

## CRIMINAL REFERENCE.

*Before Mr. Justice Chandavarkar and Mr. Justice Hayward.*

THE MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY *v.*  
MATHURADAS GOKALDAS PASTA.\*

1911.

July 10.

*City of Bombay Municipal Act (Bom. Act III of 1888), sections 379, 379A†—Overcrowding of house—Notice to abate the nuisance—Service of notice—Owner—Rooms in a building let to different tenants—Overcrowding by tenants—Notice to the owner.*

The notice contemplated by section 379A of the City of Bombay Municipal Act (Bom. Act III of 1888) should be given to the owner of a building in cases where the owner has let rooms in the building to separate tenants who cause overcrowding.

THIS was a reference made by P. H. Dastur, Second Presidency Magistrate of Bombay.

\* Criminal Reference No. 28 of 1911.

† The sections run as follows :—

379. (1) The owner of a building shall, within a period of seven days after receipt of a written notice from the Commissioner, sign and give a certificate of the following particulars with respect to such building or any part thereof :—

- (a) the total numbers of rooms in the building,
- (b) the length, breadth and height of each room, and
- (c) the name of the person to whom he has let the building or each part of the building occupied as a separate tenement.

(2) The occupier of a building or of any part of a building occupied as a separate tenement shall, on like notice and within the like period, sign and give a certificate of the following particulars with respect to such building or part of such building as aforesaid which is in his occupation :—

- (a) the total number of persons dwelling in the building or any part of it,
- (b) the manner of use of each room by day and by night, and
- (c) the number, sex and age of the occupants of each room used for sleeping.

379A. (1) Where it appears to the Commissioner, whether from any certificate furnished under section 379 or otherwise, that any building or any room or rooms therein used for human habitation is overcrowded, he may apply to a Presidency Magistrate to prevent such overcrowding; and the said Magistrate, after such inquiry as he thinks fit to make, may prescribe the maximum number of persons to be accommodated in each room and may, by written order, require the owner of the building, within a reasonable time not exceeding ten days to be prescribed in the said order, to abate the overcrowding thereof, by reducing the number of lodgers, tenants or other inmates of the said building or room or rooms, in accordance with the maximum so prescribed and to the satisfaction of the Commissioner, or may pass such other order as he may deem just and proper.

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Mathuradas was the owner of a building which was situated on the Matarpakhady Road in the city of Bombay. The building had two storeys, on each of which there were 12 rooms. These rooms were let by the owner singly to different tenants. The rooms on the ground floor had an air space of 832 cubic feet, while those on the upper floor had 798 cubic feet of air space. The total number of persons living in the whole building was 123.

The Municipal Commissioner of the City of Bombay applied to the Second Presidency Magistrate of Bombay under section 397A (1) of the City of Bombay Municipal Act (Bom. Act III of 1888), for an order to fix the maximum number of persons to be accommodated in each room and a written notice requiring the owner of the building to abate the overcrowding. The Magistrate held the inquiry and decided that the maximum number in each room should be three adults and one child. A question then arose as to who should be served with the notice of abatement. It was urged by the Municipality that the notice should be issued to the owner Mathuradas. It was urged on Mathuradas' behalf that the notices should be served on the

(2) Where the owner of the said building has sub-let the same, the landlord of the lodgers, tenants or other actual inmates of the same shall, for the purposes of this section, be deemed to be the owner of the said building.

(3) Every tenant, lodger or other inmate of the same building shall vacate on being required by the owner so to do in pursuance of any order under subsection (1).

(4) A room used exclusively as a dwelling shall be deemed to be overcrowded within the meaning of this section when the number of adult inmates is such that the amount of floor space available for each adult inmate is less than twenty-five superficial feet, and for each person under the age of ten years less than twelve and one-half superficial feet, or when the air space for each adult inmate is less than two hundred and fifty cubic feet, two children under ten years of age counting as one adult.

(5) A room not exclusively used as a dwelling shall be deemed to be overcrowded within the meaning of this section when the number of adult inmates is such that the amount of floor space available for each adult inmate is less than thirty superficial feet, and for each person under the age of ten years less than fifteen superficial feet, or when the air space for each adult inmate is less than three hundred cubic feet, two children under ten years of age counting as one adult.

tenants personally who were responsible for the overcrowding.

