

PASUVATHIA
PILLAI,
In re.

were marched from the place of arrest along a public road evidently to the police station. The accused came on the scene and from the evidence it appears he asked "What is the meaning of this extraordinary warrant?" or "What is this extraordinary procedure?" or words to that effect and seeing two of the men under actual arrest, that is under wrongful confinement, he seems to have given a slap on the cheek. At best it is a trivial offence and I do not think that in the circumstances of the case there should be a conviction under section 352 especially when it is brought to my notice that the petitioner was in jail for three weeks. I allow this petition and quash the conviction under section 353 and direct that the fine if paid be refunded.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss.

1927,
December 15.

CHAIRMAN, MUNICIPAL COUNCIL, CHIDAMBARAM
(COMPLAINANT), PETITIONER,

v.

TIRUNARAYANA IYENGAR (RESPONDENT), ACCUSED.*

District Municipalities Act (V of 1920) (Madras), ss. 338 (b), 249 and 321—Licence granted by a municipality under sec. 249 to keep a coffee hotel—Licence cancelled before termination of period—Coffee hotel continued to be kept after cancellation—Prosecution by municipality before a Magistrate for keeping hotel without licence—Plea by accused that licence has been illegally cancelled—Magistrate if competent to decide the question.

Where a person was granted a licence by a municipality to keep a coffee hotel under section 249 of the District Municipalities Act and the licence was cancelled before the termination

* Criminal Revision Case No. 612 of 1927.

of the period for which it was granted but he continued to keep it even after the cancellation, on a prosecution for keeping a coffee hotel without a licence under section 338 (b) read with sections 249 and 341 of the Act,

Held, that the accused was entitled to raise the plea that the licence had been illegally cancelled.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Subdivisional Magistrate of Chidambaram, in C.C. No. 35 of 1927, dated 10th June 1927.

The facts necessary for this report appear in the judgment.

T. R. Ramachandra Ayyar for petitioner.

M. Patanjali Sastri for accused.

Public Prosecutor for the Crown.

JUDGMENT.

This is an application to revise the order of the Subdivisional First-class Magistrate of Chidambaram acquitting the accused in a prosecution launched by the Municipal Council of Chidambaram under section 338 (b) read with sections 249 and 321 of the District Municipalities Act.

The facts of the case are :—The respondent, a coffee hotel keeper, had a licence for carrying on the business of coffee hotel keeper for the year 1926–27. As he disobeyed the order of the Chairman in connexion with some matter not connected with the licence, the Chairman gave notice that he had cancelled his licence. Notwithstanding the cancellation, the respondent continued to carry on business as coffee hotel keeper and he was prosecuted for keeping a coffee hotel without a licence as required by section 249 and Schedule V of the District Municipalities Act. The learned Subdivisional Magistrate acquitted the respondent on the

CHAIRMAN,
MUNICIPAL
COUNCIL,
CHIDAM-
BARAM
v.
TIRU-
NARAYANA
IYENGAR.

CHAIRMAN,
MUNICIPAL
COUNCIL,
CHIDAM-
BARAM
U.
TIRU-
NABAYANA
IYENGAR.

ground that the prosecution had failed to prove that there was any justification for the order cancelling the licence. The Chairman, Municipal Council, Chidambaram, has preferred this Criminal Revision Petition.

The contention of Mr. T. R. Ramachandra Ayyar for the petitioner is that it was not open to the Magistrate to consider the question whether the cancellation was proper or improper and that after the licence was cancelled the respondent carried on business without a licence and therefore he is liable to be punished under section 338 (b).

