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ANANT SADASHIV v. RATNAGIRI DISTRICT LOCAL BOARD

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the district local board defining "octroi" and "octroi limits" are *ultra vires* and it was not competent to the district local board of Ratnagiri to levy octroi on goods which entered Kunkeri from Sawantwadi.

The result is that the rule will be made absolute with costs, and there will be a decree in favour of the applicant for Rs. 4-6-0.

Rule absolute.

M. W. P.

APPELLATE CRIMINAL

Before Mr. M. C. Chagla, Chief Justice.

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GULAM KADAR INAMDAR *v.* THE STATE*

Bombay Provincial Municipal Corporations Act (LIX of 1949), Sch. Chap. IX, r. 11 (1) (a)—"Owner of premises", meaning of—Land and building owned by different persons—Whether the owner of the land liable under the aforesaid rule.

The accused, who was the owner of an open site in Poona, let the land to several persons who erected small huts on the land. The Poona Municipal Corporation issued a notice calling upon the accused to construct six privies and sinks and bath-rooms and to arrange drainage, within sixty days. The accused, having failed to comply, was prosecuted under r. 11 (*1*) (*a*) of chap. IX of the Schedule to the Bombay Provincial Municipal Corporations Act, 1949.

Held, although the definition of "premises" given in the Act includes both buildings and open lands, the primary question to decide in each case is whether the requisition by the Municipality is for the purposes of the building or land; it is only the owner of the building or the owner of the land who will be liable as the case may be.

Municipality of Bombay v. *Shapurji Dinsha*[1], relied upon.

CRIMINAL REFERENCE made by V. S. Metrani, Additional Sessions Judge, Poona.

One Gulam Kadar Inamdar (accused) was the owner of an open site in Poona. He let the land to members of wandering tribes who erected small huts on the land. The Poona Municipal Corporation issued a notice requiring the accused to construct six latrines and sinks and bathrooms and to arrange

*Criminal Reference No. 46 of 1952.

[1] (1896) 20 Bom. 617.

drainage. As the accused failed to comply, he was prosecuted under rule 11 (*1*) (*a*) of Chapter IX of the Schedule of the Bombay Provincial Municipal Corporations Act, 1949.

The trying Magistrate convicted the accused and imposed on him a fine of Rs. 30. The Additional Sessions Judge at Poona made a reference to the High Court recommending that the conviction and sentence passed against the accused be quashed.

The Reference was heard.

N. D. Dange, for the accused.

H. M. Choksi, Government Pleader, for the State.

V. M. Tarkunde, for the Poona Municipal Corporation.

CHAGLA C. J. This is a reference made to this Court by the Additional Sessions Judge, Poona, and the reference comes to be made under the following circumstances. The accused is the owner of an open site bearing Nos. 103 and 104 in Shivaji Nagar, Poona. He has let out the land to members of wandering tribes and these wandering tribes have erected small huts on this land. These huts number about 157 and about 706 people reside in these huts. The Poona Municipal Corporation issued a notice upon the applicant calling upon him to build six latrines and sinks and bathrooms and arrange drainage within sixty days. The accused failed to comply with the requisitions contained in the notice. Thereupon he was prosecuted under r. 11 (*1*) (*a*) under Chapter IX of the Bombay Provincial Municipal Corporations Act, and he was convicted by the Magistrate and fined Rs. 30. The Additional Sessions Judge has made a reference to us pointing out that in his opinion the conviction was bad and the order should be set aside.

