A

STATE OF JAMMU AND KASHMIR & ORS.

v.

HAJI WALI MOHAMMED AND OTHERS

August 8, 1972

[A. N. GROVER AND D. G. PALEKAR, JJ.]

B

Jammu and Kashmir Municipal Act, Samvat 2008, *ss.* 129, 238 *and* 239—*Notice affixed to property—No proof of attempted service—If sufficient—Grant of* 24 *hours time to demolish structures in which business was being carried on—No opportunity given to repair—If time given reasonable.*

C

Buildings and structures in which the respondents were carrying on their business were ordered to be demolished under s. 129 of the Jammu and Kashmir Municipal Act, Samvat 2008. Only 24 hours time was given to the respondent for dismantling the structures. The notices were never served upon the respondents but were affixed on the premises. The municipality demolished the properties. In writ petition filed by the respondents the High Court held that the orders passed by the appellants were illegal.

D

Dismissing the appeal to this Court,

HELD : Owing to the non-compliance with the provisions of ss. 238 and 239 of the Act, the action taken by the municipality in the matter of demolition must be held to be entirely illegal and contrary to law. [811A B]

(1) Section 239 of the Act gives the procedure relating to authentication of service of a valid notice. Under sub-s. (i) every notice may be served in the manner provided for the service of summons in the C.P.C. so far as may be applicable. Even accepting the contention of the appellant that the respondents refused to accept the notices and that was the reason for affecting service by affixation, the provisions of O. 5, r. 9 of the Code were not complied with. No proof was adduced by way of an affidavit of the process server or any other officer regarding the attempts to serve the notices. Production by the respondents of the notices or admission that there was affixture did not dispense with compliance with the requirements of the statutory provisions contained in s. 239 in the matter of service of notices. [809F-G; 810A-C]

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(2) (a) Section 238 of the Act provides that when any notice under the Act requires any act to be done, for which no time is fixed by the Act, a reasonable time for doing the same shall be specified in the notice. Section 129 does not specify or fix any time for complying with the notice issued under that section. Therefore, a reasonable time for doing the acts required to be done by the notice had to be specified. [809F; 810C-D]

G

(b) Section 129 also contemplates that the owner may be required either to remove the structure or to cause such repairs to be made to it as may be considered necessary for public safety. But, in the present case, no time was given for repairing and the owner or occupier of the property was straightway required to demolish the building or the structure. Considering that at no previous stage the officers of the municipality had formed the opinion that the structures were in such a dangerous condition that they should be demolished, the drastic step of demolition directed to be taken in 24 hours, appears, on the face of it, to be harsh and unusual [810D-G]

H

Therefore, the notices issued to the respondents did not comply with the provisions of s. 238 and the time granted was so short that it was not possible for the respondents eiher to comply with the notices or to take any effective steps in the matter of filing an appeal or revisions to the appropriate authorities. [810H] A

[The conclusions and observations of the High Court relating to collusion between various government officers for dispossessing the respondents from their properties and demolishing them and the *mala fide* nature of their action have not been dealt with by this Court in view of the decision regarding the illegality and invalidity of the demolition carried out pursuant to the notices issued under s. 129. Hence, the observations made by the High Court or the conclusions reached by it on all those other points would not be binding in any proceedings which may be initiated or taken or continued either by the respondents or the appellants under law] [808H; 811B-C] B C

CIVIL APPELLATE JURISDICTION : C. A. Nos. 144 to 147 of 1969.

Appeal by certificate from the judgment and order dated 19th July 1969 of Jammu and Kashmir High Court in Writ Petition No. 216 of 1968.

L. M. Singhvi, P. C. Bhartari, Ravinder Narain and J. B. Dadachanji, for the appellant. D

A. S. R. Chari, K. R. Chaudhuri, K. Rajendra Chowdhary and H. N. Tiku, for respondent (in C.A. No. 144 of 1969)

V. A. Seyid Muhammad, K. R. Nagaraja, S. K. Mehta and *M. Qamaruddin, for respondents* (in C.A. Nos. 145-147 of 1969). E

The Judgment of the Court was delivered by

Grover, J. These appeals arise out of a common judgment of the Jammu & Kashmir High Court given in four writ petitions filed by the respondents.

