

*Kalu v. Bai Muli*<sup>(1)</sup>. As the suit was wrongly disposed of on a preliminary point, we reverse the decree and remand the case for disposal on the merits according to law.

All costs including those of the Court-fees of this pauper appeal, in which Government are interested, must be costs in the cause.

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*Decree reversed.*

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(1) (1893) 18 Bom. 749.

## CRIMINAL REVISION.

*Before Mr. Justice Chandavarkar and Mr. Justice Heaton.*

EMPEROR v. RAMCHANDRA BHASKAR MANTRI.\*

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July 20.

*City of Bombay Municipal Act (Bombay Act III of 1888), section 305†—Municipal Commissioner—Notice, disobedience of—Private streets—Levelling and draining of—Liability of owners of several premises—Owners of building sites—Buildings constructed by lessees on the sites—Premises, what are—Construction of statutes.*

The owner of a large plot of land sub-divided it into a number of building sites, which he arranged on either side of a private street which was projected to run through the plot. Those building sites were let to lessees (of whom the applicant was one) for a period of thirty years; at the end of the period the lessee was to remove the building put up by him unless the lessor purchased it. Under the terms of the lease the lessee was to contribute rateably to the expenses of making, repairing, etc., all ways, roads, etc. The applicant was one of those lessees. He built a house upon one of those sites, and let it to tenants from whom he received rent. The Municipal Commissioner of Bombay issued a notice to the applicant, under section 305 of the City of Bombay Municipal

\* Criminal Application for Revision No. 175 of 1910.

† The City of Bombay Municipal Act (Bombay Act III of 1888), section 305, runs as follows:—

If any private street be not levelled, metalled or paved, sowered, drained, channelled and lighted to the satisfaction of the Commissioner, he may, with the sanction of the Standing Committee, by written notice, require the owners of the several premises fronting or adjoining the said street or abutting thereon to level, metal or pave, drain and light the same in such manner as he shall direct.

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Act (Bombay Act III of 1888), calling upon him to level, metal, drain and light the public street in front of his building. The applicant failed to comply with the notice, for which he was prosecuted under section 471 of the City of Bombay Municipal Act, 1888. He contended that he was not the owner of the premises within the meaning of section 305 of the Act. The Magistrate overruled the contention and convicted him.

*Held*, that the mere owner of the land who had let it out under a building scheme for building purposes was not the owner of the property, because the property contemplated by section 305 necessarily embraced buildings, whether erected or to be erected; and the legislature regarded him as the owner of the premises who had the right to receive rent in respect of that property.

The word "premises" occurring in section 305 of the City of Bombay Municipal Act (Bombay Act III of 1888) must be presumed to have been used by the legislature in its legal sense, as referring to the particular kind of property which forms the subject-matter of the group of immediately preceding sections of the Act. That group (sections 302—307) has reference to streets made for the use of buildings or building sites. The dominant idea running through the sections 302—304 is that of buildings either erected or projected. That is the kind of property dealt with in what has gone before section 305; and therefore that is its "*premissa*".

It is a primary rule of interpretation that a word having a popular meaning ought to be construed in that sense. One exception to that rule is that, unless there is something to the contrary in the context, words of known legal import are to be considered as having been used in their technical sense, where the law has attached that sense to them.

APPLICATION for revision against the conviction and sentence passed by A. H. S. Aston, Chief Presidency Magistrate of Bombay.

The Municipal Commissioner of the City of Bombay issued, under section 305 of the City of Bombay Municipal Act (Bombay Act III of 1888), a notice to the applicant calling upon him to level, metal, drain and light the private street on which his building abutted. The applicant has built the house upon a building site which he rented from its owner one Narayan Moroji Zaoba under a lease for a period of thirty years. The applicant had to pay Rs. 14 as the annual rent for the site. At the end of the lease the applicant had to remove the building unless it was purchased by the lessor. The applicant had also agreed in the lease to pay and contribute a rateable or due proportion of the expense of making, repairing and cleaning all

ways, roads, pavements, sewers, drains, pipes, watercourses and other conveniences which might belong to or be used for the said premises.

The applicant constructed a building on the site : and let it out to tenants. He failed to comply with the notice ; for which, the Municipal Commissioner instituted proceedings against him under section 471 of the City of Bombay Municipal Act, 1888.

