

that the designated heir could succeed to the Math and the appeal should be dismissed with costs.

SHAH, J.:—I agree. I only desire to add that there is nothing to show that the person in the position of defendant No. 1, clearly designated as heir by Ramgiri, would not be able to succeed simply because the initiation ceremony was not performed during the life-time of Ramgiri. Though the proposition has been advanced that the initiation ceremony is essential for the purpose of constituting discipleship which would entitle him to succeed to the property, no authority has been cited in support of that proposition and I do not think that it could be said as a matter of law that where the designation has been so clear, as in the present case, the absence of formal initiation during the life-time of the last holder, Ramgiri, should present insuperable difficulty in the way of the designated disciple succeeding as heir.

Appeal dismissed.

R. R.

CRIMINAL REVISION.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

EMPEROR v. MATUBHAI M. SHAH^o.

*Bombay District Municipal Act (Bombay Act III of 1901), sections 96, 97—
Building of huts—Permission of the Municipality—Building without per-
mission—Alteration of charge.*

A Magistrate trying an accused person for erecting huts without permission of the Municipality, under section 96, clause 5 of the Bombay District Municipal Act, 1901, was of opinion that the accused had committed no offence under the section, but altered the charge and convicted him under section 97,

^o Criminal Application for Revision No. 262 of 1921.

1921.

KRISHNAGIR
v.
SHRIDHAR.

1921.

November
16.

1921.

EMPEROR
v.
MATUBHAI.

read with section 155 of the Act. On an application by the accused under criminal revisional jurisdiction,

Held, reversing the conviction, that the Magistrate was not at liberty to alter the charge in the way he did.

THIS was an application under the criminal revisional jurisdiction from conviction and sentence passed by B. V. Dev, Resident Magistrate, First Class, at Bandra.

The accused owned a large plot of land, which he obtained permission from the Municipality to develop into plots for building sites. He erected temporary sheds and huts in a portion of his land, for the housing of his labourers and informed the Municipality. The Municipality called upon him to demolish the huts and sheds as they had been built without their permission. Eventually, the Municipality resolved to prosecute the accused under section 96, clause 5, of the Bombay District Municipal Act, 1901.

The Magistrate before whom the accused was charged, being of opinion that section 96 had no application, altered the charge to one under section 97 and convicted the accused.

The accused applied to the High Court.

B. J. Desai, with *P. B. Shingne*, for the applicant:— Section 96 of the Bombay District Municipal Act does not apply to huts or sheds. The lower Court accepted this view. If so, the applicant, who was charged under section 96, should have been acquitted. But the lower Court convicted him under section 155, read along with section 97. There was not the least suggestion that the applicant was prosecuted under section 155, read along with section 97. The period in the notice given by the Municipality had still to expire, and the prosecution was filed before the period had expired. The conviction is, therefore, wrong.

Coyajee, with *S. V. Bhandarkar*, for the opponent:—
Section 96 is wide enough. The definition of the term “building” given in section 3 (7) is wide enough to include a hut or a shed. If so, the applicant had violated the provisions of section 96. The conviction can be sustained on the ground that section 96 applies to this case. The applicant erected huts without abiding by the provisions of the Act.

MACLEOD, C. J.:—The accused was charged with an offence under section 96 (5) of the Bombay District Municipal Act III of 1901. The complainant, Mr. Shinde, the Secretary of the Ghatkoper Kirol Municipality, alleged that the accused had commenced erecting a number of temporary huts on Survey No. 31 of Ghatkoper village situate within the limits of the Ghatkoper Kirol Municipality without having obtained permission from the Municipality under clause (1) of section 96 and thus had committed an offence punishable under section 96 (5) of the Act.

The Magistrate came to the conclusion that no offence had been committed under section 96 (5), but on the facts he dealt with the case as if the Municipality had given notice to the accused under section 97, and that the accused not having obeyed the requisitions of the Municipality had committed an offence under section 155 of the Act, and fined him Rs. 50, or in default simple imprisonment for one month.

On the 18th January 1921, the accused wrote to the Municipality that he was a registered occupant of several pieces of land at Ghatkoper, and as such had applied for permission to the Salsette Development Officer to appropriate the said lands to building purposes, and, for the purpose of giving facility to the workmen and servants employed by him for developing the land and making roads and plots and for

1921.

EMPEROR
v.
MATUBHAI.

