

ABDUL
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SAHIB
v.
ASHROOF
SAHIB.

place reliance upon the fact that the plot now claimed to be part of the burial ground was ploughed and sown and was also the subject of a lease. This is entirely immaterial for the present purpose. Vacant portions of a burial ground may be improperly used for raising crops; but that would not take away the right of persons entitled to bury their dead when occasion arises. Section 147 which relates to the exercise of any right of use of any land or water covers cases of this description and the magistrate has to see whether the right which is exercisable only on particular occasions or at particular seasons was exercised during the last of such seasons or occasions. It appears there were burials in this plot in spite of objection. The question is not whether the plots in dispute were cultivated or not but whether the Muhamadans exercised their right to bury in any portion of the plot which was decreed to be a burial ground. As the learned magistrate has not addressed himself to the real question in the case, I set aside his order and direct him to restore the petition to file and dispose of it in the light of the remarks made herein.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss.

1927,
December 1.

In re VADUGA KUMARA NADAR (ACCUSED), PETITIONER.*

Madras Local Boards Act, sec. 159—Liability under—Only if owner or occupier of premises encroaches—A person neither manager nor trustee of property belonging to a community but only treasurer of a fund of the community—If liable for encroachment by property of community.

In order to make a person liable under section 159 (1) read with section 207 (1) (e) of the Madras Local Boards Act for

* Criminal Revision Case No. 751 of 1927.

disobedience of an order to remove an obstruction to a public pathway, he must be shown to be the owner or the occupier of the premises which caused the obstruction or encroachment.

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Where a person, who was neither manager nor trustee of a property belonging to a community, but was only treasurer of a fund belonging to the community, was convicted under section 159 (1) read with section 207 (1) (c) of the Madras Local Boards Act for disobedience of an order to remove an obstruction to a public pathway, caused by such property, *held*, in revision, that he was not an owner within the meaning of section 3 (14) of the Act and that the conviction should be set aside.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1928, praying the High Court to revise the judgment of the Court of the Subdivisional First-class Magistrate of Melur Division in Criminal Appeal No. 20 of 1927 preferred against the judgment of the Court of the Special Second-class Magistrate of Madura in Calendar Case No. 39 of 1926.

The facts necessary for this report appear in the judgment.

V. L. Ethiraj and *A. Rangaswami Ayyangar* for petitioner.

Public Prosecutor for the Crown.

JUDGMENT.

This is an application to revise the order of the First-class Magistrate of Melur Division declining to interfere with the conviction of the petitioner by the Special Second-class Magistrate of Madura under section 159 (1) read with section 207 (1) (c) of the Madras Local Boards Act of 1920. The only point urged before me by Mr. Ethiraj is that a conviction under sections 159 and 207 cannot be had against the representative of a community. The prosecution was for disobedience of an order to remove an obstruction to a public pathway. The Sub-Magistrate in the course

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of his judgment observes that "the petitioner is one of the representatives as the treasurer for the community. The charge against him is also in his capacity as a representative of Nadars although it is not stated so in the notice." In appeal it was contended that the encroached portion belonged to the Nadar community and not to the accused in his private capacity. The Subdivisional Magistrate observed in his judgment: "It is idle to talk on behalf of the accused that the accused is not liable for prosecution as he is one of the community that is using the nandavanam. The accused himself has admitted in his statement before the lower Court on 11th October 1926 that he himself dug up a well and formed nandavanam with a compound wall". In order to make a person liable for disobedience under section 159 he must be the owner or the occupier of any premises which caused the obstruction or encroachment. The word "owner" is defined in section 3 (14) as including the person for the time being receiving or entitled to receive the rents or profits of the property whether on his own account or as agent, trustee, guardian, manager or receiver for another person or for any religious or charitable purpose. It is not the case for the prosecution that the petitioner himself is one of the persons in charge of the property or is a trustee who is entitled to receive the rents and profits of this nandavanam or one who manages on behalf of the community the affairs of the nandavanam. The fact that he constructed the compound wall or formed a nandavanam would not be sufficient to make him an owner if he had before the date of the notice created a trust in favour of the whole community in respect of the nandavanam and divested himself of all interest in it. He says that he has no interest in it and that he made over the property to the community. From the

judgment of the Second-class Magistrate and from the contention of the accused it cannot be said that he is either the manager or the receiver or the trustee for the community. The mere fact that he is a treasurer of some fund of the community would not make him a trustee of the nandavanam or bring him within the meaning of the term "owner" as used in the Local Boards Act. I therefore set aside the conviction and direct a retrial of the case and the prosecution would be entitled to adduce evidence to show that the petitioner is a person coming within the definition of the term "owner" in section 3, clause (14) or is an occupier of the nandavanam. The fine paid will be refunded.

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B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Madhavan Nair and Mr. Justice Curgenvven.

LOCAL FUND OVERSEER, MAYAVARAM
(COMPLAINANT IN BOTH), PETITIONER,

1927,
September
23.

v.

PAKKIRISAMI THEVAN (ACCUSED IN BOTH), RESPONDENT.*

Madras Local Boards Act, sec. 166 (1)—Motor Vehicle—Plying for hire—Where and when done—Meaning of—Hiring within Municipal area—Licence from District Board—If required.

Under section 166 (1) of the Madras Local Boards Act, the act of plying a motor vehicle for hire can only be done at the place and the time the hiring is effected.

Where a person was charged with plying his car for hire from Mayavaram Municipality to Tranquebar, on roads within the area of the District Board of Tanjore, without a licence from

* Criminal Revision Cases Nos. 100 and 101 of 1927 .