

**Mt. Bafatan Vs. Emperor**

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**Court :** Allahabad

**Decided On :** May-19-1933

**Reported in :** AIR1933All617

**Appellant :** Mt. Bafatan

**Respondent :** Emperor

**Judgement :**

**Iqbal Ahmad, J.**

1. This is a reference by the Sessions Judge of Mirzapur, recommending that the conviction of Mt. Bafatan under Section 185, Municipalities. Act (Local Act 11 of 1916 as amended by Act 2 of 1919), and the sentence, of. fine of Rs. 15 passed on her beset aside. The reference came up before a learned Judge of this Court who referred it to a Bench of two Judges. The facts giving rise to the reference are as follows: By an application, dated 14th January 1931, Mt. Bafatan notified her intention to the Chunar Notified Area Committee to construct enclosure walls and a kothri in her house and prayed for permission to make the said constructions. B. Baldeo Prasad, the Vice President of the Notified Area Committee, inspected the locality on 23rd January 1931, and. reported that the permission prayed for should be granted on certain conditions. The report was put up before B. Mathura Prasad, the President of the Notified Area, who before passing orders decided to inspect the locality himself. B. Mathura Prasad inspected the locality on 29th March 1931,

and found that Mt. Bafatan had already made certain constructions without the permission of the Notified Area Committee. A notice was then issued to Mt. Bafatan calling upon her to show cause why she should not be prosecuted for building her house without the permission of the Notified Area Committee and eventually a complaint was filed against Mt. Bafatan under Section 185, Municipalities Act, by B. Mathura Prasad, the President of the Notified Area Committee, in the Court of Th. Ram Singh, a Magistrate of the First Class. The learned Magistrate convicted Mt. Bafatan for an offence punishable under Section 185, Municipalities Act, and sentenced her to pay a fine of Rs. 15. Mt. Bafatan filed an application in revision in the Court of the Sessions Judge against the order of the Magistrate and the learned Sessions Judge being of opinion that the conviction was bad in law has made the present reference to this Court with the recommendations noted above.

2. The constructions made by Mt. Bafatan are shown on plan Ex. C on the record. They consist of enclosure walls, a kothri, a room marked A, and a platform marked B on the plan. She was not called upon to show cause with respect to the construction of platform B, nor was she convicted for having constructed that platform by the learned Magistrate. We are therefore not concerned in this reference with the platform marked B on the plan. The question for consideration in the present reference is whether the conviction of Mt. Bafatan, under Section 185, Municipalities Act, as regards the remaining constructions made by her is legally sustainable. The decision of this question depends on the answer to the question whether the amendments made in the Municipalities Act (2 of 1916) by the Municipalities Amendment Act (2 of 1919), do or do not apply to Notified Areas.

3. By Section 337, Municipalities Act, the Local Government is authorized to declare, by a notification, that in respect of any local area, other than a Municipality, town area or agricultural village, at is desirable to make administrative provision for some or all the matters described in Sections 7 and 8 of the Act, by extending thereto the provisions of Chap. 12 of the Act which deals with by that section that a local area in regard to which such a notification has been issued is to be called a Notified Area. The power to apply or adapt to a

Notified Area the provisions of any section of the Municipalities Act, or of any Act which may be applied to a Municipality, or part of such section, or any rule, regulation or bye-law in force or which can be imposed in a Municipality under the provisions of the Municipalities Act or any other Act, is reserved to the Local Government by Section 338(1a), Municipalities Act.

4. In exercise of these powers the Local Government has declared various areas in the United Provinces of Agra and Oudh to be Notified areas and by notifications dated 6th June 1917, and 11th June 1917, has extended to such areas generally the provisions of certain sections or portions of sections of the United Provinces Municipalities Act (2 of 1916). It has further been declared by these notifications that where a Commissioner decides that the circumstances of any Notified Area in his division are such as to require the application of any other section or portions of sections of the Municipalities Act, he can apply or adapt such sections or portions thereof to a particular Notified Area. Sections 178 and 185, Municipalities Act (2 of 1916) which regulate the conditions on which a new building or any material alteration in a building, etc., may be made and provide the penalties for the breach of the rules contained in those sections have been applied to all the Notified Areas in the United Provinces by the notification 'referred to above. The sections that are relevant for the purposes of the reference before us are Sections 178, 180 and 185 of the Act. Section 178 of the Act as applied to the Notified Areas requires that before beginning to erect a new building or making an alteration in a building a person should in certain cases, give notice of his intention to do so to the Notified Area. Section 180. of the Act (2 of 1916), contained four clauses and authorized Municipal Boards to refuse or to sanction any work of which notice has been given, either absolutely or subject to certain conditions, and the section further reserved to the person giving the notice the right, in the event of the Board neglecting or omitting to pass an order on the notice given to it under Section 178, to call the attention of the Board to the neglect on its part. A further Sub-clause (Sub-clause 5) was added to Section 180, U.P. Municipalities Amendment Act (2 of 1919). That sub-clause runs as follows:

No person shall commence any work of which notice has been given under Section 178 until sanction has been given or deemed to have been given under

this section.

