IN THE SUPREME COURT OF FIJI
Appellate Jurisdiction
Criminal Appeal No. 57 of 1958

Between:

LAUTOKA TOWN COUNCIL — Appellant

AND

MOHAMMED HAFIZ — Respondent

Dilapidated premises—closing order issued by Local Authority—no repairs or alterations specified—demolition order—obligations of Local Authority.

The respondent was served with a " closing order " issued under section 21(1) of the Public Health Ordinance (Cap. 124). The Local Authority which issued that order did not specify any repairs or alterations it required to be effected to the premises concerned, as it may have done under section 21(2). The appellant took no action to comply with the closing order and the Authority eventually issued a " demolition order ". The respondent contended that the Local Authority must specify in the " closing order " what repairs or alterations to the premises it required.

Held.—(1) The word " may " in section 21(2) creates no obligatory duty and a " closing order " need not specify any repairs or alterations.

(2) The respondent would have had no right of objection to any specified repairs or alterations had they been contained in the order.

(3) If a " closing order " specifies requirements by way of repairs or alterations and they are carried out the " closing order " has no further effect.

(4) If a " closing order " is disobeyed the Local Authority must pass a resolution that it is expedient that the premises be demolished and the " closing order " is then superseded.

(5) At a meeting of the Local Authority to consider the " expedient " resolution the owner of the premises concerned may attend and can object to demolition but not to any specification which might have been contained in the " closing order ".

Appeal allowed.

Cases cited:—

Julius v. The Lord Bishop of Oxford (1880) 5 A.C., 214; *re Eyre and Leicester* (1892) I Q.B., 136.

A. D. Leys for the appellant.

F. M. K. Sherani for the respondent.

LOWE, C.J. [24th December, 1958]—

This is an appeal against an order of the Senior Magistrate at Lautoka setting aside a demolition order made by the Lautoka Town Council, which is the local authority for the urban sanitary district of Lautoka (to which I will refer hereafter as " the Authority "), in respect of premises belonging to the respondent and within the area under the jurisdiction of the Authority.

It is common ground that the necessary notice referred to in section 21(1) of the Public Health Ordinance (Cap. 124) was properly given to the Authority and it is not disputed that in making the closing order, antecedent to the " interim " and " final " demolition orders, the Authority took all procedural steps required of it by the relevant section of the Ordinance as, in fact, it also did regarding the subsequent orders.

After the receipt by him of the " final " demolition order the respondent gave notice to the Authority, under section 29 of the Ordinance, requiring its appearance before the Magistrate's Court at Lautoka to show cause why the order should not be set aside and, at the hearing, evidence on behalf of the Authority was given to establish that the proper steps were taken in relation to the orders it issued, and signed copies of the various relevant documents were exhibited to the court. The Health Inspector, who gave the initial notice to the Authority, showed that the premises concerned were in a very dilapidated condition and said that the Authority had need to issue the demolition order. He also said that it would be uneconomic for the owner, the respondent, to carry out the necessary repairs. He agreed that every building was capable of being repaired, that the dilapidations of the premises amounted to a nuisance and that the matter could have been dealt with under the section of the Ordinance relating to such nuisances. The economics of the matter would normally appear to be something which would concern the owner of the premises rather than the Authority or the Inspector and I think the Ordinance implicitly shows that to be acknowledged. However, as to the question of the dilapidations amounting to a nuisance, the fact is that action was not taken on that basis and it is necessary for me to consider the true aspect of the case as it was presented. There was no challenge in the lower court or in this Court as to any opinion of the Authority. The Authority showed the lower court the action it took, step by step, and the reasons for such action.

The cause shown by the Authority was not disputed as to matters of fact as no evidence in rebuttal was called on behalf of the respondent, then the applicant. The decision of the learned Magistrate is recorded as follows:

> " Onus is on Respondent, the Local Authority. It is undisputed that the closing order did not give the owner any notice of the repairs and alterations required to render the building fit. Without these, section 24 and others of the Ordinance are of no use at all. It is clear that the whole idea behind this Ordinance as regards demolition is to give an owner a chance to do his repairs and to give him a chance to make representations about those repairs before a demolition order is made.
>
> Section 21(2) says ' such order may provide that such direction shall not have effect if the repairs or alterations specified therein are made etc.'
>
> This clearly implies that repairs and alterations must be specified in the direction made under subsection (1).
>
> The word ' may ' does not always leave a discretion. In this case it is mandatory. It is mandatory in section 80 of the C.P.C. For instance where it says that a ' Magistrate may in his discretion issue either a summons or a warrant; ' it is, in fact, mandatory on a Magistrate to issue either a summons or a warrant in the circumstances that apply to that section.
>
> The closing order must, in my opinion, specify the repairs or alterations required, before any further action can be taken upon it."