The respondents are stated to be purchasers of certain premises which were originally owned by Dewan Bishan Das who was a former Prime Minister of the State of Jammu & Kashmir. He had constructed several buildings and structures on the disputed property which was situated in Magharmal Bagh in Srinagar. The respondents Haji Abdul Aziz Shah and his wife Abdul Salem Shah and Haji Mohammed Ramzan Shah purchased rights in 8 Kanals 9 Marlas and 10,000 sq. feet of the area bearing Khasra Nos. 885 and 890 by two sale deeds which were got registered in July 1967. Respondent Haji Wali Mohammed purchased rights in the land measuring 25,704 sq. feet along with buildings and garages situated in Sarai Pain near the Exhibition Grounds. According to the respondents they started their own business establishments in the properties which had been purchased. It may be mentioned that the properties had been sold by Purmesh Chander and others who were heirs F G H

A of Dewan Bishan Das to the respondents. For the purpose of more detailed facts we may refer to the petition filed by the respondent Haji Wali Mohammed. It was alleged therein that in the month of December 1967 municipal buildings in Hari Singh High Street, Srinagar caught fire. The Municipality cleared the debris and took possession of the lands which became vacant as
B a result of the buildings having been destroyed by the fire. It was alleged that the Deputy Commissioner who was also the Estate Officer purported to issue certain notices in terms of the provisions of the Land Grants Act 1960 and the Jammu & Kashmir Public Premises (Eviction of (Unauthorised Occupants) Act 1959. These notices, however, were never served on the writ
C petitioners. Para 9 of the petition was as follows :

> "That petitioner is not liable to any proceedings under any provision of the aforementioned laws. That matter being, however, before the Estate Officer will be dealt with in terms of law".

D It was further alleged that on January 9, 1968 the Administrator of the Srinagar Municipality got a notice affixed near the petitioner's property. This notice purported to have been issued in terms of s. 129 of the Municipal Act of Samvat 2008. The said notice was never served upon the petitioner according to law. Only 24 hours' notice was given for dismentling the huge
E structures on the petitioners' land. This was followed by a very large number of police personnel and municipal employees coming to the property of the petitioner on January 11, 1968 who demolished the properties of the petitioner. Even the movable properties like iron pipes, timber and fixtures were either damaged or removed. The Administrator also took illegal possession of
F the petitioner's property without any authority of law. It was prayed that a writ or direction be issued to the Administrator of the Municipality prohibiting him from interfering with the physical possession of the petitioner and commanding him to forbear from taking possession of the property without authority of law. The notice issued under the signature of the Administrator
G of the Municipality which was annexure B to the petition was as follows :—

> "Whereas your one storeyed garage without a roof situate at Bagh Magharmal is in a dilapidated condition and there is a danger of an accident u/s 129 of the
H Municipal Act of 2008, therefore, you are hereby informed through this notice of twenty four hours under the said section to dismantle the said structure within the said period. In case of non-compliance the

Municipality will get it demolished through its employees and will recover the charges thereof from you"

A letter as well as a telegram were sent by the Advocate of Haji Wali Mohammed on 10th and 12th January 1968 respectively to the Administrator calling upon him, *inter alia* to stop all illegal action of demolition of the building as also the structures on the property of Haji Wali Mohammed. It was also pointed out that property worth several lakhs had been damaged or destroyed.

By means of a petition dated February 18, 1968 Haji Wali Mohammed sought to introduce some additional grounds in the writ petition. These were :

(a) "That the proceedings taken against the petitioner by respondent No. 2 under sections 4 and 5 of the Public Premises Eviction Act are *ultra vires* the Constitution and violating fundamental rights and liable to be quashed.

(b) That Sections 4 and 5 of the Act violate Article 14 of the Constitution of India".

An additional prayer was introduced to the effect that the writ be issued against the Estate Officer and the State of Jammu & Kashmir quashing proceedings under the Public Premises Eviction Act pending before the Executive Officer.

