

(Spl.H.C.D.D 28E)
G.P.Bve-(J)-191-18,000-6-89.
G.R.J.D No. 4398 dated 3.7.16.

FIRST APPEAL NO. 1165/80

Date of decision:17.10.94

For Approval and Signature

Hon'ble Mr.Chief Justice : B.N.Kirpal

Hon'ble Mr. Justice : R.K.Abichandani

1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter of not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr.A.M. Bukhari, Advocate for the appellant
Mr. S.N.Shelat, Advocate for the respondent.

Coram: B.N.Kirpal, C.J. & R.K.Abichandani,J.
Date :17.10.1994

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The appellant challenges the judgement and order dated 31st July, 1980 passed by the learned Judge, City Civil Court, Ahmedabad in Civil Suit No. 910/78 dismissing the suit. The case of the plaintiff was that survey No. 914 to 948 was the property owned by Shree Shankerdas Fatehsinh Sadavat Trust, out of which a shop below the western stair-case in survey No. 945 was leased to the appellant for business purpose from 1st January, 1978 at a monthly

[illegible]

[illegible]

a mo rent of Rs. 75/- exclusive of Municipal tax. A show cause notice

under Section 260(1) of the Bombay Provincial Municipal Corporations Act, 1949 was issued in connection with the said shop. According to the plaintiff the said notice is illegal and vague and the action of the respondent for dismantling the shop was illegal, unauthorized and void. The case of the appellant was that no opportunity to file her objections was given to the appellant and the notice was not duly served on her.

In the say of the respondent, occupant and owner were served with notice and on behalf of the trust the notice was received by Trustee Chandulal Chamaldas as the Manager of the Trust and since nobody was available and the suit site was closed, the notice of the occupant was pasted on the premises. Copy of the notice was also served on the husband of t

The trial Court held that the appellant did not prove that the impugned notice was vague and illegal. The trial Court came to the conclusion that the notice was duly served on the owner who had erected the disputed structure and there was no illegality in the notice since there was a specific reference to the violation of the building by-laws No. 80 and 93 made therein. The notice was also found to have been affixed on the premises in question.

The learned Counsel appearing for the appellant argued that no notice was served on the appellant who was held to be the occupant of the premises. It was not disputed that the notice was duly served on the owner and was also affixed on the premises in question.

Notice under Sec. 260(1) (a) is required to be served on the person who is erecting or has erected the building. The evidence on record suggests that the owner trust had erected the evidence on record suggests that the owner trust had erected the evidence on record suggests that the owner trust had erected the evidence on record suggests that the owner trust had erected the evidence on record suggests that the owner trust had erected the evidence on record suggests that the owner trust had erected the evidence on record suggests that the owner trust had erected the evidence on record suggests that the owner trust had erected the evidence on record suggests that the owner trust had erected the evidence on record suggests that the owner trust had erected the evidence on record suggest

evidence on record suggests disputed structure. The notice under Sec. 260(1)(a) was also pasted at the premises as it was closed. Notice was also served on

the husband of the appellant.

The provision of Section 473 of the said Act inter alia provides for service of notice on the owners of the premises and other persons. Under clause (d) thereof if none of the means enumerated in clauses (a), (b) and (c) be available, then the notice can be served by affixing the same on conspicuous part of the building or land to which it relates. Section 474 of the Act which deals with service on owners or occupier of premises also provides in clause (c) that if none of the means included in clauses (a) and (b) be available, then service shall be effected by causing the said notice to be affixed on some conspicuous part of

The affixation of the notice on the suit property was therefore lawfully done by the respondent and it would not be open to the appellant to complain that proper opportunity was not given to the appellant for showing cause against notice u/s 260(1).

We therefore, find no reason to interfere with the decision of the trial Court, particularly when admittedly the construction in question is unauthorized. This appeal is therefore, dismissed with no order as to costs.