The Magistrate was of opinion that the notices should go to the tenants and not to the owner, on the following grounds:—

“It seems clear, looking to clause (2) of the section, that when the owner has sub-let the building, as is the case here, the tenants should be given the notice, but Mr. Crawford contends that the words used are “sub-let the same,” which refer to the whole building and not bits of the building; and as the owner in the present case has not sub-let the whole building to one individual, this clause, he contends, does not apply to the present case. I hold, however, that “sub-let the same” does also refer to the sub-letting of bits of the building and think that notice in this case should be issued to the tenants of Mathuradas and not to him.”

Mr. Crawford, for the Municipal Commissioner of the City of Bombay, requested the Magistrate to refer the point to the High Court for opinion: the Magistrate, thereupon, referred the following question to the High Court:—

When the owner of a building has let his rooms separately to individual tenants and these cause the overcrowding, is the notice, to abate the same, to be given, under section 379A (1) of the Bombay Municipal Act, to the owner or to the tenants?

The reference was heard.

*Lang*, instructed by *Crawford, Brown & Co.*, for the Municipality.—The notice under section 379A (1) of the Bombay City Municipal Act should be issued to the owner of the building. Clause (2) of the section is intended to provide for the very common case where the owner of the building sub-lets or farms the whole building to a contractor and has no dominion over the building at all. The order of the Magistrate requires 24 different notices to issue. That this was not the intention of the framers of the Act is clear from the wording of section 379A, clause (1). In section 379A, clause (1), no matter whether one room is overcrowded or every room, it is the “owner of the building,” obviously as a whole, who is made responsible, *i. e.*, it does not contemplate a number of notices but only one. Clause (2) carries this idea on only making provision for a special case. Why should clause (2) suddenly change and contemplate a number of notices. Besides this there are practical disadvantages. Suppose a chawl of 100 rooms, the Magistrate would have to issue 100 notices and bring to Court 100 persons, mostly of the mill-hand class,

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*Jardine*, instructed by *Little & Co.*, for Mathuradas.—The intention of section 379A is to reach the person in actual possession of the room or house overcrowded. The preceding section, that is, section 379, distinguishes between the owner and the occupier and apportions certain duties to each. This distinction would be meaningless and unnecessary, if it is not read into section 379A. This construction derives support from the fact that the Legislature has used in clause (2) of the section, the term “lodger” and not “lessees.” The section contemplates a house divided into separate tenements, each one of which is rented by a different person who individually is liable to abate the overcrowding.

*Lang* in reply.—Section 379 provides for obtaining different items of information either from the “owner” or the “occupier,” as one best fitted to give it. It does not divide the responsibility in any way. There is no hardship on the owner. All he has to do is to call on his tenants to vacate and if they do not they can be punished under section 471 of the Act.

CHANDAVARKAR, J.:—This is a reference under section 432 of the Code of Criminal Procedure by the Second Presidency Magistrate of Bombay.

The question of law referred arises upon the construction of clauses (1) and (2) of section 379A of the Bombay Municipal Act (III of 1888) as amended by Bombay Act V of 1905, and is as follows:—

“When the owner of a building has let his rooms separately to individual tenants, and these cause overcrowding, is the notice, to abate the same, to be given, under section 379A (1) of the Bombay Municipal Act, III of 1888, to the owner or to the tenants?”

Our answer is, the notice must be to the owner.

To construe properly clause (2) of section 379A, we must bear in mind what has gone before in clause (1) of the section.

The latter clause provides (omitting portions which are not material here) that “where it appears to the Commissioner that any building or any room or rooms therein used for human habitation is overcrowded,” he may apply to a Presidency Magistrate “to prevent such overcrowding,” and that the Magistrate “may, by written order, require the owner of

the building " to adopt measures (pointed out in the clause) to abate the overcrowding.

It is obvious from the language of this clause that, whether the overcrowding is in the whole of the building or in only one room or some rooms of it, the written order must be to " the owner of the building ". It is the whole building as one undivided entity and its owner as a single person that are brought within the operation of the clause.

Then comes clause (2). It deals with the case of a building sub-let. It runs as follows:—" Where the owner of the said building has sub-let the same, the landlord of the lodgers, tenants, or other actual inmates of the same shall, for the purposes of this section, be deemed to be the owner of the said building." Here the words are " the said building." The words " any room or rooms therein " in clause (1) are studiously excluded: *Expressio unius est exclusio alterius*. What is contemplated is the whole building taken as a single undivided entity, not one split into parts and sub-let in portions.