The question for consideration in this case is whether the Criminal Court could consider whether the order cancelling the licence was within the jurisdiction of the Chairman. The argument of Mr. Ramachandra Ayyar is that under section 249 a licence is necessary for keeping a coffee hotel. Under clause I of section 321 it shall be the duty of the Chairman to inspect places in respect of which a licence or permission is required by or under the Act and he may enter any such place between sunrise and sunset in order to satisfy himself that the conditions of the licence are observed and, if any of the terms of the licence are violated, the Chairman has power to cancel the licence. It is argued that, the Chairman having cancelled the licence, the respondent ceased to have a licence, for, the moment a licence is cancelled, it ceases to be in operation and his carrying on business after the cancellation would be carrying on business without a licence, for, clause 7 says, "When any licence or permission is suspended or revoked, or when the period for which it was granted, or within which application for renewal should be made, has expired whichever expires later, the grantee shall for all purposes of this Act or any rule made under this Act be deemed to be without a licence or permission until

the order suspending or revoking the licence or permission is cancelled or subject to sub-section 11, until the licence or permission is renewed, as the case may be." The question is whether a licence which has been granted by the Chairman can be cancelled for any reason other than for a violation of any of the conditions or the terms of the licence and the second question is whether the Court can, in dealing with the accused under section 338, go into that question. As regards the first question, whether the Chairman could cancel a licence for any other reason or for no reason has to be considered in connexion with the provisions of the Act. The Chairman can cancel the licence under section 321 (5) only for the contravention of any of its terms and it is not open to him to cancel the licence for any reason that he thinks proper. In this case the reason for cancelling the licence is the non-payment by the respondent of the water-tax. However reprehensible the conduct of the respondent may be in not paying the water-tax due to the municipality, that would not be a ground for cancelling his licence to carry on business of a coffee hotel keeper. Therefore the cancellation of the licence was *ultra vires* the Chairman of the Municipal Council.

The next question is whether the Court could go into that question in a prosecution launched by the municipality under section 338. The contention of Mr. Ramachandra Ayyar is that it is not open to the Court to go into the validity or otherwise of the cancellation because it is outside the province of the Court trying an accused person for an offence under the Municipal Act to go into the question whether any order made by the Municipal Chairman is proper or improper. Section 338 makes punishable the doing of any act if that act is done without a licence or permission or registration or in a manner inconsistent with the

CHAIRMAN,
MUNICIPAL
COUNCIL,
CHIDAM-
BARAM
v.
TIRU-
NARAYANA
IYENGAR.

CHAIRMAN,
MUNICIPAL
COUNCIL,
CHIDAM-
BARAM
2.
TIRU-
NARAYANA
LYNGAR.

terms of any such licence or permission and under clause (a) the Chairman may give notice to the person doing the act to alter, remove or as far as practicable restore the whole or any part of any property within the time specified in the notice. Then clause (b) says : "If no penalty has been specially provided in this Act for so doing such act, the person so doing it shall be liable on conviction before a magistrate to a fine not exceeding fifty rupees for every such offence." It is not denied that carrying on a hotel keeper's business without a licence is an offence punishable under section 338. But the respondent having had a licence, the improper or illegal cancellation of it by the Chairman does not deprive him of the licence which he obtained properly and the terms of which he has not in any way violated. A distinction has to be drawn between a case of refusal of a licence asked for the doing of a thing and the cancellation of a licence which a person has properly obtained. In the case of a refusal of a licence for a bus it may be that the Municipal Chairman has some reason for refusing it and it would not be open to the Court to consider whether the reasons were good or bad for no reasonable man who is acting as Chairman would refuse to grant a licence unless he has some reason for refusal. But if it is patent to the Court that there could have been no reasons, the Court could come to the conclusion that the refusal amounted to not doing what is required by the Act but something which is outside the Act and such refusal might be considered to be *ultra vires* the Chairman. In the case of a licence which has been granted and which is good for a period it would be *ultra vires* the Chairman of the Council to cancel it or suspend it for not something which the licensee did in the contravention of the terms of the licence but for something which was unconnected

with the licence. In such cases the Court is not prevented by anything contained in the District Municipalities Act from holding that such an act was not within the ambit or within the scope of the powers vested in the Chairman of the Council by the Act and therefore the reason for doing such an act would not arise for consideration. I think on this principle the various cases on the interpretation of the several sections of the District Municipalities Act can be reconciled.

