

## REVISIONAL CRIMINAL

*Before Mr. Justice Kendall and Mr. Justice Iqbal Ahmad*

EMPEROR *v.* BAFATAN\*

1933  
May, 19

*Municipalities Act (Local Act II of 1916), sections 180(5), 185—Construction of building before sanction—Notified Area—Whether section 180, clause (5) applicable to Notified Areas—Municipalities (Amendment) Act (Local Act II of 1919), sections 14, 15—Interpretation of statutes—When certain sections of an Act are made applicable, by the authority having power to do so, to a particular subject, whether subsequently amendments in those sections also become automatically applicable—Municipalities Act (Local Act II of 1916), section 314—Complaint under section 185 filed by President of Notified Area Committee, whose election as President was invalid—Jurisdiction.*

Inasmuch as the Local Government has not, in the exercise of the powers vested in it by section 338 of the Municipalities Act, II of 1916, extended to Notified Areas the provisions of the Municipalities (Amendment) Act of 1919, the amendments introduced by the latter Act do not apply to Notified Areas. Accordingly, clause (5) of section 180 of the Municipalities Act has no application to Notified Areas. Although section 180 was one of the sections made applicable to Notified Areas by Government notifications in June, 1917, the subsequent addition to that section made by the Act of 1919 did not *ipso facto* apply to Notified Areas.

So, where a person gave notice to the Notified Area Committee of his intention to make certain constructions, and commenced those constructions without having received either any sanction, conditional or unconditional, or any refusal from the Notified Area Committee, it was *held* that he could not be prosecuted under section 185 of the Municipalities Act.

Where the President of a Notified Area Committee was authorised by resolution to file prosecutions and complaints, and a complaint under section 185 of the Municipalities Act was filed by a person as President, whose election as President was subsequently held by a civil court to be invalid, it was *held* that the complaint not having been filed by an authorised person according to section 314 of the Municipalities Act, the Magistrate had no jurisdiction to try the case and the conviction was illegal.

\*Criminal Reference No. 642 of 1932.

1933

EMPEROR  
v.  
BAFATNA

Mr. *Saila Nath Mukerji*, for the applicant.

Mr. *Shiva Prasad Sinha*, for the opposite party.

KENDALL and IQBAL AHMAD, JJ. :—This is a reference by the Sessions Judge of Mirzapur recommending that the conviction of Mst. Bafatan under section 185 of the Municipalities Act (Local Act No. II of 1916, as amended by Act II of 1919) and the sentence of fine of Rs.15 passed on her be set aside. The reference came up before a learned Judge of this Court, who referred it to a Bench of two Judges.

The facts giving rise to the reference are as follows. By an application dated the 14th of January, 1931, Mst. Bafatan notified her intention to the Chunar Notified Area Committee to construct enclosure walls and a *kothra* in her house and prayed for permission to make the said constructions. \* \* \* B. Mathura Prasad, the President of the Notified Area Committee, inspected the locality on the 29th of March, 1931, and found that Mst. Bafatan had already made certain constructions without the permission of the Notified Area Committee. A notice was then issued to Mst. Bafatan calling upon her to show cause why she should not be prosecuted for building her house without the permission of the Notified Area Committee and eventually a complaint was filed against Mst. Bafatan under section 185 of the Municipalities Act by B. Mathura Prasad, the President of the Notified Area Committee, in the court of Thakur Ram Singh, a Magistrate of the first class. The learned Magistrate convicted Mst. Bafatan for an offence punishable under section 185 of the Municipalities Act and sentenced her to pay a fine of Rs.15. Mst. Bafatan filed an application in revision in the court of the Sessions Judge against the order of the Magistrate and the learned Sessions Judge being of opinion that the conviction was bad in law has made the present reference to this Court with the recommendations noted above.

