
(1923) 09 BOM CK 0008

In the Bombay High Court

Case No : Criminal Application for Revision No. 193 of 1923

Dayabhai Lallubhai

APPELLANT

Vs

The Ahmedabad Municipality

RESPONDENT

Date of Decision : 27-09-1923

Acts Referred:

Bombay District Municipal Act, 1901 — Section 3(12), 90(3)

Citation : AIR 1924 Bom 116 : (1923) 25 BOMLR 1218

Hon'ble Judges : Lallubhai Shah, J;Crump, J

Bench : Division Bench

Judgement

Lallubhai Shah, Kt., Ag. C.J.

1. The applicants before us were first given a notice on August 3, 1921, to do certain things u/s 90, Sub-section (3), of the Bombay District Municipal Act in respect of an open space owned by them, but which was accessible to the occupiers of other houses in the same dehla. Objections to that notice were raised and after considering these objections the Municipality issued another notice on June 30, 1922, which is in these terms:

By order of the Chief Officer, Ahmedabad Municipality, you are hereby informed by this notice that you get the dehla road in your Pole levelled and make way for passage of water and put up lights for the inhabitants of the dehla.

2. One notice was given to accused Nos. 1 and 2 and a similar notice was given to accused No. 3. These notices were not complied with, and as a result the petitioners were prosecuted under the Bombay District Municipal Act. The learned First Class Magistrate found that the notice was legal and that it was not so vague and indefinite as to justify non-compliance with the notice, and accordingly convicted the accused and sentenced each of them to pay a fine of Rs. 10 each.

3. The accused have applied for a revision of this order, and two points have been urged: firstly, that the open space in respect of which the notice is given is

not a "street" within the meaning of the definition of the word as given in Section 3, Clause (12), of the Bombay District Municipal Act III of 1901; and, secondly, that the notice is vague and indefinite. We have heard an interesting argument as to whether it would be a street within the meaning of the definition. I am satisfied that the space in respect of which notice is given is a street within the meaning of the second paragraph of Clause (12) of Section 3 of the Act.

4. It has been urged in support of the contention on behalf of the applicants that the last clause of that paragraph, viz., "but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid" has reference to all persons other than the occupiers in that street or in that space. On the other hand, it is urged that "other persons" mean persons other than "the occupier of any such building," and that the last clause has no reference to the space which the applicants cannot prevent other occupiers from using at all hours. Having regard to the expression used in that definition "notwithstanding that it may be private property", and to the grammatical construction, it seems to me that "all other persons" would mean persons other than the occupier of such building, and would not mean all occupiers of all the buildings within that space. That contention must, therefore, be disallowed.

5. Secondly, it is urged that the notice is vague and indefinite, and that therefore, it could not be legally enforced. I think there is force in this contention, because it is not stated what space in the dehla is to be levelled and how. It is generally stated that the road is to be levelled. Secondly, as regards the passage of water it is not stated in the notice as to whether the water meant was the rain water only or the rain water and Bullage water or only the sullage water and what sort of private passage was to be provided. As regards the lights, it is not stated where the lights are to be put up and how many lights are to be put up for the inhabitants of the dehla. In other words, the manner of carrying out the work is not specified as required by Section 90, Sub-section (3), of the Bombay District Municipal Act. It is difficult to comply with a notice which is so vague and indefinite. I think this contention of the applicants should be allowed. It would not be reasonable to require the present applicants to comply with notices, the vagueness of which I have just indicated. I would, therefore, make the rule absolute and set aside the convictions and sentences and direct the fines, if paid, to be refunded.

Crump, J.

6. I agree, The land with which we are concerned in the present case falls within the definition of "street" contained in the second paragraph of Clause (12) of Section 3 of the Bombay District Municipal Act III of 1901. It is a vacant space, and the fact that it is private property, does not prevent of its being a "street," or the fact that it is closed by gates at either end. Houses abut upon it and it is used by the occupiers of such houses as a means of access to and from public places and thoroughfares. Therefore it fulfils the definition of "street," unless it is

excluded by the concluding words of this paragraph which run as follows:

But shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid.

7. Now, construed grammatically, there can be no doubt that the word "other" means person other than the occupier of any such building, and if the word "occupier" be read along with the words "any part of such space", the intention of the legislature is clear enough. That intention is to preserve the rights of the occupier of any building to any part of the open space over which he has exclusive right as against the occupiers of other buildings. It is only such portions of the open space that are excluded from the definition of "street". Therefore these words, which have been relied upon in the present case, do not have the effect which is sought to attribute to them. It is only, if it be established that any of these owners was entitled to exclude all other persons including the other occupiers in this dehla from any part of the open space, that he can claim that that particular portion of the open space is not within the definition of "street."

8. As to the second point, I agree that a notice, such as we have in this case, is not drafted with the precision with which it ought to be drafted, and that it would be practically impossible for a person receiving such a notice to know precisely what he was called upon to do, or in what manner he was called upon to do it. Section 90 of the Act, under which that notice purports to be issued, requires that the work, shall be specified, and that the manner of doing the work shall also be specified. Taken literally, the notice would require the occupiers to level and make passages for water with regard to the whole of this open space, in fact, convert the whole of the dehla into a made road. It is conceded by the Magistrate in his judgment that that could hardly be the intention, and indeed that is clearly so, if the situation of the property is apprehended. The manner in which the work is to be carried out is not attempted to be specified, and I agree that on that ground the convictions must be set aside.