1921.

EMPEROR
v.
MATUBHAI.

erecting buildings, he had commenced erecting temporary sheds and shops, which would be removed after the buildings were erected.

Then he made certain inquiries with regard to the building rules and regulations which had been framed by the Municipality. But for the purposes of this case those inquiries are irrelevant.

In answer to this letter of the 18th, the Municipality, on the 25th of January, replied that the permission of the Municipality was equally necessary before proceeding with the work mentioned in the letter under reply. The work in question was, therefore, purely unauthorized and was proceeded with notwithstanding the repeated verbal as well as written warnings given to the accused's staff in charge of the work. Reference was then made to the Municipal rules and bye-laws, and the letter concludes: "Lastly I may take this occasion to add that if these unauthorized structures are not removed within four days from the receipt of this notice necessary action will have to be adopted against you under the provisions of the District Municipal Act."

On the 27th January 1921, at a meeting of the Managing Committee under the heading "Buildings erected without permission on Agra Road at Ghatkoper by Mr. Matubhai M. Shah," it was resolved that Mr. Matubhai M. Shah be prosecuted under section 96 (5) of the District Municipal Act for carrying out building work without obtaining previous permission of the Municipality.

It is obvious, therefore, that the Municipality treated the accused as having commenced to erect a building without giving notice as required by section 96 (1), or without furnishing the documents and affording the information prescribed by the section, and that,

therefore, he was liable to be charged under section 96 (5). The learned Magistrate said :—

“I agree with the learned pleader Mr. Shingne in so far that section 96 is not applicable to huts and sheds although the word “building” includes huts and sheds as per section 3 of the Bombay District Municipal Act. If this section is made applicable to huts and sheds, sections 97 and 98 will ever remain dormant and no Municipality will have occasion to use them, and that does not appear to be the motive of the Legislature.”

I agree that the view taken by the learned Magistrate was correct. Although under section 3 (7) “building” would include any hut, shed or other enclosure, whether used as a human dwelling or otherwise, it does not follow that wherever the word “building” is used in the Act it includes a hut or a shed.

Sections 96, 97 and 98 come under the heading in Chapter IX of “powers to regulate buildings, &c.”, and it was clearly the intention of the Legislature that while the provisions of section 96 should apply to buildings in the ordinary sense of the word, special provision was made for huts and sheds whether built for temporary purposes or for a more permanent object, so that when the accused wished to erect huts or sheds for the purposes of his development scheme, he was bound to give previous notice to the Municipality. Then the Municipality might have made certain requisitions, and it is only when any hut or shed or range or block is built without giving proper notice to the Municipality, or otherwise than as required by the Municipality, that the Municipality may give written notice to the owner or builder thereof requiring him within a certain specified time to take down or remove the same or to make such alterations therein or additions thereto as, having regard to sanitary considerations, the Municipality may think fit; and it is only when the directions given by the notice have not been complied with that proceedings can be taken under section 155 against the person to whom notice has been given.

1921.

EMPEROR
v.
MATUBHAI.

1921.

EMPEROR
v.
MATUBHAI.

I do not think, therefore, that the Magistrate, once he had come to the conclusion that the proposed buildings of the accused did not come within section 96, could alter the charge and treat the offence as if it was punishable under section 155. All penal provisions of a statute must be very strictly construed, and it is impossible to say that the accused in this case brought himself within the provisions of that section. I think, therefore, that the conviction was wrong and must be set aside, and the fine, if paid, refunded.

SHAH, J.:—I agree. I desire to add that the proceedings in this case having been started under section 96 (5) of the Bombay District Municipal Act III of 1901, the proper course for the Magistrate was to decide whether the facts necessary to bring the case within the scope of that sub-section were established. It is clear, however, that having regard to the nature of the building set up by the accused, the case would be covered by the provisions of section 97; under the circumstances the prosecution under section 96 (5) would not be justified. The learned Magistrate has taken that view; but he has convicted the accused under section 97, read with section 155. I do not think that in these proceedings the facts necessary for that purpose have been established, nor is there anything in the case to show that the accused had sufficient notice to meet the case under section 97, read with section 155. The present proceedings must be treated as having been taken under section 96 (5) and disposed of on that footing. It may be that if the Municipality are so minded, they may be able to give a proper notice under section 97 and to take further steps against the accused.

Conviction set aside.

R. R.
