

## REVISIONAL CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

1890.

December 1.

IN RE JAMNA'DA'S DULABDA'S.\*

*Bombay District Municipal Act (Bombay Act VI of 1873), Sec. 33—Sanad under the City Survey Act (Bombay Act IV of 1868)—The right of the Municipality to call for the production of the sanad.*

Under section 33 of the Bombay District Municipal Act (Bombay Act VI of 1873) a Municipality has no right to insist on the production of a *sanad* issued under section 10 of the City Survey Act (Bombay Act IV of 1868) before granting permission to build.

APPLICATION under section 435 of the Criminal Procedure Code (Act X of 1882).

On the 13th September, 1889, the applicant gave notice to the Municipality of Surat of his intention to build a new house on the foundations of an old one which had been pulled down by orders of the Municipality on account of its dilapidated state.

On the 27th September, 1889, the Municipality called upon the applicant to produce the *sanad* issued to him under the City Survey Act (Bombay Act IV of 1868).

On the 27th February, 1890, the applicant applied for permission to rebuild his house, but without producing the *sanad*. The Municipality replied that until the *sanad* was produced, his application would not be granted.

On the 3rd April, 1890, the applicant furnished the Municipality with a plan of the proposed building, and renewed his application for leave to rebuild his house, stating that he had no *sanad* with him. On the 10th April, 1890, the Municipality replied to the same effect as they had done to his former applications.

On the 9th May, 1890, the applicant gave the Municipality a final notice, informing them that he had commenced building his house.

The applicant was thereupon prosecuted, at the instance of the Municipality, for acting in contravention of section 33 of the Bombay District Municipal Act (Bombay Act VI of 1873).

\* Criminal Revision, No. 288 of 1890.

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The applicant was convicted by the Honorary First Class Magistrate, and sentenced to pay a fine of Rs. 15.

Against this conviction and sentence the present application was made to the High Court under section 435 of the Code of Criminal Procedure.

*Máneksáh Jehángirsháh* for accused :—Section 33 of Bombay Act VI of 1873 does not empower the Municipality to require the production of a *sanad* under the City Survey Act. The only information they are entitled to demand under that section is information regarding “the limits, design, and materials of the proposed building.” But the *sanad* issued under the City Survey Act gives information not only about the limits of a building site, but also about the tenure on which it is held. The Municipality have clearly no right to ask for such information under the section. The section lays down certain conditions which the Municipality may insist upon for sanitary purposes. It does not empower the Municipality to raise questions of title.

*Shántarám Náráyan*, Government Pleader, for the Municipality :—The *sanad* under the City Survey Act specifies the limits of the building, and affords the most reliable and authentic information on which the Municipality can act in granting or refusing permission to build. The words of the section are wide enough to cover a case like this.

BIRDWOOD, J.:—The applicant has been convicted under clause 3 of section 33 of Bombay Act VI of 1873 of building his house without the permission of the Surat Municipality. He gave specific notice on the 24th March, 1890, to the Municipality of his intention to build a house on the foundations of his former house, which the Municipality had, in August, 1889, caused to be pulled down on account of its ruinous state. The Municipality replied to this notice on the 10th April, 1890, to the same effect as they had replied to a former notice given with the same object. They said that the applicant must produce the *sanad* granted him under the City Survey Act, or else a memorandum of the measurements of his property made by the City Survey Department. The applicant says he has no *sanad*. He had, however, on the 3rd April furnished the Municipality with a plan

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of the proposed house. His contention is that the order of the 10th April, virtually prohibiting the building of a house unless he produced a *sanad* or a memorandum of the measurements of his property, is illegal and that he is not punishable for disregarding it. This contention is, in our opinion, sound. Under clause 1 of section 33 of the Act, the Municipality were empowered to call on the applicant to furnish information as to the limits, design, and materials of the proposed building. The *sanad* granted to the applicant under section 10 of Bombay Act IV of 1868 (if any *sanad* was granted him) would contain information as to the limits and tenure of his holding. But such information the Municipality is not empowered to call for under section 33 of Bombay Act VI of 1873. It is only for building without a notice or without affording the information expressly prescribed by clause 1 of section 33 or in any manner contrary to a legal order of the Municipality that a person so building is punishable under clause 3. The applicant gave due notice on the 24th March. The information which he failed to afford was not information which the Municipality were empowered by clause 1 to call for; and the Municipality could not legally prohibit the building of the house for failure to furnish information which they could not legally call for. If they had called for information as to the limits of the proposed building, they would have been within their rights, and if he had refused to give that information, the conviction would have been good. But they asked for more than that, and their demand was outside the Act altogether. We reverse the conviction and sentence, and direct the fine paid to be refunded.

*Conviction and sentence reversed.*

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