

GURUCHARAN SINGH

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v.

BA TOWNSHIP LOCAL AUTHORITY

[SUPREME COURT, 1964 (Hammett Ag. C.J.) 22nd August 1963,
21st January, 1964]

B

Appellate Jurisdiction

Local government—demolition order by local authority—undertaking by owner to repair—fitness for human occupation—adequacy of repairs—discretion of local authority to make demolition order notwithstanding undertaking to repair—Public Health Ordinance (Cap. 124) ss.21(1) (2), 24, 25, 26, 27, 29(1) (2)—Public Health (Building) Regulations, 1959, regs. 15, 21(b).

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Interpretation—Ordinance—permissive or mandatory—Public Health Ordinance (Cap. 124) ss.21(2), 26, 27.

The Ba Township Local Authority passed a resolution under section 24 of the Public Health Ordinance that it was expedient to order the demolition of a building owned by the appellant and gave him due notice thereof. The appellant appeared before the Local Authority and submitted proposals for repairs to be carried out to the building in lieu of demolition. The Local Authority considered the age, state and general condition of the building were such that no repairs should be permitted, and issued a demolition order under section 26 of the Ordinance. The appellant appealed, under the provisions of section 29 of the Ordinance, first to a Magistrate and then to the Supreme Court, contending that the Local Authority had no power under section 26 of the Ordinance to make a demolition order, as the appellant had undertaken to execute forthwith the works necessary to render the building fit for human occupation.

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Held: 1. There was evidence before the magistrate, which he accepted, that the repairs proposed would not have rendered the building fit for human habitation. On the facts, therefore, the appellant had not “undertaken to execute forthwith the works necessary to render the building fit for human habitation”, in terms of section 26.

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2. Reading section 26 of the Ordinance with section 27, which section is permissive in nature and not mandatory, the Local Authority has a discretion under section 26 whether or not to make a demolition order, even if an owner undertakes to carry out repairs necessary to render the premises fit for human occupation.

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Case referred to: *Lautoka Town Council v. Mohammed Hafiz* (1958) 6 F.L.R.88.

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Appeal from the decision of a magistrate on appeal to him under section 29(1) of the Public Health Ordinance.

R. G. Q. Kermode for the appellant.

K. P. Mishra for the respondent Authority.

A The facts sufficiently appear from the judgment of the Acting Chief Justice.

HAMMETT Ag. C.J.: [21st January, 1964]

B On 26th November, 1962, the Ba Township Local Authority made a Demolition Order under the provisions of Section 26 of the Public Health Ordinance in respect of a garage in Ba Township owned by the Appellant.

On 11th December, 1962, the Appellant required the Ba Township Local Authority to appear before the Magistrate, Ba, on 16th January, 1963, under the provisions of Sections 29, to show cause why the Demolition Order should not be set aside.

C On 10th April, 1963, after a prolonged hearing the learned Magistrate, Ba, gave the reasons for his decision that the Demolition Order should not be set aside.

D From that decision the appellant has appealed to this Court under the provisions of Section 29(2). The appeal was heard by the late Chief Justice, who died before he had prepared his Judgment, and I have therefore heard the appeal *de novo*.

The Grounds of Appeal are as follows:

E "1. Having regard to the mandatory provisions of section 26 of the said Public Health Ordinance (Cap. 124) and the fact that your petitioner was at all material times prepared to undertake to execute all repairs necessary to render his said building fit for human occupation, it was not competent for the Ba Township Board to order demolition and the learned Magistrate erred in law and in fact in arriving at his said decision dismissing your petitioner's appeal.

F 2. Having regard to the evidence of Mr. Rao, the Health Inspector, to the effect that the said buildings could be repaired and to the evidence of the proprietor of Prasad Construction a builder and contractor of admitted repute that the said buildings could be repaired at a cost of £22, the learned Magistrate failed to give due weight to such evidence.

G 3. Having regard to the fact that Mr. Tilley, the Civil Engineer called by the said Ba Township Local Authority was also a member of the said Authority, the learned Magistrate erred in giving undue weight to such witness's testimony.

H 4. That in any event as Mr. Tilley admitted that each item of alleged disrepair was capable of repair the learned Magistrate erred in not considering such evidence in the light of other evidence from the Building Inspector.

5. That the finding of the learned Magistrate is unreasonable and cannot be supported having regard to the evidence.

The facts are not in dispute. On 14th September, 1961, a Sanitary Inspector, who was an officer of the Local Authority, served notice of application on the Ba Township Local Authority for a closing order in respect of the appellant's premises under the provisions of Section 21 of the Public Health Ordinance in the following terms:

“ APPLICATION FOR ISSUE OF CLOSING ORDER

Premises situated at—YALALEVU BA TOWNSHIP
C.J. 6912 (King's Road)

Owned by—GURUCHARAN SINGH s/o Baldeo Singh

Occupied by—DESMOND QUSI HOI and utilised as a Motor
Mechanical Shop.

Description of Premises—The whole structure is constructed of corrugated galvanised iron with an earth flooring. (Dimensions—36' x 24').