The Magistrate was of opinion that the applicant, as the owner of the building, was included in the expression "owners of the several premises" used in section 305 of the Act, for the word "premises" in the section meant both "land and buildings". He, therefore, convicted the applicant of a failure to comply with the requisition served upon him and sentenced him to pay a fine of one rupee.

The applicant applied to the High Court under its criminal revisional jurisdiction.

*Setalvad*, instructed by *Sabnis and Goregaonker*, for the applicant :—The Municipal Commissioner has power under section 305 of the City of Bombay Municipal Act, 1888, to require "the owners of the several premises" to do things mentioned in the section. The question then arises, who are the owners, and what are the premises? The term "owner" is defined in section 3, clause (m) of the Act, as meaning "the person who receives the rent of the premises or who would be entitled to receive the rent thereof if the premises were let." The word "owner" would, therefore, include the lessor *Zaoba*, who let out the building site to the applicant and who is primarily entitled to receive rent.

If persons in the position of the applicant were intended by the legislature to be reached under the section, it would have used the expression "owners or occupiers" as it has done in sections 228, 249, 251, 275, &c. See also the Calcutta Municipal Act (Bengal Act III of 1899), section 645 ; the Public Health Act, 1875 (38 & 39 Vic. c. 55), section 150.

Even if it be conceded that the term "owners" includes both the lessor *Zaoba* and the lessee (the applicant), then the Commissioner is not authorized anywhere in the Act to single

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out any one of them for the purposes of his requisition under section 305. He ought to requisition both of them.

The term "premises" is nowhere defined in the Act: and it is employed in different senses in the Act. See *The Municipality of Bombay v. Shapurji Dinsha*<sup>(1)</sup>. Reading the sections that immediately precede section 305, it appears that the term premises means "land" and in section 305, used as it is in reference to street land, it must mean the abutting lands and nothing more.

*Jardine* (Acting Advocate-General), instructed by Messrs. *Crawford, Brown & Company*, for the Municipality:—It is not disputed that the applicant has constructed a building, which he has let out to tenants. He is the person who receives rent for the building, and is, therefore, its owner as defined in section 3, clause (m) of the City of Bombay Municipal Act, 1888. Even on general principles the person who receives the immediate rent is liable. It is he who is to be looked, for the benefit of enhanced rent goes to him. The lessor only gets a fixed rent for a long period of years. The applicant is not the occupier of the building for he has let it out. See *Lewis v. Arnold*<sup>(2)</sup>.

CHANDAVARKAR, J.:—The question of law before us arising on this rule is as to the meaning of the words "owners of the several premises" occurring in section 305 of the City of Bombay Municipal Act (Bombay Act III of 1888).

The question arises under the following circumstances:—

One Zaoba parcelled out certain land belonging to him in plots for building purposes and gave each plot on lease for a fixed term (30 years). Each lessee erected on his plot a building at his own expense. The petitioner before us is one of those lessees. There is a private street adjoining the plots and it was with reference to it that the Municipal Commissioner of Bombay called upon the lessees, the petitioner included, to level, metal, drain and light the said street on the ground that they were "owners of the several premises fronting or adjoining" it within the meaning of section 305 of the Act. They having

(1) (1895) 20 Bom. 617.

(2) (1875) L. R. 10 Q. B. 245.

refused to comply with the requisition, the Commissioner filed a complaint against them in the Presidency Magistrate's Court charging them under section 471 of the Act.

The lessees contended that they were not "owners of the several premises" and that it was their lessor, the owner of the land, who was legally liable to perform the work required by the Commissioner under section 305. The Chief Presidency Magistrate overruled that contention and convicted the lessees. Hence this rule.

The City of Bombay Municipal Act defines the word "owner" but is silent as to the meaning to be attached to the word "premises", though that word occurs frequently in the Act. And, as was pointed out by Ranade, J., in *Municipality of Bombay v. Shapurji Dinsha*<sup>(1)</sup>, the word is used in different senses in different sections, in some meaning land, in some signifying buildings, and in others including both land and buildings. We must, therefore, see in what sense the word is used in section 305 of the Act.

