the notice would be no compliance with the notice. On the contrary there may be a case where the vital thing is the execution of the work and not the site. In such a case a deviation from the specified site should be held to be not so material as to disentitle altogether the Committee from recovering the cost of the construction.

Regular Second Appeal from the decree of the Court of Shri Radha Kishan Bawcja, Senior Sub-Judge, Delhi, dated 25th August, 1958, affirming with costs that of Shri S. S. Gill, Sub-Judge 1st Class, Delhi, dated 28th May, 1957, granting the plaintiff decree for permanent injunction restraining defendant No. 1

from realising the cost of the works in dispute from the plaintiff, but refusing to grant the mandatory injunction prayed for by the plaintiff in the second suit requiring the demolition of these latrines but leaving the parties to bear their own costs of the suit.

B. P. MAHESHWARI, ADVOCATE, for the Appellant.

ANANT RAM WHIG, ADVOCATE, for the Respondents.

JUDGMENT.

KHANNA, J.—This judgment would dispose of two regular second appeals Nos. 124-D and 129-D of 1958, which have been filed by the Municipal Corporation of Delhi and are directed against the Judgment and decrees of the learned Senior Subordinate Judge, Delhi affirming an appeal on the decision of the trial Court.

The brief facts of the case are that the respondents are the owners of building known as Amrik Roy Ganj, Sarai Rohilla, Delhi. Different tenants of the respondents are in occupation of that building. The Municipal Committee, Delhi, which was predecessor of the appellant served a notice under sections 125, 126 and 136 of the Punjab Municipal Act on respondent No. 1 to provide two sets of six seats water-borne latrines complete with drainage and sewerage connection as per design and plan at an estimated cost of Rs. 7,288. The said respondent was called upon to carry out the work within a period of two months of the receipt of notice failing which the Committee would cause the said work to be executed through its own agency at the risk and cost of the respondent. The said respondent was also told that in that event the Committee would recover the expenses incurred in constructing the works from respondent No. 1. Respondent No. 1 thereupon instituted a suit for injunction for restraining the Municipal Committee from constructing the latrines. As the latrines were not constructed within a period of two months, the Municipal Committee served a notice under section 220 of the Punjab Municipal Act, on 10th May, 1956 and called upon the respondents to do the needful within six hours failing which the Municipal Committee would cause the work to be done and recover the costs. The Municipal Committee thereafter constructed the two latrines on the property in dispute of the respondents. Another suit was then brought by the respondents for a mandatory injunction directing the Municipal Committee to demolish the latrines which, according to the respondents, had been illegally constructed by the

Municipal Committee. The allegations of the respondents in this suit were that they had already provided latrines and drainage in accordance with the requirements of their tenants and that the Municipal Committee could not compel them to provide particular type of water-borne latrines. Plea was also taken that the latrines had been constructed at places other than those shown in the plan attached with the original notice under sections 125, 126 and 136 of the Punjab Municipal Act. The respondents claimed that the construction of the two latrines by the Municipal Committee was unauthorised, illegal and *mala fide*, and not in conformity with the resolution of the committee.

The suits were contested by the Municipal Committee and it was pleaded that the notices issued on its behalf were in accordance with law and that the latrines were constructed at sites approved by respondent No. 1 and the tenants in occupation of the building.

The trial court found that the notice under sections 125, 126 and 136 of the Punjab Municipal Act was proper but the construction of the latrines by the committee was unauthorised inasmuch as they were built at sites different from those specified in the plan attached to the above notice. The trial Court declined to grant relief for mandatory injunction for demolition of the latrines but restrained the Municipal Committee from realising the cost of the construction. On appeal the learned Senior Subordinate Judge affirmed the decision of the trial Court. The plea of the Municipal Committee that the latrines had been constructed on different sites at the asking of one of the respondents or his tenants, was not accepted.