The respondents filed preliminary objections to the writ petition saying that the Public Premises Eviction Act had been held to be *intra vires* and that the petition was misconceived and because other efficacious remedies by way of appeal and suit were available the writ petition should be dismissed. The Executive Officer filed a return dated June 7, 1968 denying most of the averments contained in the writ petition and it was not denied that the notice had been issued under s. 5 of the Public Premises Eviction Act. It was, however, claimed that the same had been done in accordance with law. It was denied that the petitioner Haji Wali Mohammed had any *locus standi* to file a petition because the transaction by means of which he claimed to have acquired the rights was null and void. The Administrator also filed a reply in which he maintained that the Estate Officer was within his rights in the proceedings taken under the Public Premises Eviction Act as also under the Land Grants Act 1960. As regards the notice issued under s. 129 of the Municipal Act it was stated that its service had not been accepted by the petitioner and therefore the same had to be served under the provisions of the Municipal Act by fixing it on the premises. Paragraphs 12, 13 and 14 may be reproduced :

A "12. That the contents of the para are denied as incorrect. The dilapidated condition of the structure was rendered more dangerous due to the heavy snowfall and as such the life of the inhabitants of the locality was in imminent danger and as such a notice under section 129 Municipal Act 2008 Srinagar was warranted
B by the conditions obtained at that time and the same was done *bona fide*.

13. That the respondent has no knowledge about it. That the contents of this para are partly admitted inasmuch as the structure was already removed as its dilapidated condition was a positive threat to the life
C and property of the locality and the passers by. And due to heavy snow fall the structure was further damaged and in order to ward off any threat to life and property to the inhabitants of the locality the petitioner and to the public in general. The notice was served and received by the Respondent No. 1 after the structure
D was demolished.

14. The contents of the para are denied. The petitioner failed to comply with the notice under section 129 of Municipal Act 2008 and the respondent in exercise of the powers conferred on him under the Act, after getting fully convinced by the technical and expert
E opinion to avert danger to human life and property, demolished the structure".

It was firmly claimed that the dilapidated house had been demolished under s. 129 of the Municipal Act.

We have referred to the pleas in one of the writ petitions
F and the returns etc. filed on behalf of the respondents before the High Court in some detail because one of the main grievances of Dr. Singhvi, who appeared for the appellants in this Court, relates to the High Court having gone into and decided certain points which did not arise on the pleadings. The High Court in its judgment referred to some admitted facts which had been
G concluded from the unrebutted assertions made by the petitioner and also from the government file No. 561 produced by the Additional Advocate General. It referred firstly to the law under which the land, which according to the State, had been granted to Dewan Bishan Das on what is called Wasidari tenure was substantially a lease-hold tenure. The possession of the
H land could be resumed by the State on certain conditions one of which was that the compensation was to be assessed by the Government in accordance with paragraph 21 of the rules for grant of land in Jammu & Kashmir State for building purposes and

the compensation was to be paid to the lessee. On September 22, 1957 the Government decided to resume the lands in question as they were required for constructing the tonga and lorry stands. Certain orders were passed later by which the lands sought to be resumed were to be transferred in favour of the Road and Building Department for government purposes. The orders were made that the possession was to be taken only on payment of compensation.

The compensation, according to the High Court, was ultimately fixed at Rs. 1,39,260/-. After certain notices had been served regarding fresh assessment of valuation by the Divisional Engineer the lessees filed appeals to the Chief Engineer. Those appeals were filed by the predecessors-in-interest of the respondent, namely, Purnesh Chander and others. The appeals were dismissed. It was found by the High Court that while the correspondence between the Deputy Commissioner and certain government departments concerned was still continuing for payment of compensation composite notices under ss. 4 & 5 of the Public Premises Eviction Act were served on the tenants on June 18, 1963. Thereafter the matter was completely dropped and no steps either to pay the compensation to the lessees or to acquire the land or to continue the valuation proceedings under the aforesaid Act were taken. It is mentioned in the judgment of the High Court that no reasonable explanation was given by the Additional Advocate General for this silence for a long time on the part of the government or its officers. The inference which the High Court drew from this long unexplained silence was that the government on second thoughts did not want to pursue the matter.

On January 5, 1968 order of eviction was passed under the Premises Eviction Act. The High Court noticed the allegation of the parties with regard to the service of the notice as also the case of the petitioner that although the notice was dated January 8, 1968 it was ante-dated the date shown being January 5, 1968. That was the day on which the devastating fire broke out in the municipal building which was adjacent to the building in dispute and by which large portion of the municipal building was burnt down to ashes. The case of the writ petitioners before the High Court was that since lands had been resumed by the Government for purposes of building flats for the municipality, the municipality thought it a fit occasion to grab the adjoining lands. Since its own buildings were gutted the Administrator of the Municipality acting in collusion with the Estate Officer got a notice issued to the petitioners under ss. 4 & 5 of the Premises Eviction Act. The Administrator also issued a notice on January 9, 1968 under s. 129 of the Municipal Act, giving only 24 hours'

notice for demolishing the building if there was non-compliance with the order. A number of contentions were advanced on behalf of the writ petitioners before the High Court with regard to the validity of the proceedings under ss. 4 & 5 of the Premises Eviction Act. The Additional Advocate General relied on the validating legislation but the High Court, after referring to certain decisions of this Court, took the view that s. 5 was *ultra vires* and could not be revived by the validating or amending legislation. It was observed that the only alternative for the State was to take fresh proceedings under the amended Act against the petitioners.

