

APPELLATE CRIMINAL

Before Mr. Justice Bhagwati and Mr. Justice Vyas.

STATE v. MOHAMEDBHA I. RAVJI.*

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Bombay Municipal Corporation Act (Bom. III of 1888), ss. 274 (1), 271 (2), 140 (a), 141 (b)—Municipal Commissioner—Notice to landlord to install overhead storage and suction tank at ground level—Vagueness of notice—Whether prosecution can be sustained for non-compliance.

When the Municipal Commissioner issues a notice under s. 274 (1) of the Bombay Municipal Corporation Act, 1888, calling upon the owner of any premises to provide such premises with cisterns and fittings, it is incumbent upon him to specify the size, material, quality and description of the cisterns and fittings as also the position in which they are to be placed, with such safe and easy means of access as he thinks fit. If these particulars are not given and the notice is vague and indefinite, such a vague and indefinite notice cannot be the basis of any action to be taken against the landlord under s. 471 of the Act.

A notice requiring a landlord to provide for domestic purposes overhead storage of a total capacity of 1,500 gallons and a suction tank at the ground level of 1500 gallons capacity without more is not as clear and specific as it should be having regard to the provisions of s. 274 (1) of the Act, and the landlord cannot be convicted for non-compliance with it.

The power of the Municipal Commissioner under s. 271 (2) of the Bombay Municipal Corporation Act, 1888, to require a landlord to obtain an adequate supply of water to his premises from the municipal water works is given to him only in those cases where the landlord has failed and neglected to apply for water connection in spite of the notice under s. 141 (b) of the Act. Where the landlord has already obtained water supply but the same is subsequently found to be inadequate for some reasons, then an occasion arises for the exercise of the powers of the Commissioner under s. 274 (1) of the Act.

CRIMINAL APPEAL against the order of acquittal passed by S. B. Awar, Esquire, Presidency Magistrate, 18th Court, Bombay Central, Bombay.

Mohamedbhai I. Ravji (accused) was the owner of certain premises situate at Girgaum Road, Bombay, consisting of a ground and three upper storeys.

On June 21, 1926, the Municipal Commissioner for the City of Bombay gave a public notice under s. 141 (b) of the City of Bombay Municipal Act, 1888, intimating that sufficient water was available from the Municipal Water Works for furnishing

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a reasonable supply to all premises within the locality of the house and that water tax would be levied in respect of all such premises. Pursuant thereto the accused applied for and obtained a water supply to his premises from the Municipality and paid the water tax in connection with the same.

On October 30, 1941, the accused wrote to the Hydraulic Engineer of the Municipality (complainant) informing him that his tenants were complaining that they were not getting sufficient water on the 2nd and 3rd floor and, therefore, he should get the premises inspected and show him ways and means of getting sufficient water. The complainant replied on November 29, 1941, suggesting certain changes in the water connection and installation of domestic storage tanks of 1400 gallons with electric pumping arrangements at the cost of the accused. The accused turned down that suggestion contending that the Municipality was bound to supply sufficient water by increasing the pressure. On December 12, 1941, the accused again inquired of the complainant whether he would give a fresh $\frac{3}{4}$ " connection for the 2nd and 3rd floors of his premises. To this the complainant replied in the affirmative on January 16, 1942, but added that if there were short supply complaints on the said floors, a separate $\frac{1}{2}$ " connection for each of the ground, 1st and 3rd floors would have to be taken.

Nothing happened after this until February 23, 1948, when the complainant acting on complaints received from the tenants of the said premises again addressed a letter to the accused reminding him of his duty to obtain an adequate supply from the Municipal water main and provide supply and distributing pipes, cisterns, fittings, pumps, etc., necessary for that purpose. He also suggested therein alternative arrangements for improving the water supply and ultimately wound up by saying that all his previous requisitions were thereby cancelled.

