1920

WAHID-UN-NISSA BIBI v. ZAMIN ALI SHAH.

widow claims to set aside the deed of gift so far as it affected her share as heir of the deceased, and when she claims to establish her right to the dower-debt, she is making both claims under the same title within the meaning of section 10. These words do not refer to the identity of the cause of action. 'Right' and 'title' are often used as synonymous terms, but I think the word 'title' in this section and in section 11 is used in a technical and familiar sense. Whether it is admitted or denied as a fact, the woman's marriage is an essential and fundamental factor in her title. She cannot establish her right to either claim unless she proves, or unless it is admitted, that she was lawfully married.

By THE COURT.—We dismiss this application with costs.

Application dismissed.

REVISIONAL CRIMINAL

Before Mr. Justice Piggott.

EMPEROR *v.* MANNU.*

Act (Local) No. II of 1916 (United Provinces Municipalities Act), sections 298, List 1, G (a) (x), and 318—Dangerous or offensive trades—Licence—Power of municipal board to refuse licence—Remedy of person whose application for a licence has been refused.

1920
January, 24.

In matters to which section 298, List 1, Heading G, of the United Provinces Municipalities Act, 1916, relates a municipal board is not bound to grant a licence to anyone who is prepared to abide by the prescribed conditions, unless it be found that the necessary licence cannot be granted in respect of the particular site in question without prejudice to the health, safety or convenience of the inhabitants of the municipality.

If an application for such a licence is refused, the remedy of the applicant is by way of appeal under section 318 of the Act

Moran v. *Chairman of Motihari Municipality* (1) and *Queen-Empress* v *Mukunda Chunder Chatterjee* (2) referred to.

THIS was an application in revision of an order convicting the applicant of a breach of certain byelaws of the Cawnpore Municipal Board in that he had used a certain piece of land for the purpose of storing wood without having obtained a licence to use it for the aforesaid purpose, he having in fact applied for such a licence, which had been refused.

* Criminal Revision No. 1435 of 1919, from an order of G. L. Vivian, Magistrate, First Class, of Cawnpore, dated the 26th of June, 1919.

(1) (1889) I. L. R., 17 Calc., 329. (2) (1893) I. L. R., 20 Calc., 654.

1920

EMPEROR v. MANNU.

The facts of the case are fully stated in the judgment of the Court.

Dr. *Kailas Nath Katju*, for the applicant.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

PIGGOTT, J. :—This is an application in revision by one Mannu, who is the occupier of a certain plot of ground situated on or near the banks of the Ganges, within the limits of the Municipality of Cawnpore. In the year 1914 a dispute arose between the said Mannu and the Municipal Board of Cawnpore, the Board claiming that the land in question belonged to them as *nazul* and that Mannu was occupying it without their consent. The attempt then made to eject Mannu from the site by means of proceedings in a Criminal Court came to nothing, because the court was satisfied that there was a *bonâ fide* dispute between the parties on the question of title. After the United Provinces Municipalities Act (No. II of 1916) had come into force, certain byelaws were duly promulgated by the Municipal Board of Cawnpore under Part G. (*a*) (*x*) of section 298 of the said Act, and since then Mannu has been twice prosecuted for the offence of using the plot of ground in question for storing wood without a licence granted by the Municipal Board. On the first occasion the prosecution came before this Court in revision and the matter was dealt with by myself in a judgment to be found in *Mannu* v. *Emperor* (1). Since that judgment was pronounced Mannu has formally applied to the proper authorities to grant him a licence for storing wood, up to the prescribed limit of one thousand maunds, on the site in question, and this licence has been definitely and peremptorily refused him He continued nevertheless to use the site as before for the purpose of storing wood, and the result is that he has been again prosecuted to conviction. The application now before me is against the order of a Magistrate of the first class convicting Mannu and sentencing him to a small fine. In admitting the application I seem to have overlooked, or condoned, the omission of Mannu to apply in the first instance in revision either to the Sessions Judge or to the District Magistrate, but in any se the questions raised

(1) (1919) 17 A. L. J., 976.

1920

EMPEROR v. MANNU.

by the applicant have been fully argued out before me and I propose to deal with the matter on its merits.

It has been suggested before me that Mannu has not really been guilty of a breach of any byelaw, because in his application for a licence he offered to be bound by all conditions laid down in the byelaws themselves, subject to which a licence for storing wood on any place within Municipal limits is ordinarily granted, and no evidence has been offered to show that Mannu has not in fact observed all these conditions. This argument overlooks the wording of section 299 (1) of the United Provinces Municipalities Act (No. II of 1916), and the fact that the conviction has been recorded for using the site in question for storing wood "in default of a licence granted by the Board." The question of the due observance of the conditions prescribed in the byelaws could only arise in the case of a man to whom a licence had been granted.