CHAIRMAN,
MUNICIPAL
COUNCIL,
CHIDAM-
BARAM
2.
TIRU-
NARAYANA
IYENGAR.

Reliance is placed by Mr. Ramachandra Ayyar upon *Muthu Balu Chettiyyar v. Chairman, Madura Municipality*(1), in support of his position that it is not open to the Magistrate to go into the validity of order of the Chairman cancelling the licence. That case does not help him. In that case it was held that it was not open to the Court to question the validity of the rules framed under the District Municipalities Act. The learned Judges observe at page 636: "The offence charged is under section 338 of the Act and consists of using the rice mill without the licence prescribed by any rule, by-law or regulation made under the Act. The necessary rules have been framed in this case and it is not within the province of a Criminal Court to determine whether such rules have been validly framed, a matter which should be left for determination in a Civil Court." If the Criminal Court were to go into the validity of the terms of the licence that would be outside the province of the Court, but it is open to the Court to consider whether the Chairman acted within the powers given to him by the rules framed under the Act for the issue of licences under the Act. That the municipality cannot act in contravention of the Act is a well-established proposition. The municipality is a statutory body and

(1) (1928) I.L.R., 51 Mad., 122.

CHAIRMAN,
MUNICIPAL
COUNCIL,
CHIDAM-
BARAM
v.
TIRU-
NARAYANA
IYENGAR.

it cannot act in contravention of the terms of the statute by which it is created. In *Queen-Empress v. Veerammal*(1), a person applied for a building licence and the municipality refused to grant the licence on the ground that the land proposed to be built on was required for municipal purposes. Notwithstanding the refusal of the municipality to grant a building licence the party put up the building. Then an order was served upon the party to remove the building, but the party refused to remove the building, whereupon a prosecution was launched and a Bench consisting of MUTHUSWAMI AYYAR and BEST, J.J., set aside the conviction on the ground that the municipality acted outside its powers in refusing a licence. Mr. Justice BEST observed: "The order of the Council directing Veerammal to abstain from building on a portion of her land was *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."

It is unnecessary to consider in detail some of the cases quoted by Mr. Patanjali Sastri, such as those in *Municipal Council, Chicacole v. Seetharamayya Nayudu*(2), *Ramachandra Servai v. President, Union Board, Karai-kudi*(3), and *Taluk Board, Bandar v. Zamindar of Chellapalli*(4). It was held by Mr. Justice OLDFIELD, and Mr. Justice KRISHNAN in *Sesha Prabu, In re*(5), that the validity of a notification under the Act could be questioned in a prosecution launched for violation of the notification. In that case the notification was published as if it was under the new District Municipalities Act of 1920. As a matter of fact, on the date of the

(1) (1893) I.L.R., 16 Mad., 230.

(2) (1925) 21 L.W., 280.

(3) (1926) I.L.R., 49 Mad., 383.

(4) (1921) I.L.R., 44 Mad., 156.

(5) (1922) 42 M.L.J., 149.

notification, the District Municipalities Act had not come into force and the Court held that the notification published before the Act came into force was not a valid notification and the accused who acted in contravention of that notification was not guilty of an offence under the new Act. Reliance is placed by Mr. Ramachandra Ayyar upon a decision of Mr. Justice KRISHNAN in *Krishnaswami v. Emperor* (1). In that case Mr. Justice KRISHNAN upheld the conviction for driving a car without a licence and the accused's contention was that the President of the District Board to whom he applied for licence improperly refused to grant a licence and that he was justified in driving it without a licence. Mr. Justice KRISHNAN observed, "I do not think that his order can be regarded as an absolute nullity as is argued and the case considered as one in which no order has been passed. It may be that the accused can claim damages against the President if he is able to establish that the President exercised his powers under section 212 not *bona fide* but with malice on account of personal ill-feeling against him. That question will have to be considered when a proper case is brought; but in this prosecution the accused, in order to escape punishment, must show that he had a licence given by the President of the District Board or he comes under clause 11 of section 212." This decision is not against the principle that where the President of a District Board or the Chairman of a Municipal Council acts *ultra vires* his order cannot but be invalid and a violation of the order cannot be the subject of a criminal charge. It may be that the refusal to grant a licence may be for proper and valid reasons and the Court cannot go into the validity of the reasons or the expediency of the occasion which