Defects reported—The roof is in dilapidated condition—the iron sheets are partly perished—the studs, purlins and bottom plates are all in defective state—shutters and doors in unsound condition—no provision for drainage of site.

By reason of the above defects the premises are unfit for human habitation (occupation), and the Local Authority is asked to authorise the issue of a closing order.

(Sgd.) J. N. Rao,
Sanitary Inspector
Medical Officer of Health

Date 14th September, 1961.

Authorised by the Local Authority for the Sanitary District of—
Ba Township on 14th September, 1964.

(Sgd.) ?
Sec. Ba Board.”

Sections 21 (1) and (2) read as follows:

“21. (1) Where a medical officer of health, assistant medical officer of health or any officer of the Board or of the local authority serves notice in writing on the local authority that any house or other building within its area is unfit or unsafe for human habitation or occupation, such local authority may by an order in writing, hereinafter referred to as a closing order, declare that such house or building or any part thereof is not fit for human habitation or occupation and direct that such house or building or part thereof shall not after the time specified in such order be inhabited or occupied by any person.

(2) Such order may provide that such direction shall not have effect if the repairs or alterations specified therein are made in the house or building so as to render it fit for human habitation or occupation to the satisfaction of the local authority or of the Board.”

The members of the Ba Township Board went to the premises and inspected them, and the Board then authorised and issued a Closing Order, in the following terms.

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“ CLOSING ORDER

To — Gurucharan Singh s/o Baldeo Singh owner
WHEREAS the Health Inspector, Ba has served notice in writing to the Local Authority for the Township Sanitary District of Ba that whole of the building owned by you comprising mechanical repair garage situate at C.T. 6912, Kings Road, Yalalevu, Ba is unfit for human habitation.
occupation.

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NOW therefore the said Local Authority in pursuance of section 21 of the Public Health Ordinance doth hereby declare that the above-mentioned premises are not fit for human habitation or occupation, and directs that after the expiration of three hundred thirty (330) days from the date of service hereof such premises shall not be inhabited or occupied by any person.

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DATED this 26th day of October, 1961.

By order of the Local Authority for the Township Sanitary District of Ba.

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(Sgd.) ?

Chairman,

Ba Township Local Authority.”

It will be noted that this Closing Order did not specify any repairs or alterations which the Respondent Authority required to be done to the premises. In the case of *Lautoka Town Council v. Mohammed Hafiz* (1958-1959) 6 F.L.R. 88 Lowe C.J. held that the word “may” in Section 21 (2) of the Public Health Ordinance was permissive and not mandatory in meaning. He then held that a Closing Order need not provide that any repairs or alterations are to be carried out. This decision was not challenged at the hearing of this appeal and I do, with respect, agree with it. The word “may” in Section 21 (2) does not mean “must”, but “may”, and there was no need for the Respondent Authority to specify in the Closing Order that any repairs were to be carried out.

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The Appellant was granted 300 days from the 26th October, 1961, i.e. nearly 11 months, by this Closing Order within which to vacate the premises. Shortly before that time expired, he did, on 15th August, 1962, apply to the Ba Township Board for permission to carry out repairs to the premises under the provisions of Regulation 15 of the Public Health (Building) Regulations 1959, of which the material part reads:

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“15. No person shall repair a building without first obtaining from the Local Authority a permit authorizing in writing such repair”

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This application was considered by the Respondent Authority which refused to grant permission to the Appellant to carry out any repairs. The Authority was acting under the provisions of Public Health (Building) Regulation 21 (b) which reads :—

"21. (b) It shall be lawful for the Local Authority by resolution to refuse the issue of a permit for the execution of repairs or alterations to any building if in the opinion of the Local Authority the age, state or general condition, or degree of non-conformity with the current Regulations is such that a permit for repairs or alterations should not be granted."

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That decision of the Authority is not challenged in these proceedings and has never been varied.

On 27th September, 1962, the Local Authority passed a resolution to order demolition of the building under Section 24 of the Ordinance.

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The relevant sections of the Ordinance are as follows:

" 24. Where a closing order has been made in respect of any house or building and has not been determined by any subsequent order, then the local authority or Board, if of opinion that the house or building has not been rendered fit for human habitation or occupation and if the necessary steps are not being taken to render it so fit, shall pass a resolution that it is expedient to order the demolition of the house or building or any part thereof.

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25. The local authority or Board shall cause notice of such resolution to be served on the owner of the house or building and such notice shall specify the time and place appointed by the local authority or Board for the further consideration of the resolution, not being less than one month after service of the notice, and any owner of the house or building shall be at liberty to attend and state his objections to the demolition.

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26. If upon consideration of the resolution and objections the local authority or Board decide it is expedient so to do, then, unless the owner undertakes to execute forthwith the works necessary to render the house or building fit for human habitation or occupation, the local authority or Board shall order the demolition of the house or building or any part thereof.

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On 28th September, 1962, a Notice of Intention to Demolish under Section 25 was issued calling on the Appellant to show cause on 22nd November, 1962, why the premises which were unfit for human occupation should not be demolished.

