
(1930) 03 BOM CK 0018

In the Bombay High Court

Case No : Criminal Application for Revision No. 458 of 1929

Emperor

APPELLANT

Vs

Bechardas Narotamdas Munshi

RESPONDENT

Date of Decision : 30-03-1930

Acts Referred:

Bombay City Municipalities Act, 1925 — Section 123(7)
Bombay District Municipal Act, 1901 — Section 96(5)

Citation : (1930) 32 BOMLR 768

Hon'ble Judges : Mirza, J;Broomfield, J

Bench : Division Bench

Judgement

Mirza, J.—These are five revisional applications against the orders of the Sessions Judge of Broach who has confirmed the convictions of the applicants by the First Class Sub-Divisional Magistrate, Broach, for certain offences under the Bombay City Municipalities Act, 1925, but has varied the sentences originally imposed. The applications have been heard together.

2. In Revision Application No. 460 of 1929, the facts found were that the applicant had in 1927 constructed a house without previously obtaining the permission of the Broach Municipality in that behalf. The Broach Municipality prosecuted the applicant for the offence and the applicant was convicted and fined Rs. 100 on October 10, 1927. On April 30, 1929, the Municipality filed the present complaint alleging that the house constructed by the applicant and allowed to remain undemolished by her was a continuing contravention of the provisions of Section 123(7) of the Bombay City Municipalities Act, The First Class Sub-Divisional Magistrate who tried the case convicted the applicant of an offence u/s 123 (7) and sentenced her to pay a fine at the rate of eight annas per day from October 21, 1927, to April 30, 1929. The appeal Court confirmed the conviction but reduced the fine to four annas per day for a period of six months only.

3. The two main grounds taken up in revision are (1) that the lower Courts have

erred in their interpretation of Section 123(7) and (2) that the lower Courts have erred in holding that the cause of action for the complaint had arisen from day to day. Section 123(7) of the Bombay City Municipalities Act, 1925, inter alia, provides as follows :-

Whoever begins any construction...in any...respect contrary to the provisions of this Act or of any bye-law in force thereunder, shall be punished...and in the case of a continuing contravention of any of the aforesaid provisions, he shall be liable to an additional fine which may extend to ten rupees for each day during which such contravention continues after conviction for the first such contravention ; and the Chief Officer may-

(a) direct that the construction...be stopped, and

(b) upon a conviction being obtained under Sub-clause 7 by written notice, require such construction,...to be altered or demolished in accordance with the provisions of such notice."

4. It is contended on behalf of the opponents, that the words used in the latter part of Sub-section (7) of Section 123 "in the case of a continuing contravention of any of the aforesaid provisions" would include a building which has been completed in contravention of the provisions of the Act and has since been allowed to remain undemolished. The provisions regarding the continuing contravention of the provisions of the Act which appear in Sub-section (7) of Section 123 were not contained in the corresponding Section 96 (5) of the Bombay District Municipal Act 1901. It is contended on behalf of the opponent that the object of the amendment was to give the Municipality an additional remedy against a party who has completed a building in contravention of the provisions of the Bombay City Municipalities Act, and has not afterwards demolished it. The Sessions Judge observes :-

Section 98 (5) of the Bombay District Municipal Act had not provided for punishment of a continuing contravention of the provisions of the section. The present Act makes good the deficiency

In amending the Act the object of the Legislature seems to provide the Municipalities with more than one mode of having offenders punished. The Municipality could ask for a fine for a continuing contravention and also the Chief Officer could ask for the demolition of the building by giving a written notice. If this be the intention of the Legislature it is reasonable to suppose that the Legislature did not merely intend that the offence of a continuing contravention should be restricted to a building before it reaches a stage of completion but also intended that the building when completed should come within its scope. There is no reason why in the case of uncompleted buildings the Municipality could have the power to get the offender punished for a continuing offence and also to have the building demolished by giving notice and in the case of completed buildings it should have the power of having the buildings demolished only.