On March 19, 1948, the accused wrote back asking for the withdrawal of the notice on the ground that the responsibility for the shortage rested on the Municipality and that the materials mentioned by him were not available in the market. Correspondence thereafter ensued between the parties wherein the accused continued to blame the Municipality for the shortage of water supply and the complainant tried to impress upon the accused his obligations in the matter and asked him to do the needful at the earliest. Ultimately on May 17, 1949,

the Municipal Commissioner addressed a notice to the accused the material portion of which ran as follows:—

“Whereas in my opinion the abovementioned premises are without a supply of pure water adequate to the requirements of the persons usually occupying the said premises.

Now I do hereby give you notice pursuant to the provision of ss. 271 (2) and 274 (1) of the City of Bombay Municipal Act, 1888, as amended up to date, to carry out the undermentioned requisitions within a month from the date of receipt of this notice:

1. To retain the existing $\frac{3}{4}$ " connection for the suction tank and to take branches therefrom for direct supply to the different floors as follows, and to extend the connections to the overhead storage tanks;

$\frac{1}{2}$ " branch for ground floor from $\frac{3}{4}$ " connection.

$\frac{3}{4}$ " branch for first floor from $\frac{3}{4}$ " connection.

$\frac{3}{4}$ " branch for second floor from $\frac{3}{4}$ " connection.

$\frac{3}{4}$ " branch for third floor from $\frac{3}{4}$ " connection.

2. To provide for domestic purposes overhead storage of a total capacity of 1500 gallons.

3. To retain for flushing purposes overhead storage of a total capacity of 600 gallons.

4. To provide suction tank at the ground level of 1500 gallons capacity.

5. To provide a pump of sufficient capacity to fill up the overhead storage tanks.

6. To substitute $\frac{3}{8}$ " size taps in place of existing ones on ground and 1st floors.

7. To provide necessary water fittings for the purpose, subject to the provisions of s. 287B of the said Act, as amended as aforesaid.

I also hereby give you further notice that should you fail to comply with the above requisition, you will render yourself liable to the penalty prescribed in that behalf under s. 471 of the said Act, as amended as aforesaid.”

The notice was not complied with, and, therefore, the accused was prosecuted in the Court of the Presidency Magistrate, 18th Court, Bombay, under s. 471 of the City of Bombay Municipal Act, 1888.

The learned Magistrate acquitted the accused by observing in his judgment as follows:—

“In my opinion, it is not competent to the Commissioner to make the requisition under head 1, as it means redistributing the existing internal connections which cannot be done under sub-s. (2) of s. 271.....It will be noticed that sub-s. (1) [of s. 274] refers to cisterns and fittings only

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and not to supply and distributing pipes which are referred to in sub-s. (2) of s. 271 and it, therefore, appears to me that the requisitions made under head 1 in the notice cannot also be enforced under sub-s. (1) of s. 274.

As regards the other requisitions made under heads 2 and 4 to 7 in the notice, Ex. P, I think that the Commissioner is competent to enforce them under s. 274 (1) if a proper notice as required by the said section has been given. The notice Ex. P, however, does not give the size, material and quality of the cisterns nor does it specify where they were to be placed and with which safe and easy means of access as required by the section. The requisition under head 2, is for providing for domestic purposes, a overhead tank of a total capacity of 1500 gallons. It was contended for the prosecution that the overhead means the terrace or roof. That is true but where exactly the tank was to be placed on the terrace or roof has not been specified in the notice. There is a similar omission in the case of a requisition under head 4, for a suction tank at the ground level. The requisition under head 5, is for providing a pump of sufficient capacity to fill up the overhead tanks, but what is considered sufficient by the accused may not so appear to the Commissioner. The notice does not also specifically refer to the distributing pipes but it appears the 'fittings' as defined in s. 260 A (G) would include distributing pipes, but the difficulty is that the notice does not state how many distributing pipes were to be taken and on which floors and of what size, quality and material. In my opinion, the Commissioner was bound in his notice to give all the particulars referred to in the section and as the notice does not comply with the requirements of the section it is not a good notice within the meaning of sub-s. (1) of s. 274. See *Emperor v. Trikamlal* 40 Bom. L. R. 314 and *Rex v. Narayan Vithal Patil* in Cri. Revision Appl. No. 82 of 1949 B. H. C."

