

ATUKORALE
v.
SPECIAL COMMISSIONER, MUNICIPAL COUNCIL, GALLE

COURT OF APPEAL.
GRERO, J.
C.A. 285/83
M.C. GALLE 16698
FEBRUARY 15, 1993.

Housing and Town Improvement Ordinance, sections 12 (1) & (2), 13 (1) (a), (c) and (6) – Constructing part of a building without prior approval – Demolition – Failure to comply with section 12 (1) & (2) – Service of notice.

Held:

Where it was alleged that accused had built part of a building without prior approval of the local authority in writing, sections 12 (1) & (2) of the Housing and Town Improvement Ordinance must be complied with.

Where a building is completed contrary to the provisions of the Housing and Town Improvement Ordinance, the Chairman is required by section 12 (1) to cause a notice in writing on the person who constructed the building to show sufficient cause why such building should not be removed or pulled down. Section 12(2) provides that if such person fails to show sufficient cause to be satisfaction of the Chairman why such building should not be removed or pulled down, the Chairman may make an order requiring such person to remove such building.

Where there was only evidence that notices under section 12 (1) were sent on two occasions, there was no documentary evidence to show that the notices were served.

The notice that is required to be given should be in writing and the best proof of such notice being sent served is to produce a copy of such notice along with the registered postal receipt.

Before a Magistrate makes the order of conviction of an accused, he must be satisfied that there had been proper compliance with section 12 (1) and (2) of the Ordinance. Oral evidence alone is insufficient.

Appeal from conviction by the Magistrate of Galle.

Ran Banda Seneviratne for accused-appellant.
Respondent absent and unrepresented..

Cur adv vult.

March 19, 1993.

GRERO, J.

This is an appeal against the order of the learned Magistrate dated 29.3.83 whereby he convicted the accused-appellant and imposed a fine of Rs. 250/-. Further the accused-appellant was ordered to pay Rs. 25/- per day till the building in question is removed.

The accused-appellant was charged for acting contrary to Sections 13 (1) (a), (c) and (d) of the Housing and Town Improvement Ordinance and thereby committing an offence punishable under Section 13 (1) of the said Ordinance.

The allegation against him is, that he had constructed a part of a building without obtaining the prior approval of the authority of the local body in writing.

According to Section 12 (1) of the Housing and Town Improvement Ordinance if any building is completed contrary to the provisions of this Ordinance, the Chairman of the local body is required to cause a notice in writing on the person who constructed the building to show sufficient cause why such building should not be removed or pulled down.

Section 12 (2) of the said Ordinance says that if such a person fails to show sufficient cause to the satisfaction of the Chairman why such building should not be removed or pulled down, the Chairman may make an order requiring such person to remove such building.

In this case at the inquiry, an officer by the name Somadasa Hirimuthugoda had stated in his evidence that notice was sent to the accused-appellant on two occasions, i.e. on 11.4.77 and 28.9.77. But apart from his oral evidence, there was no documentary evidence to show that such notices were served on him. In other words copies of such notices and the registered postal receipt were not produced before the Magistrate. It was contented by the learned Counsel for the accused-appellant that there was no proof that such notices were

served on the accused-appellant, other than the oral evidence of the said witness.

When a Magistrate holds an inquiry under the provisions of this Ordinance and before he makes the order of conviction of an accused, he must be satisfied that there had been a proper compliance with the provisions of Sections 12 (1) and 12 (2) if steps were taken under 12 (2) of the Ordinance. Oral evidence with regard to the compliance of Sections 12 (1) and 12 (2) is not sufficient. The notice that is required to be given should be in writing, and the best proof of such notice being sent and served on him is to produce a copy of such notice along with the registered postal receipt. In this case other than the oral evidence of the aforesaid witness Hirimuthugoda there was no documentary evidence to support his evidence. It appears that there was no consistency with regard to his evidence regarding the inspection of this building and in such circumstances a court cannot rely upon his oral evidence and be satisfied that there was a compliance with the provisions of Sections 12 (1) & 12 (2) of the Ordinance.

Whether there had been sufficient compliance with the aforesaid Sections 12 (1) and 12 (2) is in doubt, and in the circumstances this court is of the view that the order of the learned Magistrate should not be allowed to stand. Hence his order dated 29.9.83 is hereby set aside and he is acquitted and discharged from the proceedings of this case.

Accused acquitted. Appeal allowed.