The language of Section 123 (7) would not, in my opinion, justify the construction placed on it by the Sessions Judge. There are no express words used which would indicate that a building when completed in contravention of the Act and allowed to remain is to be regarded as a continuing contravention of the provisions of the Act. Had it been the intention of the Legislature to provide a remedy by way of imposing a fine in addition to the right the Municipality has of requiring a structure so completed to be altered or demolished, one would expect to find clear words to that effect in this section. It does not seem to follow that because the words "continuing contravention" used in this section are new therefore the Legislature intended that the words should apply to a completed structure.

5. Halsbury in the article on Public Health and Local Administration, Vol. XXIII (Laws of England), para 828, p. 425, states :-

Where an authority may under the statutory provision pull down or remove any work begun or executed in contravention of any bye-law, or where the beginning or execution of the work is an offence punishable under a bye-law by penalty, the existence of the work during its continuance in such a form or state as to be in contravention of the bye-law is deemed to be a continuing offence.

6. In the footnote to this paragraph he states-

Continuing to build in contravention of bye-laws might be a continuing offence ; but without the provision in the text, *supra*, mere omission to pull down would not.

A reference is made for this statement of the law to the leading case of *Marshall v. Smith* (1873) L.R. 8 C.P. 416, where the Court had to construe certain bye-laws made by the Local Board of Sunderland under the Public Health Act, 1848, Section 115, and the Local Government Act, 1858, Section 34, by one of which all party-walls, except in houses of one storey, were required, under a penalty of 40s., to be nine inches at least in thickness, and by another of which it was provided that:-

In case any offence under any of the foregoing bye-laws shall continue, the person offending shall be liable to a further penalty of not exceeding 40 Section for each day during which such offence shall continue after written notice of the offence has been given by the local board to the offender.

7. The appellant before the Court had been previously convicted and fined for having built a party-wall of four and a half inches in thickness instead of nine inches. He was afterwards convicted upon an information which charged him with a continuing offence and was again fined. The Court of Common Pleas held in appeal that suffering the party-wall to remain unaltered was not a "continuing offence" within the bye-law, or if it was, that the bye-law was unreasonable, the appropriate remedy being the removal of the structure by the board, as authorised by Section 34 of the Local Government Act, 1858. In consequence of

this decision the Legislature intervened and expressly enacted that the continuance of a completed structure under such circumstances would be regarded as a "continuing offence."

8. In *Welsh & Son v. West Ham Corporation* [1900] 1 Q. B. 324 Channell J. has observed on this point (p. 328):-

I can entertain no possible doubt that Section 158 of the Public Health Act, 1875, was passed in order to meet the case of *Marshall v. Smith*, in which the Court held that suffering a wall built of a less thickness than required by a by-law to remain unaltered was not a continuing offence.

9. In *The Corporation of Calcutta v. Ananta Dhar* 32 C. W. N. 696 the petitioner had been previously convicted under Clause 1, Rule 7, of the 17th Schedule of the Calcutta Municipal Act, 1923, for having put new golpata leaves upon the old frame of the roof of his hut. Subsequently he was prosecuted on the allegation that inasmuch as he had not pulled down the golpata leaves or altered it in accordance with the requirements of Rule 7 of Schedule 17 of the Act, he was guilty of a continuing offence and was liable to a daily fine. Rankin C. J. and Ghose J. held that suffering the roof to remain unaltered was not a continuation of the offence of making the roof within the meaning of Section 488, Sub-section (2). Rankin C. J. observed in his judgment (p. 698):-

The leading case on this subject is the case of *Marshall v. Smith* and in that case which has never been dissented from in England it was held under a very similar clause that the offence consisted in the building of the wall. It was also held that a mere failure to pull down a wall or rebuild it in accordance with the statutory requirements was not a continuation of that offence. In con. sequence of that decision Section 158 of the Public Health Act of 1873 was made to provide that "where the beginning or the execution of the work is an offence in respect whereof the offender is liable in respect of any bye-law to a penalty the existence of the work during its continuance in such a form and state as to be in contravention of the bye-law shall be deemed to be a continuing offence." No such provision has been incorporated into the Calcutta Municipal Act and if, therefore, we are to hold that the conduct of the Opposite Party in suffering the roof to remain is a continuation of the offence of making the roof we have to do a certain amount of violence to the language of Clause (2) of Section 488. It is plain as a matter of right reason that suffering the roof to remain is not a continuation of the offence committed, "", e., of making the roof." The reasoning in this judgment, in my opinion, would equally apply to the construction to be put on Section 123(7) of the Bombay City Municipalities Act, 1925.