As regards the notice issued by the Administrator of the Municipality under s. 129 of the Municipal Act the High Court expressed the view that there had been interpolations in the notices issued on the various dates to the tenants nor had the notices been properly served as required by the provisions of the Municipal Act. Furthermore the haste in which the notices had been issued and the buildings demolished raise "a cloud of dust on the nature of the proceedings taken by the Administrator". It was emphasised that the notice issued by the Municipality did not "specify the nature of the portion of the building which is dangerous nor does it give sufficient time to the petitioners to repair the buildings or to make representation to the Administrator". The High Court considered that it was manifestly clear that the Deputy Commissioner and the Administrator of the Municipality had entered into an unholy alliance in order to forcibly and illegally disposses the petitioners of their property at a time when the entire valley was in the grip of heavy snowfall and roads were completely blocked and the government and the High Court were functioning at Jammu. The following circumstances and reasons were set out for arriving at that conclusion :

(1) "That the petitioners and before them their predecessors in interest were in lawful possession of the premises in dispute for a long time.

(2) That although the lands were ordered to be resumed, the petitioners could not be evicted until due compensation was paid to them and the Dy. Commissioner had himself clearly adverted to this legal position in his letters to various authorities and had requested the Govt. for making funds available for payment of compensation to the lessees.

(3) That at the time when notice under section 4 and an order under section 5 of the old Act were issued, the compensation though assessed under the new Rules and not under the old

Rules which applied to the present case was neither offered nor paid to the petitioners. A

(4) That after issuing notice under section 4 some time in 1963, no further proceedings were taken for about five years and suddenly an order under s. 5 was issued on 8-1-1968.

(5) That the notice under s. 129 of the Municipal Act bore clear marks of interpolation and was not in accordance with s. 129 of the Municipal Act. B

(6) That even the report of the Asstt. Municipal Engineer on the basis of which the demolition was ordered merely showed that the shed was in a dangerous condition and it did not at all refer to the buildings being in such a dangerous condition so as to be demolished. C

(7) That a major portion of the premises in dispute were demolished on 1-2-1968 and soon thereafter these very premises were transferred to the Municipality by an executive order of the D.C. without sanction of the Government" D

The petitions were allowed and writs of *certiorari* quashing the order of eviction made against the petitioners and restraining the respondents from evicting them except in due course of law E were issued. Writs of *Mandamus* were also issued directing the respondents to restore possession to the petitioners immediately of the properties from which they had been dispossessed.

Apart from the grievance mentioned before on which a great deal of stress has been laid by Dr. Singhvi it has been strenuously F urged that the High Court has gone into matters which were not germane or relevant and had taken into consideration material which was not on the record by making use of a file which had been produced by the Additional Advocate General with regard to which no opportunity was given to either explain or rebut the inferences which were drawn from the documents and correspondence contained in that file. It is pointed out that in view of the G pleadings there was no justification for going into the various points on which the High Court rested its judgment.

We consider it wholly unnecessary to determine the correctness or otherwise of all the findings given by the High Court, particularly, the conclusion relating to collusion between the H various government officers for dispossessing the respondents before us from their properties and demolishing them and the *mala fide* nature of their action. It is common ground that the

A validity of the provisions of the Premises. Eviction Act which were struck down by the High Court can no longer be impugned in view of the decision of this Court in *Hari Singh & Others* v. *The Military Estate Officer & Another*(1) and the connected appeal. The question relating to the resumption of all the properties in dispute by the government on the ground that they were
B Wasidari lands was again a matter which had not been raised with any precision in the pleadings of the parties and it was wholly unnecessary for the High Court to have gone into that question for that reason and without relevant documents having been made a part of the record. In our judgment the writs and orders issued by the High Court must be sustained on the principal ground which was taken up in the writ petitions and which
C related to the action taken by the Administrator of the Municipality after issuing the notices under s. 129 of the Municipal Act. Section 129 is in the following terms :

