1932

SABIR HUSAIN v. FARZAND HASAN.

in the first instance. The court fee payable on this relief will be in addition to the *ad valorem* court fee which has already been paid in respect of the interest claimed by the appellants both against defendant No. 1 and against the assets in the hands of the other defendants.

REVISIONAL CRIMINAL.

Before Justice Sir Shah Muhammad Sulaiman and Mr. Justice Young.

EMPEROR *v.* NAZIRAN.*

1932 *February*, 16.

Municipalities Act (Local Act II of 1916), section 298, list I, sub-head H(e)—Bye-law—Prohibiting prostitutes from residing within municipal limits except in certain specified streets—Exempting prostitutes owning houses—Whether ultra vires.

A Municipal Board is competent to frame a bye-law under section 298, list I, sub-head H(*e*), of the Municipalities Act prohibiting prostitutes from residing within the municipal limits except in certain specified streets. A "municipality" being itself an area, the limits of which are specified and defined, the mention in the bye-law of such limits with the exception of certain specified parts thereof does amount to specifying a particular area, within the meaning of clause (*e*) of sub-head H, list I, section 298. There is nothing in the clause which requires that the area in which residence is prohibited must be a smaller area and not a larger area of the town.

But where such a bye-law contained an exemption from its operation in the case of those prostitutes who owned houses within the prohibited area, and thereby created an invidious distinction in favour of one group of prostitutes, it was *held* that there should be no discrimination of this kind and the prohibition must be general and of universal application within the specified area, and the bye-law was therefore *ultra vires*.

This case was first heard by a single Judge who referred it to a Division Bench by the following referring order:—

BENNET, J.:—This is a criminal reference by the learned Sessions Judge of Agra, forwarding an application in revision

* Criminal Reference No. 718 of 1931.

1932

EMPEROR v. NAZIRAN.

of one Mst. Naziran, a prostitute, against a sentence of 8 annas fine per day passed on her under section 299 of the Municipalities Act, U. P. Act II of 1916. She had been convicted of residing in Takeri Gali in Agra city on the complaint of the Municipal Board and of plying her trade as a prostitute there. The conviction was under a bye-law of 1917 made by the Municipal Board as follows: "No public prostitute shall reside in any house or building or ply her trade within the municipal limits, excepting on both sides of the street beginning from shops Nos. 3215 and 3096 in Phulatti Bazar down to Kinari Bazar up to shops Nos. 2007 and 4765 and from there on both sides of the street in Kashmiri Bazar down to Malka Bazar cross-road, shops Nos. 2723/ii and 2175, on each side of the street." This bye-law was framed by the Board in virtue of the power given by section 298H(*e*) of the U. P. Municipalities Act, Act II of 1916. This section empowers a Municipal Board to make bye-laws for the following purpose among others: "Prohibiting, in any specified street or area, the residing of public prostitutes and the keeping of a brothel or the letting or other disposal of a house or building to public prostitutes or for a brothel." The ground which has been taken in revision is that there is a decision of a learned single Judge of this Court in *Muhammadi* v. *Municipal Board, Agra* (1), in which it has been held that the bye-law in question is *ultra vires*. As I find that I cannot agree with this view of section 298H(*e*), I therefore forward this criminal reference to the learned Chief Justice with a recommendation that this case should be laid before a Bench of two Judges.

The view of section 298H (*e*) which I take is as follows. The sub-section begins with the words "prohibiting, in any specified street or area, the residing of public prostitutes". The word which has to be interpreted is the word "area". In a municipality it appears to me that for the purpose of residence there are four units of area, as follows: (1) Houses, (2) Streets, (3) Muhallas, (4) Municipality. It does not seem to have been previously argued that the word "Municipality" can mean an area, but I find in section 2(9) of the Act the definition of "Municipality" as follows: "Municipality means any local *area* which is a municipality by reason of a notification issued under section 3 or, subject to the provisions of the said section, any local area which was

(1) (1931) I.L.R., 54 All., 1.

a municipality at the time immediately preceding the commencement of this Act."

I consider therefore that the word "area" in section 298 H(*e*) must include the word "area" used in section 2(9), and therefore the municipality itself must be an area in regard to which the Municipal Board may prohibit the residence of public prostitutes. From this it would follow that a Municipal Board may either prohibit the residence of public prostitutes in any particular house or street or muhalla or any number of the above areas or in the municipal area itself, and if it may prohibit the residence of public prostitutes in the whole municipal area it may prohibit the residence of public prostitutes in the whole municipal area less any particular part. The reasoning in *Muhammadi* v. *Municipal Board, Agra* (1) is based entirely on the argument that the bye-law in question did not specify an area within which public prostitutes were prohibited from residing. This reasoning is based on the supposition that the words "within municipal limits" do not mean an area. I have pointed out that the definition of municipality in section 2(9) shows that municipality does mean an area. There is therefore in the bye-law in question in the first clause a prohibition against public prostitutes residing in an area, that is within the municipal limits. The remainder of the clause excepts certain parts of the municipal area from the prohibition. I am not able to see anything in the bye-law which is beyond the powers granted to the Municipal Board by section 298H(*e*).

