

[SMITH, C.J. AND MIDDLETON, J.]

SMITH, C.J.
&
MIDDLE
TON, J.
1893.MERTON KING AS PRESIDENT OF THE
MUNICIPAL COMMISSION OF NICOSIA *Plaintiff,*

v.

March 27.AHMET EFF. MILLIALIZADE *Defendant.*MUNICIPALITY—VALIDITY OF BYE-LAWS—POWER OF MUNICIPALITY
TO DEMOLISH WORKS UNDERTAKEN IN CONTRAVENTION OF—
JURISDICTION OF THE COURTS—MUNICIPAL COUNCILS LAW,
1885, §§ 4 AND 23.

Bye-laws to be made under the authority of a law must be strictly limited with reference to the terms of the specific enactment from which they are derived.

Section 4 of the Municipal Councils Law, 1885, enacts that "Every Municipal Council shall have power to make bye-laws for the carrying out of all, or any of the objects "hereinbefore mentioned," etc.

Sections 1, 2 and 3 of the Law which define the powers and duties of a Municipal Council, give the Council no powers to regulate the construction or alteration of buildings.

Section 23 of the Law gives every Municipal Council power to make bye-laws "with respect to the structure of walls, "foundations, roofs and chimneys of new buildings, for "securing stability, the prevention of fires, and for purposes "of health."

The following bye-laws were, among others, passed by the Municipal Commission of Nicosia :—

1. "On and after the 1st day of July, 1887, no building, "alterations or enlargements of buildings, shall be com- "menced within the limits of the Municipality of Nicosia, "without the permission in writing, first obtained, of the "Municipal Commission."

2. "Any person intending to erect a new building, or "to alter, or enlarge any building, or premises already "constructed, shall give 21 days notice in writing of such "intention to the Municipal Commission, or to the Engineer "to the Commission, and with such notice shall deposit a "plan of the building, or buildings, it is proposed to construct, "or of the enlargement or alterations it is desired to undertake, "and the Municipal Commission shall have power to alter "or modify such plans."

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6. "The Municipal Commission shall have power to remove, alter, or demolish any work begun or done in contravention of these bye-laws."

A. having obtained from the Municipal Commission a general permit to repair certain old premises, proceeded to construct a balcony on his premises, without having obtained a special written permit to do so. It was not alleged that this balcony in any way contravened the general terms of the Ottoman Law as regards such erections.

HELD: That bye-laws 1 and 2 were ultra vires so far as they restricted the alteration and enlargement of existing buildings or premises, there being nothing in the terms of Sections 4 and 23 of the Municipal Councils Law 1885, to authorise such bye-laws.

HELD FURTHER. That the existence of a bye-law empowering a Municipal Council to remove, alter, or demolish, any work begun or done in contravention of bye-laws did not oust the jurisdiction of the Courts to entertain a claim for an injunction to restrain a person from building further, or to order him to pull down works already erected.

APPEAL from the District Court of Nicosia.

G. Chakalli for the appellants.

Diran Augustin for the respondent.

The facts and arguments sufficiently appear from the judgment.

April 17. *Judgment:* The plaintiff in this action, as President of the Municipal Commission of Nicosia, sought to restrain the defendant from building a balcony without the permission of the Municipal Commission, and also claimed that the defendant be ordered to pull down the portion of the balcony he had already built.

At the settlement of the statement of the matters in dispute, it was alleged on behalf of the plaintiff that the defendant had not obtained the written permission of the Municipal Commission to construct the balcony.

The counsel for the defendant admitted that his client was building the balcony; that having obtained a general permission to repair his house, he considered it unnecessary to obtain a special permit to erect the balcony, and that he had deposited no plan because he had not been asked for one.

The plaintiff's counsel in reply contended, that by failing to produce a plan, the defendant had contravened the bye-laws dated the 18th August, 1887, and that he was, therefore, liable to have the balcony demolished.

At the hearing it was proved that the defendant had applied to the Municipal Commission for a permit to build a "kiosk," which we assume to be the balcony before referred to, and that permission had been refused.

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The defendant's counsel contended that the Municipal Commission had, under the Municipal Councils Law of 1885, no power to make "such a bye-law," without apparently specifying which bye-law he objected to.

The Court decided that as "the bye-law" was passed and published in the Gazette, it had the force of law, and that the bye-law had not been complied with; but that as, under bye-law 6 of the bye-laws referring to the construction of buildings within the Municipal limits of Nicosia, contained in Gazette No. 232, of the 17th June, 1887, the Municipal Commission had power to demolish any work begun in contravention of these bye-laws, it was not within the power of the Court to authorise the Municipal Commission to do that which it had by law power to do for itself. Taking this view the Court dismissed the action.

Against this judgment the plaintiff appealed; and it was contended on his behalf, that the fact that under the bye-laws the Municipal Commission had power to demolish any works done in contravention of the bye-laws, did not oust the jurisdiction of the Courts to entertain such an action as this.

For the respondent it was contended that the bye-laws requiring the written permission of the Municipal Commission before a balcony could be constructed to an existing house, and requiring the deposit of a plan, were ultra vires, and were not authorised by the language of the Municipal Councils Law, 1885.

In reply the appellant's counsel relied upon Section 23 of this Law as authorising the making of the bye-laws.

It appeared to us that it was very doubtful whether either Section 4 or Section 23 of the Municipal Councils Law, 1885, warranted the making of the bye-laws, and we took time to consider our judgment.

