

JAGANNADHA
v.
GOPANNA. Rule 20 only applies to cases in which the Agent has passed a judgment under Rule 19.

The petition must be dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

QUEEN-EMPRESS

v.

VEERAMMAL.*

District Municipalities Act (Madras)—Act IV of 1884, ss. 180, 263, 264—Municipal building license—Building in excess of license—Requisition to demolish building.

A landowner in a Municipality, subject to Act IV of 1884 (Madras), applied for a building license under section 180 of the Act. The Municipality having resolved that a portion of the land was required for widening a public lane, ordered the applicant to abstain from building on it, and granted a license for a building to be erected on the remaining portion. The landowner, however, erected a building upon the whole of the land. The Municipal Council then called upon her to demolish the building erected on the portion of the land which had not been licensed. This notice was not complied with. The landowner was then prosecuted and convicted under sections 180, 263 and 264 of the Act:

Held, that neither of the abovementioned orders of the Municipal Council were legal and consequently that no offence had been committed by the landowner.

Seemle, Act IV of 1884, s. 264, does not empower a Magistrate to impose a fine prospectively in respect of the period during which one convicted of the offence of omitting to comply with a notice to execute any work, may continue to leave such work unexecuted.

CASES referred for the orders of the High Court under Criminal Procedure Code, s. 438, by S. H. Wynne, Acting District Magistrate of Madura.

The facts of these cases are fully stated in the judgment of Mr. Justice Best.

Counsel were not instructed.

BEST, J.—*In Criminal Revision Case No. 95 of 1892.* One Veerammal has been convicted by the Second-class Magistrate of Periyakulam in the Madura District, of “building contrary to the terms of a license”—an offence punishable under sections 180 and 263 of the Municipal Act No. IV of 1884 (Madras), and

* Criminal Revision Cases Nos. 95 and 96 of 1892.

sentenced to pay a fine of one rupee, and further ordered to pay a fine of four annas for every day during which the offence is continued.

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The Acting District Magistrate, being of opinion that the conviction is illegal, has referred the case for the orders of this Court under section 438 of the Code of Criminal Procedure.

The following are the facts of the case: The abovementioned Veerammal being desirous of building a house on her own land applied to the Municipal Council at Periyakulam for a license as required by section 180 of the Act. The application was considered at a meeting on 10th March 1890, when it was resolved that "a piece of land (5 x 33 feet) is required for widening the lane. "Leaving this portion at the east side of the place on which the building is to be constructed, the remaining portion may be built;" and an endorsement to the above effect was made on the petition. But the building was erected on the whole land. Hence the prosecution and conviction under sections 180 and 263, notwithstanding an express finding by the Magistrate that the accused "has really a right to the place." The Second-class Magistrate was of opinion that, though the accused had this "right to the place," as "the Municipality would not allow her to enjoy it," the fact of her having constructed, "whether rightly or wrongly, "contrary to the terms of the license" was sufficient to constitute the offence, and that she must seek redress "by getting the order cancelled in appeal to proper authorities or by putting the Chairman, or other authority responsible for the order, in the Civil Court for its cancellation."

As is correctly observed by the Acting District Magistrate with regard to this suggestion of the Second-class Magistrate, there is no appeal allowed by law; and the Civil Courts cannot cancel a license, but can only award damages.

The question is whether the Second-class Magistrate was right in declining to consider the legality of the order of the Municipal Council which was challenged by the accused.

I am of opinion that the Magistrate ought to have considered the legality of the order and declined to convict on his finding it to be illegal.

It is clear on a perusal of section 180 that no power is thereby conferred on the Municipal Council of depriving owners of the legitimate use of their land. The object of the section is no other

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than to ensure the safety and sanitation of buildings to be newly erected. What the Council has to consider under the section is the plan of the proposed building; and the grounds on which the same can be disapproved are such as are stated in clause 4.

I agree with the District Magistrate in finding that the order of the Municipal Council, on which the prosecution in this case was based, was not a legal order, and that the conviction is therefore unsustainable.

I would therefore set aside the conviction and sentence and order refund of the fine realized.

MUTTUSAMI AYYAR, J.—I concur.

BEST, J.—*Criminal Revision Case No. 96 of 1892.* This case also relates to the same Veerammal, who has been further convicted by the Second-class Magistrate of Periyakulam, of omission to comply with a notice given to her by the Municipal Council, under section 263, clause 2, of the Municipal Act (IV of 1884), to pull down within one week the building constructed on the portion of her land which had been reserved for the formation of a lane, when license was given to her to build on the rest of her land. The conviction is under section 264 of the Act, and the sentence “a fine of Rs. five (5) for the offence, and a further fine of Rs. two (2) for every day during which the said offence is continued.”

The notice given to Veerammal by the Municipal Council is as follows: “On your petition applying for permission to build a house, endorsement No. 391, dated 24th March 1890, was given to you that, as it had been resolved at the meeting to open a lane from Ellupottal to the Varahanadhi and as a space of 5 English feet east to west and 33 English feet north to south out of your house site in the eastern side would be required when the lane shall be opened, you might build your house on the remaining portion, leaving the aforesaid space for the road. It having come to notice that you were building beyond the space mentioned in the license granted to you and on the portion required for the lane, you were prosecuted for having acted contrary to the terms of the license, and the Magistrate convicted and punished you under section 263 (1) of the Municipal Act. You should, within a week, pull down the building constructed on the ground without license and vacate it. This notice is

“given under section 263 (2) of the Municipal Act. If you do not act in accordance with this notice within one week, you will be prosecuted under section 264 of the said Act.”

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This notice contains a distinct admission that the portion of land which the Commissioners wished to be reserved for the lane which they had resolved to newly open, was a portion of Veeram-mal's house site.

As already observed in disposing of the connected case No. 95, section 180 of the Municipal Act, gives the Municipal Council no power to deprive owners of the legitimate use of their land. What the Council has to consider when an application is made to it under that section is whether the proposed building is objectionable on any of the grounds stated in clause 4 of the same section. If private property is required for any public purpose by a Municipal Council it must be acquired in a legal manner (*cf.* Act X of 1870) and not in the exercise of the power conferred on the Councils for the limited purpose of securing the safety and sanitation of towns.

The order of the Council directing Veeram-mal to abstain from building on a portion of her land was therefore *ultra vires*; and their further notice directing her to remove the building for no other reason than that it had contravened such order was illegal, and therefore not one that she was bound to obey.

I would, therefore, set aside the conviction and sentence and direct that the fine realized be refunded.

It appears that a sum of not less than Rs. 214 has been realized under that part of the Second-class Magistrate's sentence which imposed “a further fine of Rs. 2 for every day during which the said offence is continued.” Though section 264 prescribes such further fine, I do not think it can be imposed prospectively. The proper course seems to me to be to institute further prosecution, if there is occasion for it, and allow the accused an opportunity of defending herself before the further fine is imposed.

MUTTUSAMI AYYAR, J.—I concur.
