

1910.

SOMANA
BASAPPA
v.
GADIGEYA
KORNAYA.

It seems to us that under the law, as it stands in such cases as this, it is not open to the Court to enter upon a defence which, in substance, consists of an allegation of an oral agreement varying the written document, and if it is the desire of the Legislature that such defences which are of a very common occurrence in these cases, should be investigated and decided by the Courts, then the only course to secure that end is to extend section 10A of the Dekkhan Agriculturists' Relief Act to the districts where it is desired that the Court's powers in this respect should be enlarged.

For these reasons we affirm the decree under appeal and dismiss the appeal with costs.

Decree confirmed.

G. B. R.

CRIMINAL APPELLATE.

Before Mr. Justice Batchelor and Mr. Justice Rao.

EMPEROR v. KALEKHAN SARDARKHAN.*

Bombay District Municipal Act (Bombay Act III of 1901), section 96†--Municipality—Permission of the Municipality—Building a wall which had fallen down—Absence of permission—Material reconstruction—Erecting a building.

1910.

November 17.

The accused applied to the Municipality on the 18th April 1910 for leave to reconstruct a wall of his house which had fallen down. Under sub-section 4

* Criminal Appeal No. 391 of 1910.

† The material portion of section 96 runs as follows:—

96. (1) Before beginning to erect any building, or to alter externally or add to any existing building, or to reconstruct any projecting portion of a building in respect of which the Municipality is empowered by section 92 to enforce a removal or set-back, the person intending so to build, alter, or add shall give to the Municipality notice thereof in writing

(5) Whoever begins or makes any building or alteration or addition without giving the notice required by sub-section (1), or without furnishing the documents or affording the information above prescribed, or except as provided in sub-section (4), without awaiting, or in any manner contrary to, such legal orders of the Municipality as may be issued under this section, or in any other respect contrary to the provisions of this Act or of any by-law in force thereunder, shall be punished with fine which may extend to one thousand rupees.

of section 96 of the Bombay Municipal Act (Bombay Act III of 1901) the Municipality had one month within which to make known their decision ; and on the 13th May they issued an order to the accused prohibiting him from making the reconstruction. In the meanwhile, on the 11th May, the accused reconstructed the wall. He was, therefore, prosecuted under section 96 of the Act for having reconstructed the wall without the permission of the Municipality, but the Magistrate relying on the case of *Queen-Empress v. Tippana*⁽¹⁾ acquitted him. On appeal:—

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Held, reversing the order of acquittal, that the accused had erected a building within the meaning of section 96 of the Bombay District Municipal Act, 1901, since the rebuilding of the whole wall which had fallen down was a material reconstruction or an erection of a building as defined in the explanation to the section.

Queen-Empress v. Tippana⁽¹⁾ is not an authority under the new Act.

APPEAL by the Government of Bombay from an order of acquittal passed by Laxmishankar P., Magistrate of the Third Class, Surat.

The accused was the owner of a house within the Municipal limits of the town of Rander, in the Surat District. In February 1910, a *kachha* wall of the house had fallen down, to reconstruct which he applied to the Municipality of Rander, for permission under section 96 of the Bombay District Municipal Act (Bombay Act III of 1901), on the 19th April 1910.

On the 11th May 1910, the accused, without waiting for the permission of the Municipality, reconstructed the *kachha* wall.

The Municipality however informed the accused on the 13th May 1910 that they were unable to grant him the permission sought.

On these facts the accused was prosecuted under section 96 of the Bombay District Municipal Act (Bombay Act III of 1901) in that he rebuilt the wall without permission from the Municipality.

The trying Magistrate relying on the ruling in *Queen-Empress v. Tippana*⁽¹⁾ acquitted the accused.

(1) (1888) Ratanlal's Un. Cri. Ca. p. 402.

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The Government of Bombay appealed against the order of acquittal to the High Court.

J. A. Shah, Acting Government Pleader, for the Crown.

No one appeared for the accused.

BACHELOR, J. :—The respondent here was prosecuted under section 96 of the Bombay District Municipal Act (Bombay Act III of 1901), for that he erected a new building without permission from the Municipality, and without waiting one month for the Municipality to pass orders in his case.

There is no dispute about the facts which are these :—The wall of the respondent's house had fallen down and under section 96 of the Act he made an application to the Municipality for leave to reconstruct it. That application was dated the 19th April 1910. Under sub-section 4 of section 96 the Municipality have one month within which to make known their decision, and on the 13th of May they issued an order to the respondent prohibiting him from making the reconstruction which he desired. The reconstruction had however been made before the 13th of May. The Magistrate acquitted the accused solely on the authority of the ruling in *Queen-Empress v. Tippana*⁽¹⁾ and the only question before us is whether that decision governs the present case. We think that it does not. That was a decision passed under section 33 of the Bombay District Municipal Act of 1873, which section differs in material particulars from section 96 of the existing Statute. By sub-section 7 of section 3 of the present Act "building" is defined to include walls, and by clause (a) appended to the explanation of section 96, the expression "to erect a building" includes any material reconstruction of a building. Here the whole wall had fallen down and was rebuilt. That therefore was a material reconstruction or an erection of a building. That being so, it was obligatory upon the accused under section 96 of the Act not to erect this building before receiving the Municipality's orders, or without waiting for those orders as prescribed in the section.

(1) (1886) Ratanlal's Un. Cri. Ca. p. 402.

The accused, therefore, has infringed the law laid down in the section, and we must reverse his acquittal and convict him under section 96, sub-section 5. It is not desired to inflict any severe punishment upon the accused, the object of the present appeal being merely to establish the principle. We direct that the accused pay a fine of one (1) rupee.

Acquittal set aside.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Batchelor.

BALAMBHAT BIN RAVJIBHAT AND OTHERS (JUDGMENT-DEBTORS);
APPELLANTS, v. VINAYAK GANPATRAV PATVARDHAN (JUDGMENT-
CREDITOR), RESPONDENT.*

1911.

January 11.

Landlord and tenant—Forfeiture clause contained in a decree—Execution proceeding—Power of the Court to grant relief.

The principle that Courts of equity will not forego their power to grant relief against forfeiture in the case of non-payment of rent where the relations of the parties are those of landlord and tenant, merely on the ground that the agreement between them is embodied in a decree of the Court, applies alike to a suit to enforce a decree and to proceedings in execution.

Krishnabai v. Hari(1), explained.

SECOND appeal from the decision of V. N. Rahurkar, First Class Subordinate Judge of Satara with appellate powers, confirming the order passed by G. G. Nargund, Subordinate Judge of Tasgaum, in an execution proceeding.

Plaintiff Vinayak Ganpatrav brought a suit against his tenants Balambhat bin Ravjibhat and others to recover possession of certain lands. A decree was passed on the 24th September 1896 in accordance with the terms of a compromise arrived at between the parties and contained the following provisions:—

1. As to the lands in dispute, namely, * * * the defendants are to do the vahivat thereof as stated below in perpetuity from generation to generation

* Second Appeal No. 230 of 1910.

(1) (1906) 81 Bom. 15.