It is, however, contended that, if the byelaws on the subject be properly considered and given effect to as a whole, it should be held that the Municipal Board is bound to grant a licence to anyone who is prepared to abide by the prescribed conditions, unless it be found that the necessary licence cannot be granted in respect of the particular site in question without prejudice to the health, safety or convenience of the inhabitants of the Municipality. It has in substance been conceded in argument that, if the Municipal Board in rejecting Mannu's application for a licence had placed it on record that in their opinion there were reasons connected with the health, safety or convenience of the inhabitants of the Municipality which rendered it inadvisable that the particular site in question should be used for the purpose of storing wood, it would not be open to the Criminal Courts, on a prosecution like the present, to go into the question of the adequacy of the reasons assigned for refusing a licence. At any rate I am clearly of opinion that this would be so. Even in the strongest case which the applicant has been able to quote on his side, namely, the case of *Haji Ismail Haji Essac* v. *The Municipal Commissioner of Bombay* (1), it is clearly laid down that the Court cannot substitute its judgment for that of the Municipal

(1) (1903) I. L. R., 28 Bom., 258.

Commissioner, or interfere in such a matter as the refusal of a licence, unless it is clear beyond doubt that the Municipal Commissioner is using his authority with some indirect motive and for a collateral purpose, not for the purpose for which the Legislature has armed him with the power. The case for the applicant, however, is that, upon the facts now before me, this Court ought to interfere in order to enforce the principle laid down in this ruling. It is represented that the plot of land in question is of no practical use to Mannu unless he is permitted to use it for the purpose of storing wood and that the Municipal Board, in refusing him a licence, is not acting with any purpose of promoting or maintaining the health, safety or convenience of the inhabitants of the Municipality, but simply in order to serve a collateral purpose by compelling Mannu to give up the piece of land about which he has a dispute with the Municipal Board on the question of title. So far as the record before me goes, it does not appear that the Municipal Board of Cawnpore considers that the health, safety or convenience of the inhabitants of the Municipality is in any away concerned in the question of Mannu's using the site in question for the storing of wood. It is possible that some such question may be involved, but the Municipal Board has elected to fight the matter out to this Court upon the pure question of the limits of its authority. It has refused to grant Mannu a licence without giving any reasons for its refusal, and it has not felt itself bound to put forward any reasons for that refusal, either in the court of the trying Magistrate or even in the course of argument before this Court. I feel justified, therefore, in dealing with the point on the materials before me and in accepting, at least for the sake of argument, the applicant's contention that no question of the health, safety or convenience of the inhabitants of the Municipality of Cawnpore is involved in the use which he desires to make of the plot of land in question, and that he has been refused a licence simply because the members of the Municipal Board, having a claim against him that he has no right to occupy this piece of land at all, do not choose to stultify themselves by granting him a licence to use it for any particular purpose. Incidentally, no doubt, this refusal on the part of the Municipal Board may bring considerable

1920

EMPEROR v. MANNU.

pressure upon Mannu to submit without further resistance to the claim of the Municipal Board in the matter of the title to the disputed site, and may thus be said to serve a collateral purpose within the meaning of that expression as used by the learned Judges of the Bombay High Court, but I have thought it fair to state the point as it might reasonably appear to the members of of the Municipal Board when dealing with Mannu's application for a licence.

In substance, therefore, the question of law which I am called upon to decide presents itself to my mind somewhat as follows. Mannu has been guilty of a breach of the law in continuing to use this plot of land for the purpose of storing wood after he had been refused a licence by the Municipal Board; should the Criminal Courts refuse to enforce the provisions of the Statute, that is to say, of Local Act No. II of 1916, according to their plain meaning, merely on the ground that there seems reason for suspecting that the Municipal Board of Cawnpore is using its powers under that Statute in an oppressive manner and not in accordance with the spirit of section 298 of the Act? It must be remembered that in the Bombay case to which I have already referred the High Court was dealing with a question which arose before it in the exercise of its powers under section 45 of the Specific Relief Act (No. I of 1877). The provisions of that section confine its operation to the Presidency towns and to the High Courts of Calcutta Madras and Bombay in the exercise of their original civil jurisdiction. They have, therefore, no application to the facts now before me. Looking at the decisions of other High Courts in cases in which a question has arisen as to the proper exercise by a Municipal Board of the powers with which it has been armed by the Legislature, I find that the Madras High Court in *Somu Pillai* v. *The Municipal Council, Mayavaram*, (1) refused to enforce an agreement which depended for its efficacy on what was, in the opinion of the Hon'ble Court, a misuse on the part of the Municipal Board concerned of its discretion in the matter of granting or withholding licences. In the course of this decision the learned Judges have made some strong remarks

(1) (1905) I. L. R., 28 Mad., 520.