The State of Bombay appealed to the High Court.

Purshottam Tricumdas, with *B. G. Thakor*, the Additional Assistant Government Pleader, for the State.

A. A. Adarkar, and *K. R. Bhende*, for the accused.

BHAGWATI J. This is an appeal by the Government of Bombay against the acquittal of the accused Mohamedbhai I. Ravji by the learned Presidency Magistrate, 18th Court, Bombay Central, on a charge under s. 471 read with ss. 271 (2) and 274 (1) of the City of Bombay Municipal Act, 1888 (Bom. III of 1888). The accused is the landlord of certain premises, which are situated at Girgaum Road, consisting of a ground and three upper floors. On June 21, 1926, the Municipal Corporation gave a public notice under s. 141 (b) of the Act, intimating that sufficient water was available from the Municipal Water Works for furnishing a reasonable supply to all premises within the locality and that under s. 141 (b) of the Act water tax would be

levied in respect of all such premises. It appears that the accused applied for, and obtained, a water supply to his said premises from the Municipality and paid, and continued to pay, the water tax in connection with the same. By 1941 the tenants of the premises came to undergo difficulties in the matter of getting sufficient water on the second and third floors and accordingly complained to the landlord about the inadequacy of the water supply. On October 30, 1941, the accused, therefore, wrote to the Hydraulic Engineer of the Bombay Municipality asking him to get the premises inspected and show him ways and means to get sufficient water. The Hydraulic Engineer replied on November 29, 1941, suggesting certain changes in the water connection and also suggesting that domestic storage tanks of 1400 gallons with electric pumping arrangements should be provided to meet the demand during low-pressure hours. The accused wrote to the Hydraulic Engineer on December 5, 1941, intimating that he was neither prepared to take new connection nor to provide a storage tank according to his whims, unless the Municipality was prepared to pay the cost. He was one of the big landlords in Bombay and also had been the Ex Mayor of the Municipal Corporation, and he wanted to vindicate his rights, and he, therefore, wrote to say that it was really regrettable that the Municipal Corporation had reduced the pressure and had started a campaign to penalize the landlords of Bombay by their whims and that, therefore, he had no alternative but to refer the matter in due course to the High Court and get a decision of the question whether the Municipality was bound to supply sufficient water or not. On December 12, 1941, he again wrote to the Hydraulic Engineer stating that he did not want to put up any storage tank or electric pump as his building was old and he did not wish to incur unnecessary expenditure, but asking him whether he would give a fresh $\frac{3}{4}$ " connection for the second and third floors of the premises. The Hydraulic Engineer replied on January 16, 1942, stating that under the circumstances the requisition of putting up a storage tank with electric pump was waived and a $\frac{3}{4}$ " connection for the use of the second and third floors would be allowed. If the matters had rested there, very probably a $\frac{3}{4}$ " connection for the use of the second and third floors of the premises would have been put up by the accused. The Hydraulic Engineer, however, went on to observe in that letter that if there were short supply complaints even if a $\frac{3}{4}$ " connection for the use of the second and third floors was allowed, a separate $\frac{1}{2}$ " connection

