

REVISIONAL CRIMINAL.

Before Mr. Justice Walsh.

MUNICIPAL BOARD OF ETAWAH *v.* DEBI PRASAD.*

1920
April, 10.

Act (Local) No. II of 1916 (United Provinces Municipalities Act), sections 267 and 268—Municipal Board—Distinction between order issued to protect public from physical danger and order issued to protect it from insanitary conditions.

A Municipal Board issued an order, purporting to do so under section 267 of the Municipalities Act, to a person living within municipal limits requiring him to fill up a certain cesspool and to build another with a proper cover to it, the order being issued because the cesspool was without a cover and passers by were likely to fall into it at night.

Held that the order was a bad order, inasmuch as the only order which could be legally made under section 267 was an order which was based on sanitary grounds.

In this case the Municipal Board of Etawah issued an order to one Debi Prasad—purporting to do so under section 267 of the United Provinces Municipalities Act, 1916—calling upon him to fill up a certain cesspool and to build another near it, properly covered in, and the reason specified for the order was that the cesspool was without a cover and that passers by were likely to fall into it at night. Debi Prasad did not build a new cesspool, to which there were certain practical objections, but he provided the existing one with a stone cover. The Municipal Board prosecuted Debi Prasad for non-compliance with the notice and he was fined Rs. 10 by a Bench of Honorary Magistrates. He appealed to the District Magistrate, who acquitted him, upon the grounds, first, that the notice was a bad notice, inasmuch as it could not be legally issued under section 267, and, secondly, that, practically speaking, it had been complied with. The Municipal Board concerned applied in revision to the High Court.

Babu *Priya Nath Banerji*, for the applicant.

The opposite party was not represented.

WALSH, J.:—The municipality in this case seems to me to have misconceived the position. I do not know why the District Magistrate thought it was a case of gross injustice. At the

* Criminal Revision No. 208 of 1920, from an order of J. O. Nelson, District Magistrate of Etawah, dated the 30th of October, 1919.

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outside there had only been a fine of Rs. 10. It looks more like a case of misunderstanding. The Board issued a notice under section 267 of the Municipalities Act of 1916. Section 267 is a section contained in that part of the Act which empowers the Municipality to take such steps as are in their opinion necessary, and of course reasonable, to protect the public against insanitary conditions. The notice may require an owner to close, remove, alter, repair, cleanse, disinfect or put in good order any latrine, drain, cesspool or other receptacle for carrying away or containing refuse. That section implies that the receptacle, whatever it may be, drain or cesspool, is not in good order and not fit for the purpose, that is to say, the sanitary purpose, for which it is required. Section 267 does not contemplate or deal with any objection which might be raised to the existence of a receptacle which is not based upon a sanitary ground, and the notice in specifying what is required to be provided must necessarily specify what it is which is defective in the existing receptacle. The Municipality in this case appreciated that necessity and stated in the notice what it was which was objectionable. The notice complains of a cesspool without a covering, into which passers by are likely to fall at night. That is a sound objection, but is not a sanitary objection. It really is an objection dealing with a dangerous structure or a nuisance in the sense of a source of danger upon the highway. The result is that the notice issued under section 267 is a bad notice, and the facts do not show that the receptacle was objectionable from a sanitary point of view. Therefore the member of the public, Pandit Debi Prasad, has committed no offence in ignoring it. The Magistrate says that section 263 applies. Section 263 enables the Board to require an owner by notice to protect or enclose any tank or reservoir or excavation in his possession, which appears to the Board to be dangerous by reason of its situation. That is the provision appropriate for an open cesspool into which people are likely to fall at night, and if the Municipality have any ground for taking action about this cesspool they must issue a notice under that section. But if it be the fact, as the Bench Magistrate has said in his original order, that it is not necessary

to rebuild the cesspool, the Municipality ought to be content with the cover provided, so long as the protection placed over the opening of the cesspool does not in itself constitute a fresh danger. All that the Municipality have to see is that the covering is sufficiently strong and stable to make the passage of the public free from danger. I dismiss the application.

Application dismissed.

PRIVY COUNCIL.

BHARAT INDU (DEFENDANT) v. HAMID ALI KHAN (PLAINTIFF).

[On appeal from the High Court of Judicature at Allahabad].

Registration—Presentation of power of attorney for registration—Executant ill and unable to go to registration office—Registration Act (III of 1877), sections 32 and 33—Executant treated as presenter—Mortgage duly registered under power so presented and authenticated.

In a suit on a mortgage executed on the 30th of August, 1895, a question arose whether the mortgage had been duly registered. It appeared from an endorsement by the sub-registrar on the power of attorney under which it purported to be registered that it was brought to him on the 4th of November, 1895, "for registration and authentication" by a servant of the executant of the power who said "that the executant was ill and unable to come himself, and asked that the power of attorney might be registered on the spot." As that would have been illegal, the sub-registrar, on the 6th of November, went to the residence of the executant, and was satisfied that he was ill and unable without risk and serious inconvenience to attend at the registration office; and he read the contents of the power of attorney to the executant, who thereupon admitted the execution and completion of the power, and asked that after registration the document should be given to the person named as the attorney in it; and thereupon the sub-registrar registered it.

Held that the presentation by the servant on the 4th of November was inoperative and that the executant himself was the real presenter and was so treated by the sub-registrar on the 6th of November. *Jambu Prasad v. Muhammad Aftab Ali Khan* (1) distinguished.

The person named as attorney in the power presented on the 2nd of January, 1896, now sued upon the mortgage of which he had obtained registration under the power of attorney.

Held that the power was duly registered and authenticated in accordance with sections 32 and 33 of the Registration Act (III of 1877), and the subsequent registration of the mortgage under it by the attorney named in it was a valid registration.

*Present:—Lord BUCKMASTER, Lord PHILLIMORE and Sir JOHN EDGE.

(1) (1914) 1 L. R., 37 All., 49; L.R., 42 L.A., 22.

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