SMITH, C.J. After carefully considering the matter, we have come to
 & the conclusion that the contention of the respondent's
 MIDDLE- counsel is correct, and that the bye-laws requiring written
 TON, J. permission of the Municipal Commission to be obtained
 MERTON before alterations or enlargements of existing buildings
 KING can be made, and requiring notices of such intended altera-
 v. tions or enlargements to be given to the Municipal Com-
 AHMET EFF. mission, together with a plan of such alterations or enlarge-
 MILLALI- ments, are ultra vires.
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The bye-laws in question are Nos. 1 and 2 of the bye-laws dated the 17th May, 1887, and contained in the *Cyprus Gazette*, No. 232, of the 17th June, 1887. They profess to be made under the authority of Clauses 4 and 23 of the Municipal Councils Law, 1885.

Clause 4 of that law says that "the Municipal Council shall have power to make bye-laws for the carrying out of all or any of the objects hereinbefore mentioned."

The "*objects hereinbefore mentioned*" are those specified in Clauses 1, 2 and 3 of the law, and it does not appear to us that the bye-laws whose validity is impugned were framed in any way to carry out any of the objects specified in these clauses. Clauses 2 and 3 deal with improvements, etc., to be carried out by a Municipal Council itself, which the bye-laws in question are manifestly not intended to regulate, and Clause 1 beyond declaring that it is the duty of a Municipal Council to keep all roads, streets, etc., in good repair, and sufficiently drained, lighted and clear of obstructions, deals with matters chiefly affecting public health.

It is, however, under the provisions of Clause 23 that the appellants' counsel sought to defend the validity of these bye-laws.

This clause provides that every Municipal Council may make bye-laws with respect to the following matters that is to say:

(1) With respect to the level, width and construction of streets and the provisions for the drainage thereof. (2) With respect to the structure of walls, foundations, roofs, and chimneys of *new buildings* for securing stability, the prevention of fires, and for purposes of health. (3) With respect to the sufficiency of space about buildings to secure

a free circulation of air, and with respect to the ventilation of buildings, and (4) With respect to drainage of buildings, etc.

Stopping here for a moment, we may remark that it does not appear to us, that any of the bye-laws in question profess to regulate any of these matters. None of them deal specifically with the width and construction of streets, or with the structure of walls, foundations, roofs and chimneys of new buildings.

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The law then goes on to say " And they may provide for the observance of such bye-laws by enacting therein such provisions as they think necessary, as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out roads or to construct buildings, as to inspection by the Municipal Council, and as to the power of the Municipal Council, subject to the provisions of this law, to remove, alter, or pull down any work begun or done in contravention of such bye-laws. Provided that no bye-law made under this section shall affect any building erected before such bye-law is made."

The bye-laws authorised to be made under this part of the clause are to be made for the purpose of providing for the observance of those which may have been made for the purposes mentioned in the four sub-sections we have quoted above, and for that purpose alone.

We are unable to find anything in the law which authorises a Municipal Commission to make such bye-laws as those in question here, providing that no alterations or enlargements of an existing building shall be commenced without the written permission of the Municipal Commission.

The bye-laws to be made under the authority of a law, must be strictly limited with reference to the terms of the specific enactment from which they are derived, and, however convenient it may be to have bye-laws framed for the purpose of carrying out the general aim and object of a law, they cannot be validly made, unless they are authorised by the terms of the law.

It is perhaps a very desirable thing that Municipal Councils should have general powers of control over the alterations and enlargements of existng buildings ; but the law does not appear to us to have conferred upon them any power of

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making bye-laws for such purposes. They may regulate the structure of walls, foundations, roofs and chimneys of *new buildings*, for the purposes of providing for the stability of buildings, for the prevention of fires, or for the purposes of health, and they may regulate the space to be left between one building and another, so as to secure a free circulation of air, etc. ; but nothing is said as to the alteration and enlargement of existing buildings, and under this law as it stands it is not competent for a Municipal Council by bye-law to regulate such matters.

If such bye-laws are made even though they receive the approval of the High Commissioner, and are published in the Official Gazette, they must be held to be invalid unless they relate to the subjects in respect of which the law authorises bye-laws to be made.

We are of opinion that these bye-laws have been drafted and approved of, without due regard being had to the specific subjects in relation to which bye-laws are authorised by the Municipal Councils Law, 1885, to be made ; and that in so far as they direct, that the written permission of the Municipal Council must be obtained before any enlargement or alteration of existing buildings is undertaken, and a plan of such enlargement or alteration deposited with the Municipal Council, they are invalid.

The case for the plaintiff is rested upon these bye-laws alone, and it is not contended that he has the right to call upon the defendant to demolish this balcony under any other law. We are, therefore, of opinion that for the reasons above mentioned, this appeal must be dismissed, and the appellant must pay the respondent his costs.

Taking the view that we do, it is unnecessary for us to discuss the grounds on which the Court below have based their judgment ; but it may be convenient that we should express our opinion on the subject. We are unable to see, that because by virtue of a bye-law, a Municipal Council has power itself to demolish works which it considers to have been erected in contravention of other bye-laws, the Municipal Council is thereby debarred from applying to the Court for authority to restrain a person building further, or to pull down works already erected, or that the Court has no jurisdiction to entertain such a claim. If the Court should be of opinion that legal proceedings were taken

unnecessarily, it might decline to award to the Council the costs of such proceedings. If the person whose building was to be demolished, were to decline to allow the Council to demolish, or were to continue to build time after time, it appears to us that the only proper remedy the Municipal Council would have, would be to obtain an injunction against such proceedings, for breach of which the persons offending might be imprisoned. Many serious inconveniences might result, if the mere fact of the existence of such a bye-law as we have alluded to, were to be held to oust the jurisdiction of the Courts, but in our opinion it does not do so.

Appeal dismissed.

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