

REVISIONAL CRIMINAL.*Before Mr. Justice Abdul Qadir.***JOTI PERSHAD—Petitioner,***versus***THE CROWN—Respondent.**

1921

June 13.

Criminal Revision No. 1651 of 1920.

Punjab Municipal Act, III of 1911, sections 3 (10), 188—Bye-laws of Delhi Municipality—inconsistent with the provisions of the Act and unreasonable—whether enforceable.

By one of the bye-laws of the Delhi Municipality framed under section 188 of the Punjab Municipal Act "occupiers" of stables used for more than six animals were required to obtain a license from the Committee, and the word "occupier" was defined as meaning "the person who is responsible for the letting or sub-letting of the premises to the person in charge of animals and may include the owner." The Municipal Act itself in paragraph (10) of section 3, however, defined "occupier" as including an owner in actual occupation of his land or building, etc. The Petitioner was owner of stables which he had leased to one R. M. and in which more than six animals were stabled without a license. The Petitioner was fined Rs. 10 for a breach of the bye-laws.

Held, that the definition of "occupier" as given in the bye-laws cannot be enforced in so far as it is inconsistent with that given in the Act itself.

Narayan Chandra Chatterjee v. Corporation of Calcutta (1), followed.

Held also, that the bye-law making the owner responsible in a case where he is not in actual occupation and has no power to control the acts of his tenant with regard to the use of the premises leased is manifestly unjust to the owner and hence unreasonable, and that the English law as to the necessity of bye-laws being reasonable is applicable to bye-laws framed in the exercise of their statutory powers by Municipal Boards in India.

Emperor v. Bal Kishin (2), followed.

Revision from the order of R. H. Crump, Esq., Additional District Magistrate, Delhi, dated the 1st June 1920, affirming that of Sohan Lal, Esq., City Magistrate, 1st class, Delhi, dated the 1st April 1920, convicting the Petitioner.

DALIP SINGH, for Petitioner.

NEMO. for Respondent.

1921

JOTI PERSHAD
v.
THE CROWN.

ABDUL QADIR, J.—This is a petition for revision of an order under which the Petitioner has been fined Rs. 10 for a breach of the bye-laws made by the Delhi Municipality under Section 188 of the Punjab Municipal Act. Mr. Dalip Singh for the Petitioner has explained that, though the amount of fine is small, his client is fighting this case on principle, and that the interests of all owners of stables or mews in Delhi are involved. The case is an important one from this point of view and may be discussed at some length.

The Delhi Municipality has a bye-law among the bye-laws framed by it for licensing premises used as stables for horses, which runs as follows:—

“No person shall allow to be stabled at any time more than six animals in stables of which he is the occupier, unless he has received a license from the Committee in such behalf.”

A report was made on behalf of the Municipality before the City Magistrate at Delhi that the Petitioner, Joti Pershad, was the owner of a stable, which he had leased to Richhu Mal and in which more than six animals were stabled without a license. Joti Pershad was summoned and admitted that “the stable was his, and that he had let it to Richhu Mal, but added that it was for the latter to take out a license.”

The Magistrate held that Joti Pershad was an “occupier” within the meaning of the rules and therefore responsible. He, therefore, imposed a fine of Rs. 10 on him. The Petitioner applied to the Additional District Magistrate, who relied on the definition of “occupier” which had been followed by the City Magistrate and agreeing with the latter dismissed the Revision. The Petitioner has, thereupon applied for revision to this Court and his learned counsel has urged that the orders of the Courts below should be set aside on the following grounds:—

- (1) The definition of an “occupier” given in the bye-laws made by the Delhi Municipality under section 188 (b) is inconsistent with the definition of the same term given in the Act itself and is therefore *ultra vires*.
- (2) A bye-law should be reasonable, which the present one is not.

- (3) This was a case in which the Municipality had a remedy against the actual occupier as apart from the owner and therefore the discretion to punish the owner or the occupier should have been reasonably exercised in favour of the petitioner.

1921

JOTI PERSHAD
v.
THE CROWN.

I think there is force in the above contentions. The definition of "occupier" in the bye-laws is as below :—

"Occupier means the person who is responsible for the letting or sub-letting of the premises to the person in charge of animals and may include the owner."

The same term is defined thus in the Municipal Act itself, in paragraph (10) of Section 3 :—

"Occupier includes an owner in actual occupation of his land or building, and also any person for the time being paying or liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which the word is used."

According to this definition Joti Pershad, not being the owner in actual occupation of his own stables, would not be an occupier, while Richhu Mal would be the person responsible as "occupier" if any rule or bye-law has been broken. The definition of "occupier" as given in the bye-laws cannot be rightly followed where it is, and to the extent it is, inconsistent with that contained in the Act itself. In *Narayan Chandra Chatterjee versus Corporation of Calcutta* (1) a Division Bench of the Calcutta High Court consisting of Sir Lawrence Jenkins and Mr. Justice Woodroffe has held that a bye-law must conform with the provisions of the enactment under which it purports to be made. I think the one in question differs materially from what is contained in the Act and should not be enforced.

Coming to the second test, it is contended by Mr. Dalip Singh that the bye-law as it has been interpreted, making the owner responsible in a case where the latter is not in actual occupation and where he has no legal power to control the acts of his tenant with regard to the use of the premises leased, is manifestly unjust to the owner and hence unreasonable. The Allahabad High Court have held in *Emperor v. Bal Kishan* (2)

(1) (1909) 4 Indian Cases 259.

(2) (1902) I. L. R. 24 All. 439.

1921

that—

—
JOTI PERSHAD
v.
THE CROWN.

“The English law as to the necessity of bye-laws being reasonable is applicable to bye-laws framed in the exercise of their statutory powers by Municipal Boards in India.”

Mr. Dalip Singh has referred me to several other rulings which support his contentions, but it is hardly necessary to cite them or to discuss his third contention as, for reasons given above, I think this revision should be accepted. I think Joti Pershad was not responsible for any breach of the rules. I accept his petition and set aside the orders of the Courts below. The fine of Rs. 10, if realized, will be refunded.

Revision accepted.