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for each of the ground, first and third floors might have to be taken. This appears to have decided the accused not to do anything of the type and the matters rested there. It speaks volumes for the concern of the Municipal Corporation for the grievances of the tenants that after January 16, 1942, nothing happened at all until we come to February 23, 1948. As many as six years elapsed before the Municipal Corporation insisted upon the accused doing anything whatever to redress these grievances of the tenants which to all appearances were certainly considered legitimate by them, if the correspondence which took place in 1941 had any significance whatever. The accused was certainly not interested in providing facilities for his tenants. The tenants seemed to have slept over their rights, possibly because they thought that once a complaint had been registered with the Municipality, the accused would do the needful, and the Municipal Corporation went into a state of lethargy and required to be prodded effectively by either the tenants or their association before they would act any further in the matter. That prod came in some time in November 1947 when the Honorary Secretary of the Bombay Tenants Association wrote to the Hydraulic Engineer complaining that the tenants living in the premises of the accused complained for redress in the matter of the inadequate water supply on the first and second floors as there was no separate connection. The Hydraulic Engineer was asked to remove the above mentioned grievances and he then woke up and addressed the letter dated February 23, 1948, to the accused. He began by stating that complaints of shortage of water supply had been received from the tenants of those premises, and that it was the duty of the owner of the premises to obtain an adequate water supply from the Municipal water main and provide supply and distributing pipes, cisterns, fittings, pumps, etc., necessary for that purpose. It is interesting to observe that these were the very words which are used in s. 271, sub-s. (2), of the City of Bombay Municipal Act. The Hydraulic Engineer also suggested in the letter another alternative and asked the accused to adopt that alternative suggestion of his. He wound up that letter by saying that that letter cancelled all the previous requisitions which had been made on the accused by the Municipality. He further stated that the accused should take some decision in the matter and arrange to carry out the works in consultation with the Municipal Department within a month, and failing compliance further action would be taken to enforce the works referred to above without any further notice, as complaints regarding

shortage of water were acute and genuine and improvement in supply of water was not possible till the said works were carried out. The accused wrote back on March 19, 1948, pointing out that the building in question was very old and had no water trouble, but as the Municipality was reducing water pressure from time to time since 1939, all the responsibility rested on them and it was unfair for the Municipality to make house-owners suffer for acts of omission and commission of the Municipality. Correspondence thereafter ensued between the parties wherein the accused continued to blame the Municipality for the shortage of water supply and the Hydraulic Engineer tried to impress upon the accused his obligations in the matter and asked him to do the needful at his earliest convenience. As the accused was adamant, the Municipal Commissioner on May 17, 1949, addressed the statutory notice under ss. 271 (2) and 274 (1) of the Act, calling upon the accused to carry out the requisitions therein contained within a month from the date of receipt thereof, failing which he stated that the accused would render himself liable to the penalty prescribed in that behalf under s. 471 of the Act. This notice was not complied with by the accused, with the result that the prosecution under s. 471 of the Act was launched against the accused. The accused appeared before the learned Presidency Magistrate and filed a statement which makes very interesting reading. He contended that the occupants of the building were getting 7.6 gallons of water more than even the overall supply per head per day in Bombay which was liberal beyond measure; that Bombay was getting more liberal supply of water even then than any other city in India; that under the law, he was to supply pure water from Municipal mains but the Commissioner's demand required him to supply contaminated water from water supply stored by him; that the real trouble of the tenants was that the tenants did not co-operate amongst themselves, that they did not adjust the time amongst themselves to collect water, that if they prescribed some hours to draw water for each floor, then all complaints should cease and all occupants should get profuse water, but that civic sense was wanting and that he was not responsible for that conduct of the tenants; that the 4000 gallons of water a day which were obtained from the Municipal Works were not inadequate but the Municipal Commissioner required him to store the supply in a tank overhead, raised to it by a pump from a suction tank and supplied to the occupants if and when they required at their pleasure, the occupants need not get up at night to collect water, they need not

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have their own utensils to collect it, all these things the landlord should do for the occupants, the occupants should turn the cock when they pleased and get water, the Municipal Commissioner had no power to ask him to store water and supply water from the water stored by him to the tenants, his power was limited to requiring him to supply adequate water direct from Municipal Main at the service pipe tap and the occupants should collect water at the service water pipe tap during the hours of supply of water by the Municipality. After all these interesting statements, he wound up this statement by the only one relevant statement which really contained his defence and it was that the notice was vague, ambiguous and indefinite and it did not state the size, material, quality and description of the cisterns and fittings and it did not state how many downtake pipes should be taken, to which floors, of what dimensions, where they should be located, what should be done with the water stored in overhead tank, etc., and that, therefore, he was not liable to comply with the same and no prosecution under s. 471 could be sustained against him.