The learned Magistrate then made an order setting the demolition order aside.

The appellant Authority has appealed against that order on these grounds:

> " (*a*) That the learned Magistrate erred in holding that section 21(2) of the Public Health Ordinance made it mandatory to specify what repairs or alterations were necessary.

(*b*) That evidence showed that closing order was made without any option to repair and that condition of premises were such that Demolition Order was necessary.

(*c*) That the Petitioner having shown cause why Demolition Order should not be set aside the Magistrate erred in setting aside the Order when no evidence was given by the Applicant in rebuttal.

(*d*) In any event the learned Magistrate erred in holding that the Closing Order must specify the repairs and alterations required before any further action could be taken upon it."

This Court is asked to set aside the Magistrate's order and Counsel for the appellant Authority requested that the main issue be here decided.

Section 21(1) of the Ordinance is in clear terms and enables the Authority, after receiving a proper notice in that respect, to make a closing order declaring that the premises concerned are not fit for human habitation or occupation and directing that such premises or any part thereof shall not, after the time specified in the closing order, be inhabited or occupied by any person. The closing order in the instant case was to that effect. Subsection (2) of that section is that upon which the respondent places reliance. It is as follows:—

" 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."

Before giving consideration to the intended meaning of the word " may " in that subsection it will be of assistance if I set out sections 24 and 25. These sections, which were also relied upon by the respondent in support of his contention that the Authority must state in a closing order the repairs or alterations required to be effected, are:—

" 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.

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."

The specific words in section 24 " then the local authority . . . 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 " are of particular importance. Counsel for the respondent considered that they showed that the Authority must state in the closing order what was required in order to render the premises fit. He stressed that the owner must first be given an opportunity to bring the premises up to an acceptable state as, without such opportunity section 24 could not be effective. The analogy of section 80(1) of the Criminal Procedure Code mentioned by the Magistrate is not an apt example to show that " may " in section 21(2) should be interpreted as " must " ; firstly because the true meaning of a

word in the context of a particular section is not necessarily the true meaning of the same word in a section of a different Ordinance and, secondly, because section 80(1) is clearly intended to require a Magistrate in pursuance of that section to issue, in his discretion, either a summons or a warrant. By the fact that it says " may in his discretion issue . . ." it is permissive only in so far as the discretion is concerned but the requirement to issue one form or the other is implicit from the other relevant portion of the subsection. In section 21(2) such is not the case. No discretion is provided for; the words are " Such order may provide . . ." Nothing else in the subsection indicates that mandatory action is required of the Authority. Any word in any law must be given its ordinary grammatical meaning unless there is good reason to the contrary and particularly if practical effect can be given to the word without straining its meaning. Stroud's Judicial Dictionary, Vol. 3, 1756, Halsbury's Words and Phrases Vol. 3, 342 and cases cited therein show that " may " and such enabling words " are potential and never (in themselves) significant of any obligation (*Julius v. The Lord Bishop of Oxford* (1880) 5 A.C., 214) ".