(1) (1925) A.I.R. (Mad.), 476.

CHAIRMAN,
MUNICIPAL
COUNCIL,
CHIDAMBARAM
v.
TIRU-
NARAYANA
LYENGAR.

necessitated the refusal of the licence and a Court is bound to assume that the Chairman acted properly ; but where he is bound to do a certain thing and he does not do it or where he is not permitted to do a thing and he does it, it cannot be said that the Court could not go into the question of the validity of the omission or act especially when a prosecution is launched against a person for violating the illegal or *ultra vires* order of omission or the act of the Chairman. A prosecution under section 338 is a criminal prosecution in which a person is sought to be convicted. In order to sustain a conviction it must be shown that the accused violated a legal order which a public servant or a statutory body was authorized under the law to pass. As observed by Mr. Justice KRISHNAN in *Smith, In re* (1), "The prosecution must establish affirmatively to his satisfaction that the tax was payable and that there was a default in payment of the tax. The fact that the accused did not appeal to the standing committee cannot be treated as in any way preventing him from raising the plea before the Criminal Court, where he is sought to be convicted of an offence by the Prosecutor." This observation meets the argument of Mr. T. R. Ramachandra Ayyar that the respondent should have appealed to the Council against the order of the Chairman and if he did so the Council could have put it right. Supposing the Council did not choose to put the matter right would he be liable to be convicted under section 338. I have no hesitation in holding that, where an act is *ultra vires*, a statutory body, whether it be of the Chairman or of the whole Council, the Court, which is asked to convict a person for the violation of the order of the statutory body, is not prevented from considering the legality of

(1) (1928) 45 M.L.J., 731.

the order. Where the order is within the powers of the Chairman of the Council or sanctioned by the rules framed under the Act, it is not open to the Magistrate or the Court to go into the necessity, expediency or the reasonableness of the order. In this case the order of the Chairman was *ultra vires* and, that being so, the licence cannot be said to have been cancelled and the respondent cannot be said to have been trading or carrying on business without a licence. The order of the lower Court is right and the petition is dismissed.

B.C.S.

CHAIRMAN,
MUNICIPAL
COUNCIL,
CHIDAM-
BARAM
TIRU-
NARAYANA
IVENGAR.

PRIVY COUNCIL.*

SECRETARY OF STATE FOR INDIA IN COUNCIL,

1928,
July 24.

v.

VOLKART BROTHERS.

[On Appeal from the High Court at Madras.]

Landlord and tenant—Lease—Lessor's covenant to renew—Lessee's claim to renew as to part—Construction of covenant.

A lease of land for 99 years granted in 1821 contained a covenant by the lessor that upon the expiration of the lease he would renew it for a further term of 99 years upon such terms as should be judged reasonable. In 1914 the respondents, in whom the lease had vested, sold their right, title and interest in the greater part of the demised land. On the expiration of the lease they claimed a renewal in respect of the land remaining in their possession.

Held that upon the true construction of the covenant the respondents were not entitled to the renewal claimed.

Simpson v. Clayton, (1838) 8 L.J.C.P., 59, distinguished.

* Present: LORD SHAW, LORD CARSON, LORD SALVESSEN, SIR JOHN WALLIS,
and SIR LANCELOT SANDERSON.