The popular acceptance of the word "premises", according to Sweet's Law Dictionary and Wharton's Law Lexicon, is that it includes land. The same definition is given in Johnson's Dictionary. But, although it is a primary rule of interpretation that a word having a popular meaning ought to be construed in that sense, one exception to that rule is that, unless there is something to the contrary in the context, words of known legal import are to be considered as having been used in their technical sense, where the law has attached that sense to them: *Her Highness Ruckmaboye v. Lulloobhoy Mottichund*<sup>(2)</sup>, and *Trimbak Gangadhar Ranade v. Bhagwanandas Mutchand and others*<sup>(3)</sup>. The word "premises" has a technical meaning in law. Its strict legal meaning is "that which comes before", "the prænissa of the document or deed which includes that word". *Metropolitan Water Board v. Paine*<sup>(4)</sup>. As pointed out in this last decision, in Sheppard's Touchstone that is the only meaning given to the word.

(1) (1895) 20 Bom. 617.

(2) (1851) 5 M. I. A. 234.

(3) (1898) 23 Bom. 348.

(4) (1907) 1, K. B. 285 at p. 297.

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Having regard to the canon of construction as to the legal meaning of a word and to the fact that the word we have to construe occurs in a statute, I think that the word "premises" occurring in section 305 must be presumed to have been used by the legislature in its legal sense, as referring to the particular kind of property which forms the subject-matter of the group of the immediately preceding sections of the Act. That group consisting of sections 302 to 307 is headed "Provisions concerning private streets." The whole group has reference to streets made for the use of buildings or building sites. The dominant idea running through the sections 302 to 304 is that of buildings, either erected or projected. That is the kind of property dealt with in what has gone before section 305, and therefore that is its "præmissa".

If that view is correct—and I think it is—it follows that the mere owner of the land who has let it out under a building scheme for building purposes is not the owner of the property, because the property contemplated by the section necessarily embraces buildings, whether erected or to be erected; and the legislature regards him as the owner of the premises who has the right to receive rent in respect of that property. The lessor in the case before us receives rent under his contract only for that land; he is not entitled to rent in respect of the buildings. Once he has started his building scheme and let out his land in plots, he drops out of sight, and his lessees step in as the owners of the buildings. The land as land becomes merged in them. If no building is erected on any plot, still the plot becomes, as part of the building scheme, a building plot.

But it was contended that a more reasonable construction of the words "owners of the several premises" in section 305 was that it included both the lessor as owner of the land parcelled out for buildings, and his lessees as owners of the buildings, because the word "premises" includes both land and buildings. Such a construction of the section ignores what I have called the dominant idea of building running through the group of sections, of which section 305 is a part.

For these reasons, the conviction, in my opinion, is right and this rule must be discharged.

HEATON, J.:—I have no doubt in my own mind that the particular premises with which we are now dealing comprise the existing building and the plot on which that building stands. The lessee (in this case the applicant) is the person who receives the rent of those premises. The lessor takes the ground-rent which is something quite different from the rent of the premises. As the lessee takes the rent of the premises, he is the owner within the meaning of that word as used in section 305, as will appear from the definition of the word "owner" given in clause (m) of section 3 of the Bombay City Municipal Act III of 1888. As the lessee is the owner in this sense, I think that the notice mentioned in section 305 was correctly addressed to him, and that the Magistrate's order is right.

*Rule discharged.*

R. R.

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## CRIMINAL APPELLATE.

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*Before Mr. Justice Chandavarkar and Mr. Justice Heaton.*

EMPEROR v. AKBAR BADOO.\*

*Criminal Procedure Code (Act V of 1898), sections 162, 288—Indian Evidence Act (I of 1872), sections 21, 157—Evidence—Admissibility of evidence—Statements made by witness to Police and Panch—Statements made by the witness as accused before Committing Magistrate—Witness deposing to different story before Sessions' Court—Corroboration of the deposition before the Committing Magistrate by statements made before the Police and the Panch—Investigating Police Officer—Deposition of, as to statements made by witnesses to him—Examination-in-chief—Practice and procedure.*

During the trial of an accused person, the Sessions Judge admitted into evidence and used against the accused the following statements: (1) statements made by a witness to the Police implicating the accused, (2) the same witness' statement to the Panch, (3) and his statement as an accused person made before a Magistrate, and (4) statements made by the co-accused to the Police. The witness, when he was examined before the Committing Magistrate, gave a consistent story; but he deposed to quite a different version when he was

\* Criminal Appeal No. 145 of 1910.

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