10. I would hold, therefore, that by allowing the structure to remain undemolished the applicant has not committed a continuing offence u/s 123(7) of Bombay Act XVIII of 1925.

11. The second question which arises on this application is whether the prosecution was competent having regard to the proviso to Section 200 of the

Bombay City Municipalities Act, 1925, which provides that no prosecution for an offence under this Act or bye-laws framed under it shall be instituted except within six months next after the commission of such offence. The prosecution was instituted long after the expiry of six months from the date of the commencement of the offence if allowing the completed building to remain undemolished is to be treated as an offence. It is contended on behalf of the opponent that this was a continuing offence and therefore the rule about bringing a prosecution within six months would not apply to it. The Sessions Judge held that Section 200 would be applicable although this was a continuing offence. He observes :-

A continuing offence is a fresh one and every day it gives rise to a cause of action. The Municipality could therefore ask for the infliction of a fine for a period of six months next preceding the complaint.

12. For that reason the Sessions Judge modified the order of the First Class Magistrate by restricting the fine to a period of six months after reducing the daily quantum.

13. In *The Queen v. Slade* [1893] 2 Q. B. 247 the Appeal Court held that the limitation of six months, within which complaint must be made, imposed by Section 11 of the Summary Jurisdiction Act, 1848, applied to proceedings for acting contrary to a closing order, in breach of Section 5, Sub-section 9, of the Public Health (London) Act, 1891, and therefore, a conviction for such an offence, which imposed a fine in respect of every day during a period exceeding six calendar months, was bad. Wills J. in his judgment observes (p. 248) :-

We cannot take the conviction to pieces, so as to reduce the penalty by the amount imposed in respect of those eleven days, and uphold the remainder of the order. In the present case the Magistrate has made no mistake which can be the subject of an amendment such as we have been invited to make. Mr. Saunders was convicted in respect of the whole period of 193 days, and the penalty was imposed in respect of the whole of that period. The motion for a certiorari was made and granted on this ground only, and the conviction must be quashed.

14. In my judgment this case is an authority for holding that a prosecution such as in the case before us was not competent as having been brought six months after the date of the commencement of the alleged offence and that the Magistrate's order imposing a fine for a period in excess of six months could not be cured by restricting it to the six months last preceding as the Sessions Judge has done.

15. In *Narain Chandra Chatterjee v. Corporation of Calcutta* ILR(1909) Cal. 545 Jenkins C.J. expressed the following opinion (p. 548) :-

Had the bye-law been correctly framed, it would have been a question whether limitation would not run from the time when the offence was first committed, for

it is to be noticed that the words of the section are that the complaint must be made within three months next after the commission of such offence. There are authorities which bear on that point, but the question does not arise in the view I take of this case, and I therefore do no more now than guard myself against being taken to accede to the argument that has been addressed to us on that point.

This expression of opinion by the learned Chief Justice is referred to and not dissented from by Fawcett J. in *Emperor v. Chhaganlal*. At page 738, Fawcett J. observes:-

We still have to consider whether the effect of the proviso to Section 161(1) necessitates a qualification, by enacting that the prosecution must be within six months of the time, when the alleged offence was first committed. Sir Lawrence Jenkins, when Chief Justice at Calcutta, seems to have been inclined to answer that question in the affirmative, because of the use of the words " next after the commission of such offence implying that the six months should be from the very commencement of the offence in question. He did not, however, actually decide that point, because the decision of the Court was on a different question. I refer to *Emperor Vs. Chhaganlal Motiram Mehtaji*, .

With great respect I am prepared to accept the view to which Sir Lawrence Jenkins inclined in *Narain Chandra Chatterjee v. Corporation of Calcutta* as the correct view, The intention of the Legislature appearing in the language of Section 200 of the Bombay City Municipalities Act, 1925, seems to have been that the [period of six months within which prosecutions should be brought for contravention of any provisions of the Act should apply to as contraventions continuing as well as not continuing. It would be un-just and unreasonable, in my opinion, to put any other construction on this section. If the view of the lower Court on this point were to be accepted as correct.