The learned Presidency Magistrate came to the conclusion that once a water connection had been applied for by the landlord and water supply had been made available to him by the Municipality, there was no power in the Municipal Commissioner to ask the landlord either under s. 271 (2) or under s. 274 (1) of the City of Bombay Municipal Act to provide cisterns, fittings, etc., which might be considered necessary by him to ensure an adequate supply of water to the tenants. He expressed his opinion that it was not competent to the Commissioner to make the requisition under head 1 of the notice as it meant re-distributing the existing internal connections which could not be done under sub-s. (2) of s. 271. He also held that so far as the heads 2, and 4 to 7 in the notice were concerned, the notice given by the Municipal Commissioner in connection therewith under s. 274 (1) was vague and indefinite and was not a good notice within the meaning of sub-s. (1) of s. 274. That being so, he came to the conclusion that the prosecution had failed to bring home the guilt to the accused and accordingly acquitted the accused. The Government of Bombay has filed this appeal against that order of acquittal.

The relevant sections which fall to be determined by us in this criminal appeal are ss. 271 (2) and 274 (1) of the City of Bombay Municipal Act. Before, however, we come to them, it

is necessary to refer to s. 140 of the Act which prescribes the property-taxes. The property-taxes there are inclusive of a water-tax of so many per centum of the rateable value of the buildings and lands in Greater Bombay as the Corporation shall deem reasonable. Under the terms of s. 141 of the Act the water-tax is to be levied only in respect of premises: (a) to which a private water-supply is furnished from, or which are connected by means of communication-pipes with, any municipal water-works; or (b) which are situated in a portion of Greater Bombay in which the Commissioner has given public notice that sufficient water is available from municipal water-works for furnishing a reasonable supply to all the premises in the said portion. The water-tax, therefore, has got to be paid not only by the owners of the premises to which a water-supply is already furnished from, or which are connected with, any municipal water works, but it has also got to be paid by the owners of premises in respect of which public notice has been given by the Municipal Commissioner that sufficient water is available from municipal water works in the particular portion of Greater Bombay where those premises are situated. So that, even if the owner of particular premises does not think fit to apply for a water connection to his premises, the Municipality would be able to levy the water-tax on such premises provided public notice of the nature indicated above is given by the Municipal Commissioner. It is the availability of the water-supply within that particular locality that determines the liability of the premises to the levy of water-tax, irrespective of the fact whether the owner of the premises deems it necessary to apply for a water connection or not. Going now to s. 271 of the Act, we find laid down therein the procedure as well as the conditions of private water supply. Section 271, sub-s. (1), provides that—

“Supply pipes for conveying to any premises a private supply of water from a municipal water work shall not be connected with such water work except on the written application or with the written assent of the owner of the premises, or of the person primarily liable for the payment of property-taxes on the said premises.”

If any premises are not connected with the municipal water works and are not receiving any water-supply from them, it would be incumbent, in the first instance, on the owner of these premises to make an application to the Municipality for the giving of the water connection and for providing the water supply. The application of the owner is, therefore, an essential

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prerequisite of the granting of the water connection by the Municipality. Knowing, however, the lack of the sense of civic responsibility which some landlords might as well be suffering from, the Legislature provided for cases where, in spite of the water supply being available, the landlords of certain premises did not choose to avail themselves of it and it was, therefore, provided in sub-s. (2) of s. 271 in the words following:—

“But if it shall appear to the Commissioner that any premises situate within any portion of the city in which a public notice has been given, by the Commissioner under clause (b) of s. 141, are without a supply of pure water, adequate to the requirements of the persons usually occupying or employed upon the said premises, the Commissioner shall, by written notice, require the owner of the said premises or the person primarily liable for the payment of property-taxes thereon, to obtain a supply adequate as aforesaid from a municipal water work and to provide supply and distributing pipes, cisterns and fittings and do all such works as may in the opinion of the Commissioner be necessary for that purpose.”

