

following the ruling in *Somappa v. Naglingappa*⁽¹⁾, that is to say, to the decision in *Madivalappa v. Bhamappa*⁽²⁾, and also a party to the contrary decision in *Madhavrao v. Venkatesh*⁽³⁾. It seems to me after having heard the matter fully re-argued, that the later decision was the right one and ought to be affirmed by the Full Bench.

AFTER the decision by the Full Bench, the case was placed for final orders by the Court, when the following order was passed.

MACLEOD, C. J.:—After the finding of the Full Bench on the question referred to it, the appeal must be allowed, the order of the lower appellate Court set aside, and the case remanded to that Court to be decided on its merits on the footing that the Court has jurisdiction to go into the merits. The appellant to get his costs of the appeal. The cost of the lower appellate Court will be costs in the appeal to that Court.

Appeal allowed.

R. R.

(1) (1917) S. A. No. 879 of 1915 (Unrep.).

(2) (1918) F. A. No. 229 of 1916 (Unrep.).

(3) (1919) C. A. No. 758 of 1918 (Unrep.).

CRIMINAL APPELLATE.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

EMPEROR v. RAMRAO ABAJI PRABHU^{*}.

Bombay District Municipal Act (Bombay Act III of 1901), sections 3 (7), 96 (5)†—Building, erection of—Notice to Municipality—Erection of compound-wall—Compound-wall is building.

The compound-wall of a house is included in the term "building" as defined in section 3, clause 7, of the Bombay District Municipal Act, 1901. Before erecting such a wall notice must be given under section 96 of the Act.

^{*} Criminal Appeal No. 38 of 1921.

1920:

DATTATRAYA
KESHAV
v.
TUKARAM
RAGHU.

1921.

June 9.

1921.

EMPEROR
v.
RAMRAO.

THIS was an appeal by the Government of Bombay from an order of acquittal passed by G. S. Guhagarkar, Third Class Magistrate at Malvan.

The accused was charged with an offence punishable under section 96, clause 5, of the Bombay District Municipal Act, 1901.

He owned a house at Malvan. To this house there was a compound thirty feet wide. At the end of the compound, the accused commenced to build a stone-compound-wall. He did not obtain permission of the Municipality to build it. When during construction, the Municipality asked him to stop the work and apply for permission, he did not do so. He completed the wall.

The accused was prosecuted for failing to comply with the requisition.

The trying Magistrate acquitted the accused, because he held, following 19 Bom. L. R. 521 and 13 Bom. L. R. 494, that the compound-wall was not a building.

The Government of Bombay appealed against the order of acquittal.

T. N. Valavalkar, for the accused.

S. S. Patkar, Government Pleader, for the Crown.

MACLEOD, C. J. :—This is an appeal by Government against an order of the Third Class Magistrate dismissing the complaint of the Malvan Municipality brought against the accused in the following circumstances. The accused is the owner of a building within the Municipal limits. He wanted to erect a stone-wall to his compound at a distance of thirty feet from the house. He commenced to erect the wall without giving notice under section 96 of the Bombay District Municipal Act III of 1901, whereupon he was served with notice

to stop the construction of his wall until he had obtained permission. The accused, however, paid no attention to the notice, but finished the wall in contravention of the orders of the Municipality, in consequence of which the Municipality accorded its sanction for the prosecution of the accused for failing to give notice, and directed the Municipal Inspector to lodge a complaint against him under section 96, clause (5), of the Act.

The question is, therefore, whether the accused was entitled to build his compound wall without giving notice under section 96. If the "compound wall" comes within the definition of "building," then clearly the accused was altering externally or adding to the existing building by building the compound wall. Now the definition of "building" in section 3 (7) is as follows:—'Building' shall include any hut, shed, or other enclosure, whether used as a human dwelling or otherwise, and shall include also walls, verandahs, fixed platforms, plinths, door-steps, and the like."

Ordinarily speaking a building cannot exist without walls. Therefore there would be no necessity in the definition of the word "building" to mention that it includes walls unless it was intended to include other walls in addition to those walls without which the building could not exist.

In the definition in the previous Act VI of 1873 it was stated that the word "building" should include compound walls, door-steps, verandahs, and the like, and the omission of the word "compound" from the definition in the Act of 1901 clearly shows that the Legislature intended to include within the definition of the word "building" not only compound walls but other walls which the owner of the premises might erect for various purposes besides that of enclosing the

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land on which the building stood. Otherwise the definition that the term "building" shall include walls is absolutely meaningless. I think, therefore, that the accused was bound to give notice to the Municipality under section 96, and that he disregarded the notice to stop work. Consequently he was liable to be punished with a fine under section 96 (5) of the Act. It is certainly undesirable that house-owners should disregard the notices served upon them in such cases as these by Municipalities. But it may be that the accused had been advised that his construction of the Act was correct, and that the Municipality were exceeding their powers in asking him to stop the building of his wall. It is not, therefore, a case for exacting a severe penalty. In any event the accused has rendered a service to the public by enabling this Court to give a judicial decision on the point which was certainly not beyond dispute. It is sufficient, therefore, to convict the accused under section 96 (5) of the Bombay District Municipal Act III of 1901 and sentence him to pay a fine of rupee one.

SHAH, J. :—I agree.

Order accordingly.

R. R.
