

Bhan Deb Vs. Emperor

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Court : Allahabad

Decided On : Aug-17-1928

Reported in : AIR1928All696

Appellant : Bhan Deb

Respondent : Emperor

Judgement :

Dalal, J.

1. The laxity with which penal statutes are made use of by public bodies is a matter of grave concern. No one takes the trouble of reading the law before launching a prosecution. In the present case the applicant has been convicted of an offence under the Municipal Act, Section 307 (b), on the ground that within the limits of a Municipality he erected a new part of a building or made material alterations therein without the Board's permission. Obviously Clause 2, Section 178, Municipalities Act, was lost sight of that the notice referred to in Sub-section 1 to be given by a person, who desires to erect a new part of a building or to make material alterations, shall only be necessary when the building abuts on or is adjacent to a public street or place or property vested in His Majesty or in the Board. In the Magistrate's Court everything was taken for granted. It appears, however, that the reason for prosecution was clearly defined in the Sessions Court, and it was alleged that the buildings adjoined a public road. The Sessions

Judge pointed out that what is marked by 1 on Ex. E was nowhere near a public road. The Sessions Judge says that the building marked 2 was adjacent to a public road, because it was divided from a public road by a canal and a wall only. Obviously by a canal the learned Judge meant a distributary, i.e., a narrow channel of water. If there is a wall separating this house from the public road, it is difficult to understand how the building can be called adjacent to the road. 'Adjacent' must mean 'joining at some point,' and the meaning of the word is made clearer by the words 'abutting on.' What is attempted to be avoided is the danger of obstruction or encroachment on a public road. When there is a dividing wall there cannot be any obstruction or encroachment. However that may be, a penal statute must be strictly interpreted, and 'adjacent' cannot mean to include two properties which are divided. The Government Pleader pointed out that the building was adjacent to a distributary. That, however, was not the material portion of the charge. There is nothing to show that the distributary is vested in the notified area, nor that the property is vested in His Majesty. There was no intention of prosecuting the applicant because he failed to obtain permission for making alterations in a building which was adjacent to a canal distributary. The prosecution cannot be permitted at the last moment without notice to the accused to change its ground. I am certain that the authorities connected with the Notified Area have not stopped to think of the limited nature of the property for which a notice under Section 178 (1) is necessary and fully believed that wherever in the notified area a building is erected, altered or added to, a notice is necessary. It is in this wrong belief that the present prosecution was launched. In the notice itself no reference is made to the buildings being adjacent to any public street or place or property vested in His Majesty or in the Board.

2. Two other objections were raised, but they have no substance. It was first argued that the buildings were not situated within the Notified Area. This is wrong. The western boundary is described as coming up to the bridge over the Barsati canal, 'thence due west along the Kaladhungi road to the Mukhani canal.' It was argued that from the bridge there ought to be a gap, and that the western boundary must jump to the Kaladhungi road. That would lead to the overlooking of the words 'thence due west.' When the boundary goes thence, i.e., from the bridge due west, it must go along the western boundary of the applicant's garden, and the

garden is undoubtedly included in the Notified Area.

3. The complaint was made by the Secretary under the authority of the President. There is an order passed by the Board to that effect, and therefore the complaint was correctly made as provided by the law.

4. I set aside the conviction and sentence and order the fine, if any recovered, to be refunded.

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