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On 22nd November, 1962, the Appellant appeared and was represented by Counsel before the Local Authority. He submitted proposals whereby repairs to the cost of £35 would be carried out to the building in lieu of Demolition. The Authority again inspected the building in the presence of the District Engineer who was also a member of the Board.

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After considering all that was urged on behalf of the Appellant, the Ba Township Board considered that the age state and general condition of the building was such that no repairs should be permitted especially as this commercial building was in an area to be zoned for residential purposes. I would here say that the evidence heard by the learned Magistrate Ba clearly showed that this was a perfectly proper and reasonable decision on the merits of the case.

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The District Engineer was of the opinion that the repairs the Appellant proposed to carry out would be quite inadequate and the only way to bring the building into a fit state of human occupation was by such extensive repairs as amounted virtually to rebuilding.

On 26th November, 1962, the Respondent Authority issued a Demolition Order in the following terms:

“ DEMOLITION ORDER

To Gurucharan Singh s/o Baldeo Singh
Owner of mechanical repair garage constructed of wood and iron

WHEREAS the Local Authority for the Township Sanitary District of Ba has considered its resolution passed on the 27th day of September, 1962 that it is expedient to order the demolition of premises aforesaid, comprising mechanical repair garage constructed of wood and iron.

And whereas the said Local Authority has given Gurucharan Singh s/o Baldeo Singh due notice of such resolution according to law, and has considered the objections made by the said Gurucharan Singh s/o Baldeo Singh.

Now the said Local Authority hereby orders you to take down and remove the said premises within three months from the date of service of this notice.

If you fail therein, the said Local Authority shall proceed itself at your risk and expense to take down and remove the said premises.

Dated this 26th day of November, 1962.

By order of the Local Authority for the Township Sanitary District of Ba.

(Sgd.) Dennis H. William.
Chairman

Ba Township Local Authority.”

It was in respect of this Demolition Order that the Appellant appealed first to the Magistrate Ba, and now to this Court under the provisions of Section 29 of the Ordinance, which reads:

“ 29 (1) Any person aggrieved by an order of the local authority or Board under section 26 hereof may within ten days of the service of such order require by summons the local authority or Board to appear before a magistrate to show cause why the order should not be set aside.

(2) An appeal shall lie to the Supreme Court from the decision of a magistrate under subsection (1) hereof and the provisions of Part IX of the Criminal Procedure Code shall apply *mutatis mutandis* to such appeals.”

The first ground of appeal concerns the construction of Section 26 of the Public Health Ordinance.

It is the contention of the Appellant that on a proper construction of this section the local authority had no power to make a Demolition Order in this case because the owner had undertaken to

execute forthwith the works necessary to render the building fit for human occupation.

On the facts it is clear that the evidence in the Court below, accepted by the learned Magistrate, amounted to this. The Appellant had undertaken to do certain comparatively minor repairs at the cost of some £35. The learned Magistrate accepted the evidence of Mr. Tilley, the District Engineer, that such repairs would not have rendered the building fit for human habitation. It was his opinion that virtually the entire building, including its floor, its roof and including the wood and iron and the drainage, was in such a deplorable state of disrepair and that so many repairs were necessary that little less than reconstruction would have rendered the building fit for human habitation.

The learned Magistrate accepted his evidence and he was entitled to accept it. In these circumstances, on the facts alone, the owner had not in fact "undertaken to execute forthwith the works necessary to render the building fit for human habitation" in the terms of Section 26.

On the question of the proper construction of Section 26, I feel it is necessary to consider also the provision of Section 27. They read:

" 26. If upon consideration of the resolution and objections local authority or Board decide it is expedient so to do, then, unless the owner undertakes to execute forthwith the works necessary to render the house or building fit for human habitation or occupation, the local authority or Board shall order the demolition of the house or building or any part thereof.

27. If the owner undertakes as aforesaid to execute the said works, the local authority or Board may order the execution of the works within such reasonable time as is specified in the order and if the works are not completed within the time or any extended time allowed by the local authority or Board the local authority or Board shall order the demolition of the said house or building or any part thereof."

It is quite clear from the terms of Section 27 that even if the owner does undertake to execute forthwith the works necessary to render the building fit for human habitation, the local authority is still given a discretion in the matter and is not bound to allow him to do so. To hold otherwise would be to construe the opening words of Section 27 as reading:—

"If the owner undertakes as aforesaid to execute the said works, the local authority or Board *must order* (i.e. allow) the execution of the works etc."

instead of "*may order*" etc. as in fact it reads.

There is nothing in the wording of these two sections that requires the word "*may*" in Section 27 to be given a mandatory and not a permissive meaning.

I do not accept the contention of the Appellant that under the provisions of Sections 26 a Local Authority is deprived of its discretion whether or not to make a Demolition Order if an owner

undertakes to carry out repairs necessary to render the premises fit for human occupation.

A I have considered all that has been urged in support of the remaining grounds of appeal. In my view there is no substance in any of them.

The appeal is therefore dismissed with costs to be taxed.

Appeal dismissed.