The word " owner ", as defined in clause (m) of section 3 of the Act, means, when read in reference to any premises, " the person who receives the rent of the said premises, or who would be entitled to receive the rent thereof, if the premises were let ". This definition is wide enough to include the case of a building, which, having been let to a tenant with power to sub-let, is sub-let by the tenant, as well as the case of a building simply let. In the former case, the tenant who has sub-let becomes " the owner " and " the landlord of the lodgers, tenants, or other actual inmates " of the building. He represents them for the purposes of the section, because, according to the law of landlord and tenant, there is no privity of contract or estate between a lessor and a sub-lessee unless there is an agreement creating such privity. The clause we are construing recognises no such agreement for its purposes but keeps to the general law.

It follows, therefore, that when a building is sub-let, the lessee who sub-lets is " the owner of the building " within the meaning of the section.

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But what if the proprietor of a building consisting of several rooms lets it in parts to several tenants with power to sub-let, and each or some of these sub-let? Are these tenants who have sub-let "owners of the building" within the meaning of section 379A?

They are not. The section contemplates a person who is "owner of the building", that is to say, of the whole building, which tenants of portions who have sub-let are not. That is because each of them is a tenant receiving rent from his sub-tenant in respect of the room or rooms he has sub-let. His right does not cover the whole building, whereas it is the ownership of the building as one whole that is meant by the Legislature for the purposes of the section. In that case the only person "who receives the rent of" the *building* is its proprietor, who has let it to the tenants with power to sub-let. He is, therefore, the only person falling within the definition of "owner" and becomes liable under clause (1) of section 379A.

In the present case it seems to have been urged before the Magistrate for the person proceeded against as "owner", that he did not come within the section, because the building, to which the complaint of overcrowding related, and which consisted of 24 rooms, had been "sub-let" by him to 24 tenants. This is rather a vague defence. "Sub-letting" is by a person who holds the property as a lessee with power to sub-let and becomes landlord in his turn. There is nothing on the record to show that the person here proceeded against is of that description, unless we are to take what was said in argument before the Magistrate by the respective solicitors of the parties as amounting to that. But that is not so clear. In any case, if the said person is himself lessee of the building and has "sub-let" to 24 tenants, he is "the owner" who has sub-let the building and who is "the landlord" of the tenants within the meaning of clause (2) of section 379A. If, being such a lessee, he has sub-let to 24 tenants with power to sub-let on their part and each or some of these has or have "sub-let", in the exercise of that power, it is he who still remains "owner of the said building", because,

as pointed out above, of no tenant who has sub-let can it be said that he receives the rent of "the said building" understanding the word as one undivided whole, without any reference to any individual room or rooms, on the true construction of clause (2) read by the light of clause (1) of section 379A. Who, then, is the person receiving rent in respect of the whole building, and, therefore, "owner", as defined in clause (m) of section 3 but the lessee who has sub-let? For the same reason, if the person proceeded against is the proprietor of the building and has let each room to a tenant with power to sub-let, and the tenants, all or some, have sub-let, the same result follows and he is liable as "owner".

His counsel has before us laid stress on what he calls the hardship that must result from such a construction of the section. Whether hardship or no hardship, we must adopt that meaning of the statute which is in accordance with settled canons of construction and which does no violence to its language. "No doubt, great power is given to sanitary authorities, the Legislature thinking that it was tolerably certain that they would use those powers with discretion, and not tyrannically. We must, therefore, construe those sections and bye-laws without regard to consequences": per Bramwell, L. J., in *Baker v. Mayor, etc., of Portsmouth*<sup>(1)</sup>. And, after all, what is the hardship here? The owner is to be required to abate the nuisance of overcrowding. He has to pass the order on to his tenants and call upon them to vacate, if required by that order. That is no hardship to him; if any, it is on the tenants. But the continuance of danger to the public health and sanitation of the city arising from overcrowding is a much greater hardship.

With this answer to the learned Magistrate's reference, the record and proceedings must be returned to him for disposal of the case accordingly. Costs of this reference on the respondent, Mr. Mathuradas Gokaldas.

*Answer accordingly.*

R. R.

(1) (1878) 3 Ex. D. 157.

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