In second appeal, Mr. Maheshwari, on behalf of the appellant, has argued that the fact that the latrines in question were constructed by the Municipal Committee at sites different from those mentioned in the plan attached with the notice under section 125 of the Punjab Municipal Act, would not prevent the appellant from recovering the cost of construction of those latrines. This contention has been controverted by Mr. Vig and it is urged that as the latrines were not constructed on the sites mentioned in the plan attached with the notice, the appellant has disentitled itself from recovering the cost of construction. In this respect, I find that subsection (1) of section 125 of the Punjab Municipal Act reads as under:—

> "The committee may, by notice, require the owner of any building or land to provide, move or remove any drain,

privy, latrine, urinal, cesspool or other receptacle for filth or refuse, or provide any additional drains, privies, latrines, urinals, cesspools or other receptacles as aforesaid which should in its opinion be provided for the building or land, in such manner and of such pattern as the committee may direct".

Section 220 and sub-section (1) of section 222 of the Punjab Municipal Act, are as under:—

220. *Power of committee in the event of non-compliance.*—Whenever the terms of any notice have not been complied with, the committee may, after six hours' notice, by its officers, cause the act to be done.

"222. *Recovery of costs of execution.*—Where, under this Act, the owner or occupier of property is required by the committee to execute any work and default has been made in complying with the requirement, and the committee has executed the work, the committee may recover the cost of the work from the person in default."

A perusal of the above provision goes to show that a Municipal Committee has power, *inter alia*, to require the owner of any building to provide latrines or additional latrines which should, in its opinion, be provided for the building in such manner and of such pattern as the Committee may direct. Provision is further made enabling the Committee to cause the act to be done, in case the notice is not complied with, and to recover the cost of the work from the person in default. Respondent No. 1, who is the owner of the building in dispute, in the present case, was called upon to construct the two latrines in question and on his failure to do so the latrines were constructed by the Municipal Committee. The construction of the latrines was, however, on sites not specified in the notice but on different sites, and the question which arises for consideration is whether the shifting of the sites of the latrines from those mentioned in the notice would disentitle the Municipal Committee from recovering the cost of construction of the latrines. In this respect, I find that the tenants of the respondents are admittedly enjoying the usufruct of the latrines and it would appear that the construction become necessary because of the failure of the respondent to construct the latrines. The latrines are obviously an accretion to the building of the respondents. In the circumstances, it hardly seems

just to hold that the appellant was disentitled to claim anything from the respondents because of the change in the site of construction. The construction of the two latrines is substantially in accordance with section 220 of the Punjab Municipal Act, and it would not, in my opinion, be fair or just to debar the appellant from recovering the whole cost of construction. It is not every deviation from the original notice in the execution of the work which would disentitle a Municipal Committee from recovering its cost. In considering this matter the Court would have to look to the facts of the case and all the surrounding circumstances, it may be that in a particular case the specific site on which work has been ordered to be executed, may be of special importance and in such a case the execution of the work on a site different from that specified in the notice would be no compliance with the notice. On the contrary there may be a case where the vital thing is the execution of the work and not the precise site. In such a case, a deviation from the specified site should be held to be not so material as to disentitle altogether the Committee from recovering the cost of the construction. The present case, in my view, belongs to the latter category. As there were a number of tenants in the building of the respondents and as it appears that the arrangement for latrines for the tenants was not proper, the Municipal Committee issued the notice under section 125 of the Municipal Act, for the construction of two sets of six seated water-borne latrines complete with drainage and sewerage connection as per design and plan. The important thing in the notice was the construction of the two sets of six-seated water-borne latrines complete with drainage and sewerage connection and their sites were of secondary importance as long as they were in the building in dispute. In these circumstances it would be hardly appropriate to hold that the appellant is wholly disentitled to recover the cost of construction. The proper course in a case like the present appears to be to make a deduction from the cost of construction because of the shifting of the sites from that mentioned in the original plan. Looking to all the facts I direct a deduction of 20 per cent to be made on that account.

I, therefore, accept the appeals and modify the decrees for injunction granted in favour of the plaintiff-respondents by directing that the appellant would not be entitled to recover more than 4/5th of the cost of construction of the latrines from the respondents. The parties, in the circumstances of the case, are left to bear their own costs throughout.

R. S.