The rule under which the accused is prosecuted provides that where any premises are without a water-closet, or privy or urinal or bathing or washing place, or if the Commissioner is of opinion that the existing water-closet or privy or urinal or bathing or washing place accommodation available for the persons occupying or employed in any premises is insufficient, inefficient or on any sanitary grounds objectionable the Commissioner may issue a written notice. Now, one important fact which has got to be borne in mind in this case is that the accused is not the owner of the huts. He is the owner of the land. He has let out the land and his tenants have constructed the huts. Therefore, the tenants are entitled to the huts which stand on this land. "Owner" is defined in the Act as, when used

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with 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 and then that expression is further defined, but we are not concerned with that further definition. Therefore, with regard to these huts it is clear that the accused does not receive the rents, nor would he be entitled to receive them if they were let because if the owners of these huts were to let out these huts they would be entitled to receive the rents and not the accused. All that the accused would be entitled to receive is the rent of the land which he has leased to these tribes. "Premises" is defined as including messuages, buildings and lands of any tenure whether open or enclosed, whether built on or not, and whether public or private, and Mr. Tarkunde's contention is that looking to the definition of "premises" it includes both buildings and open lands, and therefore applying that definition to r. 11 (*1*) (*a*), premises in this context means not only the buildings but also the open land and therefore the accused as the owner of the open land is liable to provide the water-closets or privies if called upon to do so by the Municipality. Now, the definition of "premises" is an inclusive definition and Mr. Tarkunde is right that the definition of "premises" does not restrict that expression to buildings or structures. But the definition does not mean that in every case premises must necessarily mean both buildings and open lands. It would depend upon the context whether in a particular section "premises" means lands and buildings or only buildings or only lands. If the requisition is made under r. 11 (*1*) (*a*) with regard to a building and if the complaint is that the occupants of that particular building do not have the necessary facilities in the nature of water-closets and privies, then "premises" in this rule can only mean the building and not the land on which the building stands. Conceivably there may be a case where a Municipality may call upon the owner of an open piece of land to construct water-closets or privies, and if the requisition is made in connection with the open piece of land, then undoubtedly in that context "premises" would mean land. There is no doubt in this case, looking to the notice served by the Municipality upon the accused, that the objection taken by the Municipality is that the facilities with regard to water-closets and privies is not sufficient looking to the large number of persons who reside in these huts. Therefore, the Municipality was thinking of the conveniences to be provided for these huts and not conveniences to be provided

with regard to the open piece of land, and the scheme of this rule is that if conveniences are to be provided in a particular building, it is the owner of that building who is liable to carry out the requisition made by the Municipality, and as I said before in this case it is not disputed and it cannot be disputed that the owner of these huts is not the accused but the members of the wandering tribes who have constructed these huts.

There is a decision of this Court very much in point which is reported in *Municipality of Bombay* v. *Shapurji Dinsha.*[1] In that case there was no privy accommodation for families dwelling in 22 houses built under the palm trees in an oart at Mahim. The oart belonged to a fazendar and the fazendar was called upon to provide privy accommodation. The fazendar was only the owner of the land and not the owner of the houses, and this Court consisting of Mr. Justice Jardine and Mr. Justice Ranade held that the fazendar was not a person liable as owner of the premises to provide privy accommodation under s. 248 of Bombay Municipal Act III of 1888, the beneficial owner of the houses built on the fazendar's land being the owner within the meaning of the section. Mr. Justice Ranade who gave a concurring judgment with Mr. Justice Jardine pointed out (p. 625):

> ".....A careful perusal of other parts of the Act satisfies me that the word 'premises' is not used throughout the Act in one and the same sense, and that its sense has to be determined in connection with the context."

Further on at p. 626 the learned Judge says:

> "The instances given above will show clearly that the word is not used throughout in the same sense, and may signify land or building, or land and building, or land appurtenant to a building, according as the context requires it. In the section now under consideration, it is obviously used with reference to the building to which the privy belongs."

Mr. Justice Ranade also puts it on general principles when he says (p. 626):

> "Quite apart from the provisions of the Act, the primary liability to have a privy, water closet, or urinal must attach to the owner of a building, and not to the owner of the land in which the building is situated, when the two owners happen, as in this case, to be different persons."

