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REVISIONAL CRIMINAL.

Before Mr. Justice Kendall.

MUHAMMADI v. MUNICIPAL BOARD, AGRA.*

Municipalities Act (Local Act II of 1916), section 298, list I, sub-head H, clause (e)—Bye-laws—Bye-law specifying area within which prostitutes were permitted to reside—Ultra vires—Interpretation of statutes.

1931
May, 18.

The Municipal Board of Agra passed a bye-law under section 298, list I, sub-head H, clause (e), of the United Provinces Municipalities Act prohibiting prostitutes from living within Municipal limits except in the portions of the city specified in the bye-law. Held that the bye-law was *ultra vires* inasmuch as the Municipal Board had power to frame a bye-law prohibiting prostitutes from residing in a specified street or area, but it had no power to make a bye-law prohibiting them from residing in the whole of the Municipal area with the exception of a certain specified part.

In interpreting an Act like the Municipal Act, which encroaches on the rights of the subjects, the legislature is expected to manifest its intention clearly and beyond reasonable doubt. The recognized rule of interpretation in such a case is that any words contained in it should be interpreted if possible so as to respect such rights.

Mr. Shiva Prasad Sinha, for the applicant.

Mr. N. P. Asthana, for the opposite party.

KENDALL, J. :—This is an application for the revision of an order of the learned Sessions Judge of Agra confirming the order of a Bench of Magistrates imposing a fine on Mst. Muhammadi, a prostitute, under section 299 of the United Provinces Municipalities Act. The fine was imposed for the alleged infringement of a bye-law made by the Board, and the application for revision is made on the ground that the bye-law itself is *ultra vires*.

* Criminal Revision No. 147 of 1931, from an order of G. O. Allep, Sessions Judge of Agra, dated the 21st of May, 1930.

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Under section 298, list I, sub-head H(e), of the United Provinces Municipalities Act a Municipal Board is empowered to make, by special resolution, bye-laws "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".

In 1917 the Municipal Board of Agra passed a bye-law under this section of the Act to the following effect: "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 Kalka Bazar cross-road shops Nos. 2723/11 and 2175 on each side of the street."

This bye-law on the face of it specified the area within which prostitutes were permitted to reside. It did not specify the area within which they were prohibited from residing, and it is argued that on a true interpretation of the Act, the Board had no right to pass a bye-law of this nature.

It has also been argued that the bye-law is unreasonable, but I have very little information on this point, and all I have been told by counsel is that the area in which they are permitted to reside is a busy market area not far from the centre of a large city,—an area which may be very suitable for a few wealthy members of the profession, but difficult of access to numbers of unfortunate prostitutes who are for this reason practically prohibited from residing in the Municipality.

The real question is whether the bye-law is *ultra vires* or not. The word "specify" as defined in Webster's dictionary is "to mention or name as a particular thing, to designate in words so as to distinguish from other things; as to specify the uses of a

plant, to specify the article one wants to purchase." In the bye-law, it is argued, the only "street or area specified" in this way is "both sides of the street etc." as detailed therein, and it is this area which has been distinguished from the rest of the Municipality and set aside as a residence for prostitutes, a procedure which is inconsistent with clause (e) of section 298, list I, sub-head H. Mr. *Asthana* on the other side has argued that the bye-law also specifies "the Municipal limits", with the result that the rest of the Municipal area is distinguished from the area which is excepted, and thus notified as a "specified area" which is prohibited to prostitutes.

I think it must be admitted that the plain meaning of the section is the one which Mr. *Sinha* would give to it, viz. that the smaller area is the one that is specified. It has been pointed out to me that in the note to some model bye-laws which were published with the Municipal Manual in 1917 the view is expressed that section 298 H(e) only permits bye-laws to be made prohibiting in any specified area or street the residence of a public prostitute, etc. . . . ; it does not authorise bye-laws prescribing distinct areas within which public prostitutes *must* reside, or prohibiting their residence *anywhere else* within Municipal limits. It is true that though the legislature may have intended this to be the interpretation of the law, it will not necessarily follow that the courts will interpret it in this way unless it can properly be so interpreted according to the judicial rules of interpretation. I have, however, not been given any reason why the more obvious interpretation should not be preferred. Moreover, if it be supposed for the sake of argument that the bye-law could "specify" the whole of the Municipal area in this way, it does not appear that the Act empowered the Board to go further and to specify a second smaller area in which prostitutes *may* reside. Mr. *Asthana* has referred to the

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case of *Kruse v. Johnson* (1) to show that a court ought to be slow to hold that a bye-law is void for unreasonableness. It is however not the unreasonableness of the bye-law that is attacked so much as the illegality of it. In more than one case which has come before this Court it has been held that in deciding a question between a Municipal Board and a resident in the Municipality a very strict view will be taken of the Board's powers. In the case of *Kamta Nath v. Chairman, Municipal Board, Allahabad* (2) it was held that "the Municipal Act is an Act which encroaches on the rights of the subjects as regards property. The recognized rule of interpretation in such a case is that any words contained in it should be interpreted if possible so as to respect such rights." A somewhat similar view was taken by a Bench of this Court in the case of *Dassu v. King-Emperor* (3). Again in the case of *Imami v. King-Emperor* (4), a Bench of this Court has held that "the intention of the legislature by framing section 128(h) (i) of the Municipalities Act does not seem to be to give the Municipal Board a power to inspect and properly regulate all places of public resort. In interpreting an Act like the Municipal Act, which encroaches on the rights of the subjects, the legislature is expected to manifest its intention clearly and beyond reasonable doubt."

On these principles I must hold that the interpretation which must be placed on clause (e) of section 298, list I, sub-head H is the one which is not only the more reasonable one but also the one that encroaches less on the rights of individual citizens, viz. that the Board has power to make a bye-law prohibiting prostitutes from residing in a specified street or area, but not to make a bye-law prohibiting them from residing in the whole of the Municipal area with the exception of a certain

(1) [1898] 2 Q. B., 91.

(3) (1909) 6 A.L.J., 544.

(2) (1905) 2 A.L.J., 676.

(4) (1912) 10 A.L.J., 426.

specified part. For these reasons I accept the application, set aside the order of the court below, and direct that the applicant be acquitted and that the fine if paid be remitted.

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Before Sir Shah Muhammad Sulaiman, Acting
 Chief Justice.

EMPEROR v. PUTTU LAL.*

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 Mar., 26.

Excise Act (Local Act IV of 1910), section 64 (c)—Breach of condition of licence—Closing shop during selling hours.

Where a general condition in the licence for a liquor shop fixed the hours for opening and closing of the shop and enjoined that the shop should not be kept open at any other hour, it was held that the object of the condition was to prevent the sale of liquor outside the fixed hours, and that it could not be interpreted as meaning that at no time between the two specified limits the shop should be closed, even temporarily.

The applicant was not represented.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

SULAIMAN, A. C. J. :—This is a reference against an order convicting the accused under section 64(c) of the Excise Act (Act IV of 1910), for having broken one of the conditions of his licence.

When the Excise Inspector went to inspect his shop, he found it closed. When questioned later, the accused alleged that he had gone to a warehouse to bring four gallons of liquor which were entered in his register. The learned Magistrate infers that it was not a case of temporary absence, but of the closing of the shop on account of picketing. He accordingly convicted the accused and sentenced him to pay a fine of Rs. 50. The Sessions Judge has recommended that either the conviction be set aside or the fine be reduced to Rs. 5.

The fourth general condition in the licence applicable to all licences is in the following terms: "The orders for the opening and closing of the shops have