\* \* \* \* \*

1933

EMPEROR  
V.  
BAFATAN

The question for consideration in the present reference is whether the conviction of Mst. Bafatan under section 185 of the Municipalities Act as regards the constructions made by her is legally sustainable. The decision of this question depends on the answer to the question whether the amendments made in the Municipalities Act (Act II of 1916) by Municipalities Amendment Act (Act II of 1919) do or do not apply to Notified Areas.

By section 337 of the Municipalities Act the Local Government is authorised to declare, by a notification, that in respect of any local area, other than a municipality, town area or agricultural village, it is desirable to make administrative provision for some or all of the matters described in sections 7 and 8 of the Act, by extending thereto the provisions of chapter XII of the Act which deals with Notified Areas. It is further provided by that section that a local area in regard to which such a notification has been issued is to be called a Notified Area. The power to apply or adapt to a Notified Area the provisions of any section of the Municipalities Act, or of any Act which may be applied to a municipality, or part of such section, or any rule, regulation or bye-law in force or which can be imposed in a municipality under the provisions of the Municipalities Act or any other Act, is reserved to the Local Government by section 338 (1)(a) of the Municipalities Act. In exercise of these powers the Local Government has declared various areas in the United Provinces of Agra and Oudh to be Notified Areas and by notifications dated the 6th of June, 1917, and the 11th of June, 1917, has extended to such areas generally the provisions of certain sections or portions of sections of the United Provinces Municipalities Act (Act No. II of 1916). It has further been declared by these notifications that where a Commissioner decides that the circumstances of any Notified Area in his division are such as to require the application of any other section or portions of sections of the Municipalities Act, he can apply or adapt such

1933

EMPEROR  
 v.  
 BAFATAN

sections or portions thereof to a particular Notified Area. Sections 178 to 185 of the Municipalities Act, which regulate the conditions on which a new building or any material alteration in a building, etc., may be made and provide the penalties for the breach of the rules contained in those sections, have been applied to all the Notified Areas in the United Provinces by the notifications referred to above. The sections that are relevant for the purposes of the reference before us are sections 178, 180 and 185 of the Act. Section 178 of the Act as applied to the Notified Areas requires that before beginning to erect a new building or making an alteration in a building a person should, in certain cases, give notice of his intention to do so to the Notified Area. Section 180 of the Act (Act II of 1916) contained four clauses and authorised Municipal Boards to refuse or to sanction any work, of which notice had been given, either absolutely or subject to certain conditions, and the section further reserved to the person giving the notice the right, in the event of the Board neglecting or omitting to pass an order on the notice given to it under section 178, to call the attention of the Board to the neglect on its part. A further sub-clause, sub-clause (5), was added to section 180 by the United Provinces Municipalities Amendment Act (Act II of 1919). That sub-clause runs as follows: "No person shall commence any work of which notice has been given under section 178 until sanction has been given or deemed to have been given under this section."

The addition of sub-clause (5) to section 180 necessitated an addition in section 185 of the Municipalities Act (Act II of 1916) and certain words were inserted in that section by the same Amending Act (Act II of 1919). Section 185 of Act II of 1916 ran as follows: "Whoever begins, continues or completes the erection or re-erection of . . . . . a building. . . . . without giving the notice required by section 178, or in contravention of an order of the Board refusing sanction

or any written directions made by the Board under section 180 or any bye-law, shall be liable upon conviction to a fine which may extend to Rs.500." By the Amending Act of 1919 the words "of the provisions of section 180, sub-clause (5), or" were inserted in the section between the words "or in contravention" and "of an order of the Board".