A further argument was addressed to me by learned counsel to the effect that the bye-law was unreasonable. I consider that it would be necessary for the applicant in revision to prove by evidence that the bye-law in question was unreasonable, and there is no evidence on this point on the record. I note that the plea was put forward by learned counsel in the case mentioned above and was rejected, and in that case it was put forward on an oral statement by learned counsel as regards the facts of the exempted area. It is obvious that a matter of this nature must be proved by evidence and not by allegations of counsel on matters of fact. For the reasons noted above I forward this Criminal Revision to the learned Chief Justice.

Mr. *Shiva Prasad Sinha*, for the applicant.

The Assistant Government Advocate (Dr. *M. Wali-ullah*), for the Crown.

(1) (1931) I.L.R., 54 All., 1.

1932
EMPEROR
v.
NAZIRAN.

SULAIMAN and YOUNG, JJ. :—This case has been referred to a Division Bench because a learned Judge of this Court differed from the opinion expressed in the case of *Muhammadi* v. *Municipal Board, Agra* (1). The Municipality of Agra made the following bye-law in 1917: "No public prostitute shall reside in any house or building or ply her trade within the municipal limits, excepting on both sides of the street . . ."

The accused is a public prostitute carrying on her trade and residing in a place not within the excepted streets. She had been fined thrice before and was found guilty of continuing her trade. Accordingly the Magistrate convicted her again and imposed a fine of eight annas per day for the period during which it was found that she had broken the bye-law.

The learned Sessions Judge has referred the case to the High Court in view of the decision in the case referred to above.

Power has been conferred on Municipal Boards under section 298H(*e*) of the U. P. Municipalities Act (Act II of 1916) for making a bye-law for the following purpose among others: "Prohibiting, in any specified street or area, the residing of public prostitutes and the keeping of a brothel or the letting or other disposal of a house or building to public prostitutes or for a brothel."

The definition of "Municipality" as given in section 2(9) of the Act is as follows: "Municipality means any local *area* which is a municipality by reason of a notification issued under section 3 or, subject to the provisions of the said section, any local area which was a municipality at the time immediately preceding the commencement of this Act."

It is therefore clear, as pointed out by BENNET, J., that the municipality is itself an area the limits of which are specified, well known and defined. The bye-law undoubtedly prohibits public prostitutes from

(1) (1931) I.L.R., 54 All., 1.

residing "within the municipal limits" except certain streets. It seems to us that the bye-law does specify the rest of the area within the municipal limits other than the excepted streets as the area in which public prostitutes shall not reside. We can see no force in the contention that the area in which residence is prohibited must be a smaller area and not a larger area of the town. There is no such restriction. It is, however, not necessary in this case to decide whether the word "area" may not include the entire area within the municipal limits. It has been suggested that there can be no specification of an area unless a bye-law mentions or names or designates particular streets or parts of muhallas. But when the bye-laws themselves show what the municipal limits are, the mention of such limits with the exception of certain parts of it does amount to specifying a particular area.

A new point has been urged before us which apparently was not discussed before the learned Judge who referred this case to us. The bye-law as quoted in the order of reference is not complete. The last portion of it is as follows: "Exception—Prostitutes owning houses in places other than those mentioned above may continue to reside in such houses, but future acquisitions of property shall not entitle them to live and carry on their profession there."

It is quite clear that reading the whole bye-law together with the exception in it, there is no absolute prohibition against prostitutes residing within the area other than the streets excepted. One class of prostitutes, namely those who own houses, are still allowed to carry on their trade within such area. This involves an invidious distinction between the two classes of prostitutes. As held in *Chanchal* v. *King-Emperor* (1) there should be no discrimination of this kind; the prohibition must be general and of universal application

(1) [1932] A.L.J., 28.

1932

EMPEROR v. NAZIRAN.

within the specified area, and must not make an exception in favour of any particular group or class of prostitutes.

In view of this last consideration we are of opinion that the bye-law, inasmuch as it failed to lay down an absolute prohibition within the specified area, was *ultra vires* and illegal. The Municipal Board would be well advised to reconsider the bye-law so as to make it of a general application within the specified areas where it intends that prostitutes should be prohibited from residing.

We accordingly accept this reference, though on a ground different from that on which it was based, and setting aside the conviction of the accused acquit her of the offence with which she was charged.

APPELLATE CIVIL.

Before Justice Sir Shah Muhammad Sulaiman and Mr. Justice Young.

1932 February, 25.

OFFICIAL RECEIVER, MORADABAD (APPLICANT) *v.* MURTAZA ALI AND OTHERS (OPPOSITE-PARTIES).*

Insolvency law—Applicability to suits and proceedings in revenue courts—Provincial Insolvency Act (V of 1920), section 28—Agra Tenancy Act (Local Act III of 1926), section 264—U. P. General Clauses Act (Local Act I of 1904), section 6(a)—Interpretation of statutes—Previous history of the law.

Before the present Tenancy Act, III of 1926, came into force the law undoubtedly was that the provisions of the Insolvency Act did not apply to suits and proceedings in the revenue courts. But that portion of section 193 of the former Tenancy Act, II of 1901, which had the effect of making the Insolvency law inapplicable to cases under the Tenancy Act having been deleted from section 264 of the present Act, there is no law now in force which makes the Insolvency law inapplicable to suits and proceedings under the Tenancy Act. So, where in execution of a decree under the Agra

* Second Appeal No. 4 of 1931, from an order of D. C. Hunter, District Judge of Moradabad, dated the 20th of December, 1930.