Express power was, therefore, given by the terms of sub-s. (2) of s. 271 to the Municipal Commissioner in respect of premises situate within any portion of the city in which a public notice under s. 141 (b) was given, to call upon the owner of the premises to obtain a supply of water adequate as therein stated from the municipal water work and to provide the necessary supply and distributing pipes, cisterns and fittings, etc. The very user of the expression “any premises situate within any portion of the city in which a public notice.....under cl. (b) of s. 141” shows that it was only in those cases where, in spite of water supply being available and water connections being granted by the Municipality at the instance of the landlords applying for the same, a landlord of certain premises within the locality did not apply for such water connection that the Municipal Commissioner could step in as above and direct the landlord to make the necessary application, obtain the water connection and provide the supply and distributing pipes, cisterns, fittings, etc., in connection therewith. Sub-s. (2) of s. 271, was, in our opinion, designed for the purpose of providing for such recalcitrant landlords, and not for investing the Municipal Commissioner with general powers whenever he thought that any premises connected with the water supply or unconnected therewith had not got provision for the supply of adequate water for the purposes therein mentioned. This power under s. 271, sub-s. (2), was only given to the Municipal Commissioner in those limited classes of cases where the landlord

of the premises, in spite of the notice under s. 141 (b), failed and neglected to apply for water connection. Reading sub-s. (2) along with sub-s. (1) of s. 271, we cannot come to any other conclusion except this, that it applied only in the cases where the landlord had failed and neglected to apply for water connection in spite of the notice under s. 141 (b) of the Act. When the water connection was applied for, the powers under s. 272 (4) and s. 272 (5) would come to be exercised by the Municipal Commissioner and a distinction was there made between the communication-pipes and the fittings thereon on the one hand and the supply and distributing pipes, cisterns, fittings, etc., on the other hand, the former of which were to vest in the Corporation and were to be maintained at the charge of the municipal fund as a municipal water work and the latter of which were to belong to the landlord but in respect of which certain supervisory powers were given to the municipal officer appointed by the Commissioner as therein prescribed. Section 273 gave the Commissioner the power to take charge of private connections by agreement with the consumer. Section 273A gave the power to the Commissioner to alter the position of the connections if at any time he deemed it expedient to do so. Then came s. 274 which contained provisions in regard to cisterns and other fittings, etc., to be used for connections with water-works. Section 274 (1) gave the Municipal Commissioner power, whenever it appeared to him to be necessary, by written notice, to require the owner of any premises furnished with a private water supply from any municipal water-work to provide such premises within a reasonable period which should be prescribed in the said notice, with cisterns and fittings of such size, material, quality and description and placed in such position and with such safe and easy means of access as he thought fit. This is a very important provision and it has a bearing on the present prosecution before us. The sub-section talks of the premises which are furnished with a private water supply from any municipal water work, as distinct from the premises situate in any portion of the city in respect of which a public notice has been given by the Commissioner under s. 141 (b) (vide s. 271 (1) of the Act). In cases of premises which are already furnished with a private water supply from any municipal water work, circumstances may arise under which it may appear to the Commissioner to be necessary to require the owner to provide those premises with cisterns and fittings of such size, material, quality and description and placed in such

