

1919.

EMPEROR
v.
BYRAMJI
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Cantonment had persisted in failure to carry out an order made under Rule 97, and, taking the words of Rule 107A, he was punishable with a fine not exceeding Rs. 5 for every day after the first in regard to which he was convicted of having persisted in the failure. He could of course be convicted with having persisted in the failure only as regards the past; he could not be convicted of a failure in regard to the future. A fine of Rs. 5 a day therefore might have been imposed for the material days up to the 27th of October. But that was not done. The District Magistrate, taking, I have no doubt, a sensible broad view of the affair, came to the conclusion that it was unnecessary to impose a fine for the past failure. But to emphasise the need of obedience to the order previously made, he directed that a fine of Rs. 5 a day should be paid from the 1st of November. That date was in the future, and as the words of the rule show, he was not empowered to make an order as to the future. That part of his order therefore is illegal and must be set aside and the fine, if paid, should be refunded.

SHAH, J.:—I agree.

Order set aside.

R. R.

CRIMINAL REVISION.

Before Mr. Justice Heaton and Mr. Justice Shah.

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EMPEROR v. BYRAMJI PUDUMJI (No. 2).^o

April 3.

Cantonment Code, 1912, Rule 97†—Notice of removal—Cantonment authority—Building in a ruinous condition.

A notice issued under Rule 97 of the Cantonment Code of 1912 can require the owner to do one of the two things, viz., to remove the building or to

^o Criminal Application for Revision No. 38 of 1919.

† The rule is set out in the judgment.

cause repairs to be made. It is not necessary that the notice should always be in the alternative either to remove or to repair, the choice to lie with the owner.

THIS was an application to revise a conviction and sentence passed by A. S. A. Westropp, District Magistrate of Poona.

The accused owned a bungalow which was situated within the Cantonment limits of Poona.

The Cantonment authority of Poona served a notice on the accused on the 6th July 1918, which ran as follows :—

" Notice is hereby given to you under the provisions of Rule 97 of the Cantonment Code to remove Bungalow No. 4 situated on Victoria Road which is in a ruinous and dangerous state within two months of the receipt of this notice failing which the law will be enforced."

The accused failed to comply with this notice. the Cantonment Magistrate of Poona, thereupon, issued a summons against the accused to answer to a charge of not complying with the notice.

The proceedings were at first taken up by the Cantonment Magistrate ; but later they were transferred to the District Magistrate of Poona. The learned Magistrate convicted the accused of having failed to obey the notice and fined him a sum of Rs. 25.

The accused applied to the High Court.

Velinkar with *Payne & Co.*, for the applicant.

P. Bunter, for the complainant.

S. S. Patkar, Government Pleader, for the Crown.

HEATON, J. :—The only point as to which it is necessary for us to express an opinion, is the meaning of Rule 97 of the Cantonment Code of 1912. Rule 97 runs as follows :—

" Where any building, wall or structure, or anything affixed thereto, or any bank or tree, is, in the opinion of the Cantonment authority, in a ruinous state or in any way dangerous either, in the case of an occupied building, to

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the occupier or to the public, the Cantonment authority may, by notice in writing, require the owner or occupier thereof forthwith either to remove the same or to cause such repairs to be made as it may think necessary for the safety of the occupier or of the public, &c."

The point arises in this way. The Cantonment authority sent a notice under this section to the applicant to remove a building and the applicant says that the notice was not a legal notice, because under the section it had to be a notice to him, he argues, either to remove or to cause repairs to be made. So we have to choose between two alternative meanings of these words. Do the words describe the notice and must the notice always be in the alternative either to remove or to repair, the choice lying with the owner; or do the words describe a power given to the Cantonment authority, who may choose whether the notice shall be to remove or shall be to make repairs? I hold that the latter is the true interpretation. I do so, because, firstly, I think that the words themselves, apart altogether from any extraneous considerations, mean this. And secondly, if we take extraneous matters into account, they seem to me to lead to the same conclusion. I gather that the meaning of the framers of this Code was to give the choice not to the owner, but to the Cantonment authority. If the framers of the Code had in view the interests of the public, the requirements of safety and of sanitation, it seems to me that it inevitably follows that the intention was to give the power to the Cantonment authority and not to leave the choice to the owner of the property.

I think, therefore, that the Magistrate's order was correct and that the rule should be discharged.

SHAH, J.:—I agree. I desire to add that at one stage of the argument I was impressed with the contention urged by Mr. Velinkar that under the rule an option of

removing the building or of effecting the repairs which may be specified by the Cantonment authority should be given in every notice to the owner. But on a further consideration I feel satisfied that the argument is more plausible than sound, and that the words of the section convey the meaning that the option is given to the Cantonment authority of deciding, when any building is in a ruinous state or in any way dangerous to the occupier, whether the owner shall be required to remove the same or whether he shall be required to cause such repairs as may be necessary for the safety of the occupier or the public. It is also clear that, if due regard is had to the object and the scope of this rule, that is the interpretation which ought to be accepted. I am unable to see any force in the suggestion made on behalf of the accused that, if it were intended that the option was not to be given to the owner in every notice given under this rule, the expression "require the owner or occupier thereof forthwith either to remove the same or to cause such repairs to be made as it may think necessary for the safety of the occupier" would not be appropriate. I think that if the framers of the Code intended to give to the Cantonment authority the power of deciding whether under certain circumstances the building should be removed or whether it should be repaired in a particular manner, the expression used would be appropriate.

Rule discharged.

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