Before the amendments noticed above were introduced by the Amending Act of 1919 it was perfectly open to a person to proceed with the construction of any building of which notice had been given under section 178 without waiting for the sanction of the Municipal Board, provided that before the commencement of the building the Board had not communicated to him an order refusing sanction or any written direction that it thought fit to issue under section 180 of the Act. In other words the right of a person, who had given the notice contemplated by section 178, to proceed with the proposed constructions was subject only to this condition that the Board could, in the exercise of the powers vested in it by section 180, refuse permission to make the proposed constructions or call upon the person giving the notice to make the constructions subject to certain conditions, and a disregard of the order of the Board either refusing sanction or according sanction subject to certain conditions was made penal by section 185 of the Act. By the Amending Act of 1919, for the first time, a further condition was imposed that the person giving notice under section 178 could not commence the construction of the building unless and until sanction had been given by the Board for the construction of the same, and it was provided that a person who commenced the construction of a building without the sanction of the Board would be liable to a fine which may extend to Rs.500. It is not disputed that the Local Government has not, in exercise of the powers vested in it by section 338 of the Act, extended to Notified Areas the provisions of the Amending

1933

---

 EMPEROR  
 v.  
 RAJATAN

1933

EMPEROR  
v.  
BAFATAN

Act of 1919. There is no escape, therefore, from the conclusion that no section of the Municipalities Act (Act II of 1916) as applied to Notified Areas provides that a person is not to construct a building without having previously obtained the sanction of the Notified Area. It is not alleged that after Bafatan had given the notice referred to above, and before she proceeded to construct the building, the Notified Area either refused sanction or communicated to her any direction as regards the conditions on which she could make the building. She, therefore, did not contravene any of the provisions of the Act as applied to Notified Areas as regards the constructions of buildings and could not be convicted under section 185 of the Act.

It was argued on behalf of the Notified Area that as sections 180 and 185 of the Municipalities Act were notified by the Local Government to apply without any modification to Notified Areas, any subsequent amendments of these sections of the Act do *ipso facto* apply to Notified Areas. Reliance was placed on section 8 of the United Provinces General Clauses Act in support of this argument. The argument is untenable. Section 8 of the General Clauses Act is as follows: "Where any United Provinces Act repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted." The provisions contained in sections 178 to 185 of the Act (Act II of 1916) have not been repealed and re-enacted by any Act of the Local Legislature, and, therefore, section 8 of the General Clauses Act has no application to the case before us. All that has been done by the Amending Act of 1919 is to make certain additions to sections 180 and 185 of the Act. These additions not having been applied to Notified Areas cannot regulate and govern the constructions of buildings.

1933

EMPEROR  
v.  
BAFATAN

in those areas. We hold, therefore, that Mst. Bafatan was perfectly entitled to make the constructions without awaiting the sanction of the Notified Area, and her conviction under section 185 of the Act was bad in law.

\* \* \* \* \*

There is yet another unanswerable objection to the maintainability of the conviction of Mst. Bafatan. The complaint, as already stated, was filed by B. Mathura Prasad as President of the Notified Area Committee. It was contended on behalf of the accused that B. Mathura Prasad was not duly elected President of the Notified Area, and, therefore, in view of the provisions of section 314 of the Act, the court could not take cognizance of the offence alleged to have been committed by Mst. Bafatan on a complaint filed by B. Mathura Prasad.

By a resolution dated the 26th of April, 1931, the Notified Area Committee authorised "B. Mathura Prasad Sahib to incur expenditure up to the sanctioned budget limit" and further authorised "the President B. Mathura Prasad Sahib to file prosecutions and complaints in general, under the sections of the Notified Area Act." These resolutions make it manifest that whereas B. Mathura Prasad was authorised in his individual capacity to incur expenditure, the authority delegated to him to file complaints was in his capacity as President of the Notified Area. It is admitted that it has been held by the civil court that the election of B. Mathura Prasad as President of the Notified Area, Chunar, was invalid. B. Mathura Prasad not being a duly elected President of the Notified Area Committee could not, in exercise of the delegated authority, legally file the complaint against Mst. Bafatan and the learned Magistrate had no jurisdiction to proceed with the case.

For the reasons given above we accept the reference, set aside the conviction of Mst. Bafatan and direct that the fine, if paid, be refunded to her.