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position and with such safe and easy means of access as he thinks fit. This situation may arise due to a variety of causes. The water supply from the main water-work of the Municipality may be inadequate. The pressure may have to be reduced by reason of the inadequacy of the general supply. Difficulties may be encountered in regard to the supply and distribution of the water, actually made available by the Municipality to the owner, between the various occupants of the premises. By reason of the large influx of tenants, the arrangements for the supply and distribution of water within the premises which were at one time considered adequate may prove to be inadequate. All these circumstances might make it incumbent on the Municipal Commissioner to see that the premises, which are already furnished with a private water supply from the municipal water work should be provided with cisterns and fittings of such size, material, quality and description and placed in such position and with such safe and easy means of access as he thinks fit and, therefore, under the terms of sub-s. (1) of s. 274 the necessary power is given to the Municipal Commissioner to call upon the landlord of the premises to fulfil those requirements. In so far, however, as this was a very wide and even drastic power, though conceived in the best interests of the occupants of the premises and also the health and sanitation of the inhabitants of the city, limitations were equally laid down on the exercise of this power in so far as it was made incumbent on the Municipal Commissioner to specify the size, material, quality and description of the cisterns and fittings as also the position in which the same had to be placed, with such safe and easy means of access as he thought fit. The Municipal Commissioner was constituted the arbiter of what were the requirements which had to be satisfied by the landlords of the premises, and if he was to be the sole judge of the necessity as well as the sufficiency of these requirements, it was equally incumbent upon him to give these particulars and specifications, so that in spite of the landlord having tried to meet the requirements of the Municipal Commissioner to the best of his ability, he might not be then told that what he had done did not meet with the approval of the Municipal Commissioner. If the size, material, quality and description of the cisterns and fittings were not particularized in this manner by the Municipal Commissioner in the notice which he gave under sub-s. (1) of s. 274 to the landlord, the landlord could not be laid under the obligation of shifting for himself as best as he might and

trying to comply with the requirements of the Municipal Commissioner, because whatever the landlord might do might conceivably not meet with the approval of the Municipal Commissioner if the latter was minded to quarrel with the landlord in the matter of what he had done. The drastic power which was thus given to the Municipal Commissioner was circumscribed in this manner that he must give these particulars and specifications, and then and then only he could expect the landlord to comply with these requisitions. If, therefore, these particulars were not given and the notice which was given by the Municipal Commissioner to the landlord was vague and indefinite, such a vague and indefinite notice could not afford the basis of any action to be taken against the landlord under s. 471 of the Act.

It is clear on a discussion of the above provisions of the City of Bombay Municipal Act that what was done by the Municipal Commissioner in the circumstances of the present case was not justified under s. 271 (2) of the Act. The water connection having been taken by the landlord soon after the public notice of June 21, 1926, it was not the case of a default having been committed by the landlord in taking the water connection and the Municipal Commissioner being, therefore, entitled to call upon him to obtain a water supply under the terms of s. 271 (2) of the Act. A water supply had already been obtained. It was considered adequate according to the situation as it obtained at the time when the water supply was obtained. It was only by reason of the subsequent developments in 1941 and particularly in 1948 that the water supply was found to be inadequate. When the water supply was thus found to be inadequate, the occasion did arise for the exercise of the powers of the Municipal Commissioner under s. 274 (1) of the Act and it was certainly within his powers then to order the landlord to provide cisterns and fittings of such size material, quality and description and placed in such position and with such safe and easy means of access as he thought fit. This is what he had purported to do when he gave the notice dated May 17, 1949, to the accused. Unfortunately, however, even though the heads 1, 3, 5, 6 and 7 in the notice could not strictly be said to be vague and indefinite, heads 2 and 4 were certainly vague and indefinite. The accused was asked to provide under head 2 for domestic purposes overhead storage of a total capacity of 1500 gallons. No doubt the words "overhead storage" were used there, but they