In other cases when the structure of a section is analysed it might be found that from an enabling word plus the attendant words an obligation arises as in section 80(1) of the Criminal Procedure Code (see also *re Eyre and Leicester* (1892) 1 Q.B., 136). " May " in section 21(2) of the Public Health Ordinance does not carry with it any obligatory duty by reason of the provisions of section 24 and there is nothing in the subsection itself to suggest that such was the intention. If the legislature had intended that section 21(2) should create an obligation that could, very simply, have been so stated. If repairs or alterations are specified in a closing order, an obligation arises and the owner of the premises affected by the closing order is then required to carry out the repairs or alterations specified in the order. If he does so, the closing order has no further effect. Whether or not any specification is embodied in the closing order, the owner may still decide whether he wishes to do anything or nothing about the premises. If he does nothing, section 24 comes into operation and if the closing order was conditional the Authority would enquire as to whether its specification as to repairs had been or was being carried out. If the owner has not obeyed the specification, no right is given to him to make objection to the direction in the closing order and it is not until the Authority has passed a resolution that it is expedient to order the demolition of the premises or part thereof that any right of objection arises. Nowhere in the Ordinance is any other right given to the owner to object to the specified repairs or alterations. They are for the Authority to decide, as would be expected. As I read the sections their intention is that the Authority may, or may not, provide in the closing order for any specified repairs or alterations as is thought fit. If the closing order still subsists because the owner has either refused or neglected to carry out the specified repairs or alterations or if none were specified, the Authority then being of the opinion " that the house or building has not been rendered fit for human habitation or occupation " (which would apply with force had the Authority specified its requirements in the closing order) " and if the necessary steps are not being taken to render it so fit " (which has particular application where there is no specification) it must pass the " expedient " or, as I have called it, the " interim " resolution; it has no other alternative, as a perusal of section 24 will show. The drafting of that section is, I consider, deliberate and meticulous and I think the choice of the draftsman's words puts the matter beyond doubt. Had the legislature intended that " may " in section 21(2) should create an

obligatory duty it could be expected that instead of referring, in section 24, to the " necessary " steps not being taken it would have said something to the effect that " the repairs or alterations specified in the closing order had not been carried out and no steps were being taken to give effect thereto ". The word " necessary " seems to me to have been used deliberately in order to preserve the position for the owner who, having no right to object to any specification in the closing order prior to the passing of the " interim resolution " thereafter " shall be at liberty to attend and state his objection to the demolition " (section 25). The objection, it will be seen, is to demolition but no doubt the owner would claim that the specification was unreasonable. Whatever his objections, he must comply with all lawful and applicable by-laws and regulations in effecting whatever repairs or alterations are determined or, perhaps, agreed to by the Authority. They are the " necessary " repairs or alterations if none have been specified. The closing order has at that stage been superseded. In other words the Authority might consider that premises are in such a state that they cannot be, economically, made fit for human habitation or occupation but it might suit the owner to expend the necessary capital to make them so fit. In that case the legislature has left it open to him to submit whatever plans and specifications may be lawfully required by the Authority and so, having obtained any necessary approval to proceed, he can prevent any action by the Authority under section 24; the Authority then would be satisfied that the " necessary " steps were being taken. The learned Magistrate was not quite correct in saying, " It is clear that the whole idea behind this Ordinance as regards demolition is to give an owner a chance to do his repairs and to give him a chance to make his representations about those repairs before a demolition order is made." The chance to do the repairs is given when they are specified in the closing order but it is only objection to demolition which is permitted, and not objection to the specified repairs or alterations, when the next stage is reached, pursuant to section 26, where the Authority considers the " interim " resolution and the objections and, " unless the owner undertakes to execute the works necessary," (not specified) the Authority is in duty bound to order demolition. It will be seen that the owner is still given every reasonable chance to meet the requirements of the Council. It seems to be abundantly clear that the consideration of the " interim " resolution and the objections takes place at the same (or an adjourned) meeting of the Authority at which the owner is at liberty to attend to state his objections to demolition. It is not for the Authority to pursue the owner. The onus is placed upon the latter to attend and state his objections if he so desires. If he does not do so he will have placed himself in a difficult position from which to complain. If he has done nothing, however, or if he and the Authority have not agreed as to what is necessary, he still has his right of appeal by way of calling upon the Authority under section 29(1) to show cause why the demolition order should not be set aside. If thereafter he is dissatisfied with the Magistrate's order he can appeal to this Court. In the instant case he chose not to call any evidence to rebut the case for the Authority. He had his right to submit such plans and specifications as might have satisfied the Authority. In fact he has been content to do nothing but base his claim on the alleged unlawful action of the Authority in issuing a closing order which contained no specification as to repairs or alterations. He does not appear to have taken any steps to state objections when the Authority was considering the demolition order.

I am unable to interpret section 21(2) in a manner favourable to the respondent and no point has been raised to cause me to doubt that the Authority has acted lawfully and properly throughout.

I allow the appeal, set aside the order by the learned Magistrate and so restore the demolition order which is now to take effect as though it bore the date of this judgment.

The respondent is to pay the taxed costs of the appellant in this Court and costs in the court below.