regarding the duty laid upon Municipal Boards of using a sound and equitable discretion in the exercise of their powers, but the ruling itself has little or no bearing on the question now in issue before me. The court had to decide mainly whether a certain agreement was or was not enforceable, and what they really found was that the contract in question was against public policy. On the other hand, the Calcutta High Court has in two different cases, one on the civil side and one on the criminal side, laid down principles which, if applied to the facts of the present case, would be quite fatal to the application before me. I refer to *Moran* v. *Chairman of Motihari Municipality* (1) and *Queen Empress* v. *Mukunda Chunder Chatterjee* (2). The latter case is particularly important, because the learned Judges were clearly of opinion that the Municipal Board with which they were dealing had abused its powers under the Statute, and they go so far as to suggest that the Legislature, in framing the Statute in question, could scarcely have contemplated arming Municipal Boards with powers so liable to misuse; nevertheless they laid down the general principle that, under the Bengal Municipal Act with which they were dealing (Bengal Act No. III of 1884), it was entirely within the discretion of the Municipal Commissioners to grant or refuse a licence for a market and the courts had no jurisdiction to control such power, however arbitrarily exercised. It has, however, been contended that there are cases of this Court which support a contrary view. One of these is *Ganga Narain* v. *The Municipal Board of Cawnpore* (3). There are expressions used in the course of the judgment of this Court in that case which lend some support to the applicant's contention; but the case in itself is no authority for any proposition of law which would warrant my interference in the matter now before me. The case then before this Court was a second appeal from a decree of a District Judge passed in the exercise of his civil jurisdiction. The Statute with which this Court was concerned was the N. W. P. and Oudh Municipalities Act (No. XV of 1883), and the fact that the Civil Courts had jurisdiction to entertain a suit for an injunction against a Municipal Board upon the facts

(1) (1889) I. L. R. 17 Calc., 329. (2) (1893) I. L. R., 20 Calc., 654.

(3) (1897) I. L. R., 19 All., 313.

1920

EMPEROR v. MANNU.

alleged in the plaint either was not contested, or had already been disposed of in favour of the then plaintiff with reference to the terms of the particular Act then in force. The other case relied upon in support of this application is that of *Emperor* v. *Bal Kishan* (1). That case is more nearly in point. A learned Judge of this Court, who had to deal with the question of the conviction of the applicant in revision for breach of a certain bye-law passed by the Municipal Board of Naini Tal, held, on the authority of the rule of law prevailing in England, that, before a Criminal Court will affirm a conviction for breach of a byelaw passed by such an authority as a Municipal Board, it is entitled to examine the terms of the byelaw in order to discover whether it is reasonable in itself. It might under some circumstances have been necessary for me to consider whether this principle would now be affirmed by a Bench of this Court in respect of a byelaw passed under the present Act (No. II of 1916), in view more particularly of the provisions of sections 318 and 321 of that Act. I think it unnecessary to consider this, because in my opinion the principle of law laid down in *Emperor* v. *Bal Kishan* (1) does not go anything like the length of the contention raised by the present applicant. There is no question now before me as to the reasonableness of the byelaws passed by the Cawnpore Municipal Board under section 298, List I, G (*a*) (*x*) of the aforesaid Act. The byelaws in question are obviously reasonable and calculated to promote the health, safety and convenience of the inhabitants of the Municipality. What I have been asked to consider is whether the facts laid before me amount to an abuse on the part of the Municipal Board of the powers conferred upon it by the Statute and the byelaws made thereunder and, if so, what would be the legal consequence of such abuse of power upon a prosecution like the present.

There has been some argument before me as to whether the provisions of section 318 of Local Act No. II of 1916 would apply to the facts of the present case. That discussion is not really relevant, because the validity of the conviction of Mannu for breach of the rule prohibiting unlicensed persons to use any plot of land within Municipal limits for the purpose of storing

(1) (1902) I. L. R., 24 All., 439.

wood does not depend upon the consideration of the remedies, if any, open to Mannu against the refusal of the Municipal Board to grant him the licence for which he applied. The point has, however, been argued before me, and I should not be doing the applicant any service if I refrained from expressing the opinion at which I have arrived. I have no doubt myself that an order of the Municipal Board refusing to grant a licence under a byelaw made under heading G of section 298 is just as much an order or direction made by the Board under the aforesaid byelaw as would be an order of the Board granting the licence instead of refusing it. I have no doubt, therefore, that Mannu had a remedy in this case by appealing against the order of the Board to the officer appointed by the Local Government for the purpose. If I am right in this view, it would seem to follow that the Board's order refusing a licence could not be questioned by suit in any Civil Court; but on this point I do not pronounce any final opinion, because questions might arise as to the competence of the Local Legislature to take away the jurisdiction of the ordinary courts in such a matter.

The conclusion I have arrived at on the whole case is that Mannu should have sought his remedy by an appeal under section 318 of Local Act No. II of 1916 and that he has been rightly convicted of the offence charged, in view of the fact that without preferring such appeal he has asserted his right to use the land in question for the purpose of storing wood without holding any licence from the Municipal Board. Something has been said on the question of sentence, but the learned Magistrate has taken into consideration the circumstances of the case and the remarks made by this Court when passing judgment in respect of the former prosecution. The sentence which he has passed is almost nominal and I do not feel called upon to reduce it further. The result is that I reject this application.

Application rejected.