Now, Mr. Tarkunde has made an attempt to distinguish this case and what he points out is that when this decision was given there was no definition of "premises" in the Bombay

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Municipal Act. He concedes that s. 248 is in terms identical with r. 11 (*1*) (*a*), but according to him the introduction of the definition of "premises" has completely changed the legal aspect of the mater. Now, the definition of "premises" was included in the Bombay Municipal Act by I of 1916 and the definition is the same as to be found in the Bombay Provincial Municipal Corporations Act. In my opinion the introduction of the definition of "premises" in the Bombay Municipal Act does not in any way shake the validity of the decision to which I have just referred. At most it might be said that after the definition, in a proper case the owner of an open piece of land may be made liable where privies are required for the purpose of the open land. But I may point out that Mr. Justice Jardine and Mr. Justice Ranade were not considering the case of an open land, but they were considering the case of privies being required for buildings put up on the open land, and the remarks of Mr. Justice Ranade that the primary liability to have a privy, water-closet, or urinal must attach to the owner of a building, are as true today as they were when the decision was given. The question, to my mind, which has got to be answered in considering r. 11 is which are the premises which are without a water-closet or privy or urinal. The definition in the Act does not prevent the Court from answering that question according to the facts established. It is not contrary to the definition to hold that in a particular case the premises which are without a water-closet or privy or urinal are a building and in another case they may be open land. Therefore, if in this case the premises complained of and the premises which are without a water-closet or privy or urinal are the huts, and it is for the convenience of the occupants of those huts that the notice is issued by the Municipality, then under r. 11 (*1*) the liability must be upon the owner of the huts and not upon the owner of the open piece of land. Mr. Tarkunde has drawn my attention to the provisions of the Municipal Boroughs Act and he has referred me to s. 134 and he has asked me to construe r. 11 (*1*) (*a*) in the light of s. 134 as the two laws are in *pari materia*. That section provides that where the Chief Officer is of opinion that any privy, or cesspool, or additional privies or cesspools, should be provided in or on any building or land, he may as laid down in that section issue a notice. I do not see how s. 134 is of any help to Mr. Tarkunde because there instead of using the word "premises" the Legislature has used the word "building or land", and that again emphasises the fact that the

question to be determined is whether the privy, cesspool, etc., is to be provided in respect of building or in respect of land; and then this section ends up by saying that the notice is to be served upon the owner of such building or land. Therefore, under that section also the primary question to decide is whether the privies are required for a building or for land, and if the privies are required for a building, then it is only the owner of the building who would be liable. Under that section, too, if you had a case where there was land and a building put upon that land and the owner of the building and of the land were different, then if the privies were required for the building, the owner of the land would not be liable.

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In my opinion, therefore, the view taken by the Additional Sessions Judge is right. I accept the reference and set aside the order of conviction and sentence passed by the learned Special Magistrate, First class, Poona. Fine if paid to be refunded.

Conviction and sentence set aside.

K. B. S.

APPELLATE CIVIL

Before Mr. M. C. Chagala, Chief Justice.

SHANKAR NAGU MANE (ORIGINAL APPLICANT), PETITIONER *v.* MAHIBUB BANDU BAGWAN AND ANOTHER (ORIGINAL CREDITORS), OPPONENTS.*

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Bombay Agricultural Debtors Relief Act (Bom. XXVIII of 1947), ss. 4, 24 (2)—Bombay Agricultural Debtors Relief Act (Bom. XXVIII of 1939), ss. 17, 45 (1)—Application by agricultural labourer challenging sale to be in nature of mortgage—Applicant debtor within Act of 1939—Failure to apply for adjustment of debts under old Act—Application barred under s. 4 of new Act—Maintainability of application under s. 24 (2) of new Act.

Sub-section (2) of s. 24 of the Bombay Agricultural Debtors Relief Act, 1947, does not exclude a person who could have been but has not been, adjudicated a debtor under the provisions of the Bombay Agricultural Debtors Relief Act, 1939. Therefore, if an agricultural labourer makes an application before August 1, 1947, challenging a sale to be in the nature of a mortgage, such application is maintainable under s. 24 (2) notwithstanding that his application for adjustment of debts is barred under s. 4 of the new Act because of the establishment of a Debt Adjustment Board under the old Act.

* Civil Revision Application No. 585 of 1951.