

Emperor Vs. Ramrao Vishvanath

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Court : Mumbai

Decided On : Mar-20-1918

Reported in : AIR1918Bom91; (1918)20BOMLR620

Judge : Shah and ;Marten, JJ.

Appeal No. : Criminal Appeal No. 487 of 1917

Appellant : Emperor

Respondent : Ramrao Vishvanath

Disposition : Appeal dismissed

Judgement :

Shah, J.

1. We have heard an interesting argument in this appeal. The question involved in the appeal is narrow, and the facts are few and undisputed.

2. Under Section 305 of the City of Bombay Municipal Act (Bom. Act III of 1888) several house-owners in the first and second cross Hanuman lanes were required by the Municipal Commissioner to level, metal, drain and light the two streets in the manner described in the written notices. The house-owners refused to carry out the work which they were required to do under the notices with the result that they were prosecuted under the Municipal Act.

3. The learned Presidency Magistrate came to the conclusion that the two cross lanes were not private streets, but public streets within the meaning of the Act, and on that footing acquitted the accused. The present appeal is preferred by the Government of Bombay, and the correctness of the conclusion arrived at by the trial Court is impugned before us.

4. It is an admitted fact that there is a sewer running along the two lanes, which carries the sullage water of the houses on the two sides of the streets, and that this sewer was constructed in the year 1883 or thereabout, long before the Act of 1888 was passed.

5. It is argued by the learned Advocate General that the streets in question are private streets and not public streets, as the streets are not sewered within the meaning of the 'public street' as defined by the Act. It is further argued that in deciding the question whether the street is sewered or not, the fact of there being a provision for sewerage of the houses in the street should be left out of consideration and the point whether the street apart from the houses in the street is sewered should be considered. It is, however, not seriously contested by the learned Advocate General, and as I understand his argument it is practically conceded, that the word 'street' would ordinarily include the houses in the street, subject to the context. It is argued that with reference to the context in Section 305 the word 'street' indicates only the road-way and not the houses on the road-way. We have been referred to a number of sections in the Act to show that according to the context the word 'street' may mean the road-way quite independently of and apart from the houses on the two sides. It is not necessary in my opinion to pursue this line of argument. It cannot help the appellant.

6. It seems to me that the whole argument proceeds upon the assumption that if the work contemplated by Section 305 relates to the road-way only and not to the houses, the expression 'private streets' must be understood in a restricted sense. But whatever the nature of the work to be done by the house-owners may be, it is clear that the section applies only to private streets. The meaning of the expression, according to the definition in the Act, is a street which is not a public street; and under the Act unless there be something repugnant in the subject or

context, public street' means any street heretofore levelled, metalled, channelled, sewered or repaired by the Corporation. There is nothing in the subject or context to show that if these streets are sewered within the meaning of the definition of 'public street', they are private streets for the purposes of Section 305. It seems to me that if these streets in the ordinary acceptance of the meaning of the word 'street' are sewered, the streets would be public streets under the Act, and Section 305 would have no application to such streets.

7. It has been held in several cases that a street includes the houses on either side of it, and that it does not merely mean the road-way. There is no reason why for the purpose of the definition the word should not be understood in that popular and generally accepted sense. There is no force in the argument that in order to decide whether these streets are sewered or not, we must consider whether there is any sewer for the road-way to carry rain-water and should leave out of consideration the sewerage of the houses. There is nothing in the context to justify such an interpretation of the word 'street' or of the word 'sewered'. In the present case there can be no doubt that the streets in question have been sewered since 1883. The view taken by the trial Magistrate is right, and the streets in question are public streets as they are sewered within the meaning of the definition of that expression.

8. The result, therefore, is that the order of acquittal must be affirmed, and that this appeal must be dismissed.

Marten, J.

