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Mt. Muhammadi Vs. Emperor

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Court : Allahabad

Decided On : May-18-1931

Reported in : AIR1932All110

Appellant : Mt. Muhammadi

Respondent : Emperor

Judgement :

Kendall, J.

1. This is an application j for the revision of an order of the learned Sessions Judge of Agra confirming the order of a Bench of Magistrates imposing a fine on Mt. Muhammad a prostitute under Section 299, U.P. Municipalities Act. The fine was imposed for the alleged infringement of a bye-law made by the Board, and the application for revision is made on the ground that the bye-law itself is ultra vires.

2. Under Section 298-H(e), U.P. Municipalities Act, a Municipal Board by special resolution is empowered to make bye. laws

prohibiting in any specified streat or area, the residing of public prostitutes and the keeping of a brothel, or the letting or other disposal of a house or building to public prostitutes or for a brothel.

3. In 1917 the Municipal Board of Agra passed a bye law under this section of the Act to the following effect:

No public prostitute shall reside in any house or building or ply her trade within the municipal limits, excepting on both sides of the street beginning from shops Nos. 3215 and 3096 in Phullatti bazar down to Kinaribazar up to shops Nos. 2007 and 4765 and from there on both sides of the street in Kashmiri bazar down to Malkabazar cross-road shops Nos. 2723/11 and 2175 on each side of the street.

4. This bye-law on the face of it specified the area within which prostitutes were permitted to reside. It did not specify the area within which they were prohibited from residing, and it is argued that on a time interpretation of the Act, the Board had no right to pass a bye-law of this nature.

5. It has also been argued that the bye-law is unreasonable, but I have very little information on this point; and all I have been told by counsel is that the area in which they are permitted to reside is a busy market area not far from, the centre of a large city, an area which may be very suitable for a few wealthy members of the profession, but difficult of access to numbers of unfortunate prostitutes who are for this reason practically prohibited from residing in the municipality.

6. The real question is whether the bye-law is ultra vires or not. The word 'specify' as defined in Webster's Dictionary is

to mention or name as a particular thing; to designate in words 30 as to distinguish from other things; as to specify the uses of a plant; to specify the articles one wants to purchase.

7. In the bye-law, it is argued the only 'street or area specified in this way' is 'both sides of the street etc,' as detailed therein, and it is this area which has been distinguished from the rest of the Municipality and set aside as a residence for prostitutes, a procedure which is inconsistent with Clause (e), Section 298-H. Mr. Asthana on the other side has argued that the bye-law also specifies 'the Municipal limits' with the result that the rest of the Municipal area is distinguished from the area which is excepted, and thus notified as a 'specified area' which is

prohibited to prostitutes. I think it must be admitted that the plain meaning of the section is the one which Mr. Sinha would give to it, viz., that the smaller area is the one that is specified. It has been pointed out to me that in the note to some model bylaws, which were published with the Municipal Manual in 1917, the view is expressed that Section 298-H(e) only permits bye-laws to be made prohibiting in any specified area or street the residence of a public prostitute etc... it does not authorize bye-laws prescribing distinct areas within which public prostitutes must: reside or prohibiting their residence anywhere else within Municipal limits. It is true that though the legislature may have intended this to be the interpretation of the law, it will not necessarily follow that the Courts will interpret it in this way unless it can properly be so interpreted according to the judicial rules of interpretation. I have however not been given any reason why the more obvious interpretation should not be preferred. Moreover if it be supposed for the sake of argument that the bye-law could 'specify' the whole of the municipal area in this way, it does not appear that the Act empowers the Board to go further and to specify a second smaller area in which prostitutes may reside. Mr. Asthana has referred to the case of Kruse v. Johnson [1898] 2 Q.B.D. 91, to show that a Court ought to be slow to held that a bye-law, is void for unreasonableness. It is however not the unreasonableness of the bye-law that is attacked so much as the illegality of it. In more than one case which has come before this Court it has been held that in deciding a question between a Municipal Board and a resident in the Municipality a very strict view will be taken of the Board's powers. In the case of Ramta Nath v. Chairman, Municipal Board, Allahabad [1905] 28 All. 199, it was held that

a Municipal Act is an Act which encroaches on the rights of the subjects as regards property. The recognized rule of interpretation in such a. case is that nay words contained in it should be interpreted if possible so as to respect such rights.

8. A somewhat similar view was taken by a Bench of this Court in the case of Dassu v. Emperor [1909] 2 I.C. 408. Again in the case of Imami v. Emperor [1912] 35 All. 24, a Bench of this. Court has held that

the intention of the legislature by framing Section 128(h)(i), Municipalities Act, does not seem to be to give a power to inspect and properly regulate all places of

public resort. In interpreting an Act like the Municipal Act which encroaches on the rights of the subjects, the legislature is expected to manifest its intention clearly and< beyond reasonable doubt.

9. On these principles I must hold that the interpretation, which must be placed on Clause (e), Section 298-H is the one which is not only the more reasonable, one but also the one that encroaches loss on the rights of individual citizens, viz., that the Board has power to make a bye-law prohibiting prostitutes from residing in a specified street or area, but not make a bye-law prohibiting them from residing in the whole of the Municipal area with the exception of a certain specified part. For these reasons I accept the application, set aside the order of the Court below and direct that the applicant be acquitted and that the fine, if paid, be remitted.

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