5. The addition of Sub-clause (5) to Section 180 necessitated an addition in Section 185, Municipalities Act (2 of 1916), and certain words were inserted in that section by the same Amending Act (2 of 1919). Section 185 of Act 2 of 1916 ran as follows:

Whoever begins, continues or completes the erection or re-erection of...in a building... without giving the notice required by Section 178 or in contravention of an order of the Board refusing sanction or any written directions made by the Board under Section 180 or any bye-law, shall be liable upon conviction to a fine which may extend to Rs. 500,

6. By the Amending Act of 1919 the words 'or the provisions of Section 180, Sub-clause (5) of were inserted in the section between the words 'or in contravention' and 'of an order of the Board.' Before the amendments noticed above were introduced by the Amending Act of 1919 it was perfectly open to a person to proceed with the construction of any building of which notice had been given under Section 178 without waiting for the sanction of the Municipal Board provided that before the commencement of the building the Board had not communicated to him an order refusing sanction or any written direction that it though fit to issue under Section 180 of the Act. In other words the right of a person who had given the notice contemplated by Section 178 to proceed with the proposed constructions was subject only to this condition: that the Board could, in the exercise of the powers vested in it by Section 180, refuse permission to make the proposed constructions or call upon the person giving the notice to make the constructions subject to certain conditions, and a disregard of the order of the Board either refusing sanction or according sanction subject to certain conditions was made penal by Section 185 of the Act. By the Amending Act of 1919, for the first, time, a further condition was imposed that the person giving notice under Section 178 could not commence the construction of the building, unless and until sanction had been given by the Board for the construction of the same, and it was provided that a person who commenced the construction of a building without the sanction of the Board would be liable to a fine which may extend to Rs. 500. It is not disputed

that the local Government has not in exercise of the powers vested in it by Section 338 of the Act, extended to Notified Areas the provisions of the Amending Act of 1919. There is no escape therefore from the conclusion that no section of the Municipalities Act (2 of 1916) as applied to Notified Areas provides that a person is not to construct a building without having previously obtained the sanction of the Notified Area. It is not alleged that, after Mt. Bafatan. had given the notice referred to above, and before she proceeded to construct the building, the Notified Area either refused sanction or communicated to her any direction as regards the conditions on which she could make the building. She therefore did not contravene any of the provisions of the Act as applied to Notified Areas as regards the constructions of buildings and could not be convicted under Section 185 of the Act.

7. It was argued on behalf of the Notified Area that the Sections 180 and 185, Municipalities Act were notified by the Local Government to apply without any modification to Notified Areas, any subsequent amendments of these sections of the Act do ipso facto apply to Notified Areas. Reliance was placed on Section 8, U.P. General Clauses Act, in support of this argument. The argument is untenable. Section 8, General Clauses Act, is as follows:

Where any United Provinces Act repeals and re-enacts, with or without modification any provision of a former enactment, then references in any other enactment or in any instrument to the provisions so repealed shall, unless a different intention appears, be construed as reference to this provision so re-enacted.

8. The provisions contained in Sections 178 to 185 of the Act (2 of 1916) have not been repealed and re-enacted by any Act of the Local Legislature, and therefore Section 8, General Clauses Act, has no application to the case before us. All that has been done by the Amending Act of 1919 is to make certain additions to Section 180 and 185 of the Act. These additions not having been applied to Notified Areas cannot regulate and govern the constructions of buildings in those areas. We hold therefore that Mt. Bafatan was perfectly entitled to make the constructions without awaiting the sanction of the Notified Area, and her conviction under Section 185 of the Act was bad in law. It appears that Mt. Bafatan had not

given notice to the Notified Area Committee of her intention to construct room marked A on plan, Ex.C, and it is argued that this omission on her part brings her within the purview of Section 185 of the Act. There is no substance in this contention. Section 178(2) of the Act provides that the notice contemplated by that section

as required in the case of a building shall only be necessary where the building abuts on, or is adjacent to a public street or place, or property vested in His Majesty or in the Board, unless, by a bye-law applicable to the area in which the building is situated, the necessity of giving notice is extended to all buildings.

9. It is conceded that no such bye-law. exists, nor does the room abut on or is adjacent to a public street or place. It follows therefore that no notice to construct room marked A was necessary and Mt. Bafatan was entitled to build that room without giving any notice. There is yet another unanswerable objection to the maintainability of the conviction of Mt.Bafatan. The complaint, as already stated, was filed by B. Mathura Prasad as President of the Notified Area Committee. It was contended on behalf of the accused that B. Mathura Prasad was not duly elected President of. the Notified Area, and therefore in view of the provisions of Section 314 of the, Act, the Court could not take cognizance of the offence alleged to have been committed by Mt. Bafatan on a complaint filed by B. Mathura Prasad. By a resolution dated 26th April 1931, the Notified Area Committee authorized:

B. Mathura Prasad Sahab to incur expenditure up to the sanctioned Budget limit.

and further authorized

the President, B. Mathura Prasad Sahib, to file prosecutions and complaints in general under the sections of the Notified Area Act.

10. These resolutions make it manifest that whereas B. Mathura Prasad was authorized in his individual capacity to incur expenditure, the authority delegated to him. to file complaints was in his capacity as President of the Notified Area. It is admitted that it has been held by the Civil Court that the election of B. Mathura Prasad as President of the Notified Area, Chunar, was invalid. B. Mathura Prasad

not being a duly elected President of the Notified Area Committee could not, in exercise of the delegated authority, legally file the complaint against Mt. Bafatan and the learned Magistrate had no jurisdiction to proceed with the case. For the reasons given above we accept the reference, set aside the conviction of Mt. Bafatan and direct that the fine if paid be refunded to her.

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