1. I am of the same opinion. The point in this case is whether this lane, or rather 1 should say, these two lanes are private streets within Section 305 of the City of Bombay Municipal Act of 1888. That in itself depends on the definitions of 'public street' and 'private street' in Section 3(x) and (y) of the Act. Assuming for a moment that the word 'street' should be given its ordinary meaning, the question resolves itself into whether within Sub-section (x) these lanes or streets were Sewered by the Corporation prior to the date of the Act, for if they were so sewered, they are public streets, and if they were not so sewered they are private

streets. The answer to that question must I think be that each of these lanes or streets was sewered by the Corporation prior to the Act inasmuch as the Corporation between the years 1881 and 1883 laid under the whole length of each lane or street a pipe which took the drainage from the houses on both sides. That really disposes of the case if the word 'street' is given its ordinary meaning.

2. It is, however, said on behalf of the Municipality that in this Act or at any rate in Section 305 the word 'street' is confined to the road-way proper and does not include the houses on either side of the road, and that the lanes in question were not sewered because the pipe I have referred to did not take the surface water of the road-way proper. Consequently it is said there was no sewerage of the 'street', because there was no sewerage of the road-way proper. In considering this argument one must ascertain what is the meaning of the word 'street' in Sub-section (x). We have the high authority of Lord Blackburn, if authority is needed, for saying that in the ordinary and popular sense of the word, 'street' means a highway with houses on each side : see *Robinson v. Local Board of Barton-Eccles* (1883) 8 App. Cas. 798, 809. I see no reason to give any different meaning to the word 'street' in Sub-section (x), and I accordingly hold that it includes the houses on either side. That being so, it follows in my judgment that the lanes in question were sewered and that therefore they were public streets and that Section 305 does not apply to them.

3. I have not overlooked the fact that the definitions in Section 3 apply ' unless there be something repugnant in the subject or context'. But I see nothing repugnant in the subject or context in Section 305. That section only applies to private streets. Before therefore one can apply Section 305 one must first find out whether the street in question is a private street. The test for that is given in Sub-section (x) and I see nothing in Section 305 to indicate that some other test is to be adopted.

4. We were referred to several other sections of the Act but I see nothing in them which would lead to the conclusion that the definition of private street in Section 3 should not be adopted in Section 305.

5. The date of the Act is the date on which it is to be determined whether the heavy expense of sewerage, etc. is to be borne by the frontagers or the Municipality. That in its turn depends on what has been done in the past. If the Municipality sewerage or repaired it in the past, they must do so in the future. If, however, the Municipality have done nothing to the road and it is a private street, then the frontagers must bear the cost of making up and sewerage the road before it is taken over by the local authority. I may observe that if the view of the Municipality is correct, it would follow that in the case of a private street the cost of a sewer proper as opposed to a surface water-drain could not be thrown on frontagers under Section 305. It is therefore somewhat surprising to find the local authority advocating a construction of the Act which normally and apart from the present case would benefit the individual frontager at the expense of the general body of rate-payers. It may, however, be that in past years so many pipes have been laid by the local authority, similar to the one in the present case, that in fact in Bombay there are very few private streets on our construction of the Act; and that consequently the present contention is in the financial interests of the rate-payers as a whole.

6. It is also noteworthy as pointed out by the learned Magistrate that in the printed notice Exh. B the requirement No. 5 as to laying a 6' sewer has been struck out. Presumably therefore the Municipality thought that the street was already sewerage, or else that they could not throw on the frontagers the expense of this sewer as opposed to the surface water-drain requirement No. 4.

7. In the view which I take it is unnecessary to consider whether even on the construction of the Act put forward by the Municipality the road-way was sewerage. The road is very narrow being only 10' in places, and it would appear that in the monsoon the surface water of the roadway overflows into the house drains or gullies and thence into the pipe I have referred to. Therefore in this indirect way the surface water of the road-way has been partially drained away. But whether this would amount to the road-way being sewerage within the meaning of the Act is, as I have already indicated, a question which it is unnecessary to decide.

8. In the result, therefore, I agree with my learned brother in holding that the judgment of the learned Magistrate in the Court below is right and this appeal must be dismissed.

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