

Emperor Vs. Kallianji Vardhaman

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Court : Mumbai

Decided On : Jun-20-1917

Reported in : (1917)19BOMLR681

Judge : Batchelor and ;Shah, JJ.

Appeal No. : Criminal Application for Revision No. 138 of 1917

Appellant : Emperor

Respondent : Kallianji Vardhaman

Judgement :

Batchelor, J.

1. The applicant before us has been convicted of infringing the provisions of Section 349B of the City of Bombay Municipal Act, 1888 and the only question is whether those provisions have or have not been infringed by him.

2. The facts, which are undisputed, are that the applicant has added small bath rooms to the third and fourth floors of an old residential house in the City. It appears to me that in these-circumstances Section 349B is of no application. That section regulates the height to which a building may be erected or raised. The word ' building' is explained by an inclusive definition in. Clause (s) of Section 3 of the Act where it is said to include 'a house, out house, stable, shed, hut and every

other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatever.' In my opinion where, as here, you have a substantial residential house, the house as a whole must be-regarded as the building referred to in Section 349B and it is not possible, without unduly straining the wording of the section to construe the word 'building' there as denoting some small portion of the whole house, such as an outlying bath room. If that is the true meaning of the word 'building' occurring in the section, then admittedly the applicant has not erected this building at the only material time; for it was erected long before the coming into force of this Act. Indeed it is common ground that the building, as it now stands, could not legitimately be built in its present form. But if the applicant has not erected this house or building within the meaning of the section, neither has he raised it in my opinion. For the bath rooms now added fall below the original height of the house or building. That I take it is the height referred to in the section and that is unaffected by the addition of the bath rooms. Not only do these bath rooms fall short of the pre-existing height of the house, but in the horizontal plane they also fail to extend so far sideways as to intersect the imaginary 45 line referred to in the proviso to the section. It follows that the accused has neither erected nor raised a building within the meaning of the section; he is, consequently, outside its purview.

3. On these grounds I am of opinion that the rule must be made absolute, the applicant's conviction and sentence being set aside and the fine, if it has been paid, being refunded to him.

4. I do not express any opinion as to whether, apart from the inapplicability of the section itself, the applicant could be saved by the terms of the proviso to Section 349B. That is a question which in my view it is not necessary to decide and it is a question upon which at present I feel some doubt.

Shah, J.

5. I am of the same opinion.