> "Should any building, wall or structure or anything affixed thereto, or any bank, or tree be deemed by the
> D Executive Officer to be in ruinous state or in any way dangerous or there be any fallen building or debris or other material which is unsightly or is likely to be in any way injurious to health, it may by notice require the owner thereof either to remove the same or to cause such repair to be made to the building, wall, structure or bank as the Executive Officer may con-
> E sider necessary for the public safety and should it appear to be necessary in order to prevent imminent danger, the Executive Officer shall forthwith take such steps of the expense of the owner to avert the danger as may be necessary".

F Section 238 provides that when any notice under the said Act requires any act to be done for which no time is fixed by the Act a reasonable time for doing the same shall be specified in the notice. Section 239 gives the procedure relating to authentication of service of a valid notice. It is provided by sub-s. (1) that every such notice may be served in the manner provided for the service of summons in the Civil Procedure Code so far as
G may be applicable. The High Court found that the notice under s. 129 had not been served in accordance with law and no proof was adduced by way of an affidavit of the process server or any other officer of the Municipality that any attempt was made to serve the notices on the petitioners personally.

It cannot be and indeed it has not been disputed that notices
H were not served in accordance with the procedure prescribed for service of summons in the Civil Procedure Code. Even if we

(1) (Civil Appeal No. 493 of 1967) decided on 3.5.1972.

accept what Dr. Singhvi says that there was a refusal to accept the summons and that was the reason for effecting service by affixation the provisions of O.5, R.19 of the Code were not complied with by the filing of an affidavit of the serving officer etc. All that has been pointed out by Dr. Singhvi is that the notices were produced along with the writ petitions which showed that they had been affixed to the premises and that in the writ petitions it was admitted that notices had been affixed on January 9, 1968 on the properties of the petitioners. We do not consider that any such averment dispensed with the requirement of the statutory provision contained in s. 239 of the Municipal Act in the matter of service of notices.

Furthermore we entirely fail to see how the requirement of s. 238 of the Municipal Act was satisfied. Section 129 does not specify or fix any time for complying with the notice issued under that section. Under the provisions of s. 238, therefore, a reasonable time for doing the acts required to be done by the notice was to be fixed. Taking the notice issued to Haji Wali Mohammed only 24 hours' time was given for dismantling the structure which was stated to be in a dilapidated condition. It is extraordinary that no time was given for repairing the structure and the owner or occupier of the property was required to straightway demolish the building or the structure. Section 129 does contemplate that the owner may be required either to remove the structure which is considered dangerous or to cause such repairs to be made to it as may be considered necessary for public safety. According to all the petitioners they were carrying on their business in the buildings and structures which were ordered to be demolished. In the month of January there is usually a snowfall in the Kashmir valley as has been pointed out by the High Court. Considering that at no previous stage the officers of the Municipality had formed an opinion that the structures in question were in such a dangerous condition or were so dilapidated that they should be demolished the notices which were given and the drastic step of demolition which was desired to be taken in 24 hours on the face of it appeared to be rather harsh and unusual. The time of 24 hours which was given for demolition was so short that in spite of Dr. Singhvi's arguments we have not been persuaded to hold that it was a reasonable time. The petitioners had to make some arrangements for removal of either their goods or business equipment or whatever articles that were lying in these buildings or structures. We have no manner of doubt that the notices issued to the respondents before us did not comply with the provisions of s. 238 of the Municipal Act and the time which was granted was so short that it was not possible for the respondents either to comply with the notices or to take any

A effective steps in the matter of filing any appeal or revision to the appropriate authorities.

Owing to the non-compliance with the provisions of ss. 239 and 238 of the Municipal Act the action taken by the Municipality in the matter of demolition must be held to be entirely
B illegal and contrary to law. The conclusions and observations of the High Court on all the points which have not been decided by us become unnecessary in the view we have taken with regard to the illegality and invalidity of the demolition carried out pursuant to the notices issued under s. 129 of the Municipal Act. The observations made by the High Court or the conclusions reached by it on all the other points would naturally not be binding in
C any proceedings which may be initiated or taken or continued either by the present respondents or by the appellants under the law. However, we uphold the orders made by the High Court and dismiss the appeals with costs. One hearing fee.

V.P.S. *Appeals dismissed.*