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did not specify how many storage tanks and of what particular containing capacity and also of what material, quality and description had to be constructed by the accused in order to satisfy this requirement of the Municipal Commissioner. Similar was the position in regard to head 4 which was to provide suction tank at the ground level of 1500 gallons capacity. Here also, even though it could be said that there might have been one suction tank thought of in this manner, we have not got anything to show of what size, material, quality and description the particular provision had got to be made and in the case of the suction tank as also in the case of the overhead storage the Municipal Commissioner did not specify in what positions they had to be placed. In our opinion, the words "overhead storage" and "at the ground level" were not enough by themselves to particularize the position in which these tanks had got to be placed by the accused. In our opinion, therefore, the heads 2 and 4 in the notice were not as clear and specific as they should have been having regard to the provisions of s. 274, sub-s. (1), of the Act. When Mr. Purshottam for the Government was confronted with this position, he pointed out that there were seven severable heads or requirements in this notice and even though these heads Nos. 2 and 4 were vague and indefinite, the others were at least clear and categoric and the accused could certainly be held liable for non-compliance with the requisitions contained in heads 1, 3, 5, 6 and 7 of this notice. We are afraid we cannot accept this argument of Mr. Purshottam. The notice is a composite one. The provision for an overhead storage as also a suction tank at the ground level cannot be divorced from the other requirements of the notice, because if the accused had chosen to carry out the other requirements excluding the requirements in heads 2 and 4, it is not as if the grievance of the tenants could have been redressed and the water supply which was inadequate would have become adequate. The overhead shortage as well as the suction tank at the ground level were calculated to redress this inadequacy of the water supply taken along with the other requirements contained in heads 1, 3, 5, 6 and 7 and it would not be legitimate to treat these requirements as falling in distinct categories, so that one category could be satisfied without having regard to the other. Having regard to these considerations, therefore, we have come to the conclusion that the heads 2 and 4 being vague and indefinite vitiated the notice as a whole and non-compliance therewith could not be made the basis of the prosecution

under s. 471 of the Act. It is not possible to treat the non-compliance with the requirements of heads 1, 3, 5, 6 and 7, therefore, as distinct from the non-compliance with the requirements of heads 2 and 4 and we, therefore, see no justification for a prosecution of the accused only for the non-compliance with the requirements of heads 1, 3, 5, 6 and 7. Having regard to the above, we have come to the conclusion that the order made by the learned Presidency Magistrate acquitting the accused was right, though we do not agree with all the grounds which commended themselves to him in coming to the conclusion that he did.

The result, therefore, is that this appeal will stand dismissed and the order of acquittal will stand confirmed.

Appeal dismissed.

M. W. P.

APPELLATE CIVIL

Before Mr. Justice Gajendragadkar and Mr. Justice Vyas.

MIRAJ STATE BANK, LTD. (ORIGINAL PLAINTIFF), PETITIONER *v.* NABI BAPU *wd.* RAHIMAN PATIL AND ANOTHER (ORIGINAL DEFENDANTS NOS. 2 AND 3), OPPONENTS.*

1951
Aug. 27

Bombay Agricultural Debtors' Relief Act (Bom. XXVIII of 1947), ss. 3, 19 (1)—Suit by merged State Bank for recovery of debt—Application by debtor for transfer of suit to Debt Adjustment Court—Jurisdiction of civil Court to transfer suit—Scheme of Act.

A civil Court has jurisdiction under s. 19 (1) of the Bombay Agricultural Debtors' Relief Act, 1947, to transfer to the Debt Adjustment Court a pending suit in respect of a debt due to a merged State Bank, although having regard to the provisions of s. 3 of the Act the latter Court would have no power to scale down the debt.

The debts due by a debtor who is entitled to the protection of the Act can be broadly classified into two classes: (i) ordinary debts which are affected by the provisions of the Act laying down for a special enquiry, for a special mode of taking accounts and for a special mode of scaling down and adjustment; and (ii) debts which can be called special debts as mentioned in s. 3. These are not intended to fall within the mischief of the special provisions contained in the Act except s. 26 and

* Civil Revision Application No. 1118 of 1950.