16. On both these grounds the conviction and sentence should be set aside and the fine, if paid, should be refunded to the applicants.

17. In Revision Application No. 458 of 1929 the applicants have been convicted under Sections 118(4) and 123(7) of Bombay Act XVIII of 1925, The applicants were prosecuted for building within the alignment line and in excess of the permission granted to them by the Broach City Municipality. They were convicted on November 23, 1927, and fined Rs. 150. They were prosecuted also under Sections 118 and 143 for putting up a balcony in excess of the permission granted to them and were convicted and fined Rs. 75. The present convictions were in respect of the completed building and the completed balcony having been allowed to remain undemolished. Section 118(4) provides :-

Whoever contravenes the provisions of Sub-section (3) shall be punished with fine which may extend to one thousand rupees and, in the case of a continuing contravention with an additional fine which may extend to Rs. ten...

18. For the reasons I have already given in construing the proviso to Section 123(7) I hold that a continuing contravention would not, cover the case of a completed building or balcony. The convictions and sentences in this case should be set aside and the fine, if paid, be refunded to the applicants.

19. In Revision Application No. 459 of 1929, the same applicants have been convicted under as. 118(4) and 143(2)(b) of Bombay Act XVIII of 1925 in respect of a building and a balcony which, were both completed by them before the prosecution was instituted. Section 143(2)(6) provides :-

Any such owner or occupier putting up any projection as aforesaid without such permission or in contravention of such permission or orders, shall be punished with fine which may extend to twenty-five rupees; and if any such owner or occupier fails to remove any projection in respect of which he has been convicted under this section, he shall be punished with further fine which may extend 40 five rupees for each day on which such failure or neglect continues.

20. As the prosecution was brought six months after the first commission of the continuing offence, for reasons I have already given, hold it was not competent u/s 200 of the Act. The: convictions and sentences should be set aside, and the fines, ii paid, b(c) refunded to the applicants.

21. In Revision Application No. 461 of 1929 the applicant was convicted under circumstances similar to those in Criminal Revision Application No. 460 of 1929, under Sections 118(4) and 123(7) of Bombay Act XVIII of 1925. For reasons already given I hold the convictions and sentences should, be set aside, and the fines, if paid, be refunded to the applicant.

22. In Revision Application No. 508 of 1929, the applicant has been convicted under circumstances similar to those in Criminal Revision Application No. 459 of 1929 of offences under Sections 118(4) and 143(2)(b) of Bombay Act XVIII of 1925. For reasons already given I hold the convictions and sentences should be set aside and the fines, if paid, be refunded to the applicant.

Broomfield, J.

23. These five applications for revision Nos. 458 to 461 and 508 of 1929 involve common points of law and may be disposed of together. The applicants, who reside within the limits of the Municipality of Broach, were all prosecuted for erecting buildings in contravention of the provisions of the Bombay City Municipalities Act XVIII of 1925 and were convicted and fined on various dates in October and November 1927. We are not now concerned with those convictions. On April 30, 1929, they were again prosecuted, not for any further constructions (it is admitted that no further building was done after the first convictions), but for not having removed the buildings in respect of which they had been convicted. In one case the conviction was u/s 123(7) of the Act, in two cases under that section and Section 118(4) and in two cases u/s 118(4) and Section 143(2).

24. Section 123 is a general provision relating to the construction of new buildings. Clause (7) of it is as follows :-

Whoever begins any construction, alteration, addition or reconstruction without giving the notice required by Sub-section (i) or without furnishing any plan, information or particulars required by or under this section, or, except as provided in Sub-section (5), without awaiting or in any manner contrary to such legal orders of the Chief Officer as may be issued under this section, or contrary to the provisions of Sub-section [5] or (6) 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 ; and in the case of a continuing contravention of any of the aforesaid provisions, he shall be liable to an additional fine which may extend to ten rupees for each day during which such contravention continues after conviction for the first such contravention ; and the Chief Officer may-

(a) direct that the construction, alteration, addition or re-construction be stopped, and

(b) upon a conviction being obtained under Sub-clause 7 by written notice, require such construction, alteration, addition or re-construction to be altered or demolished in accordance with the provisions of such notice.

25. Section 118 relates to buildings within the regular line of a public street. Clause (3)(a) provides:-

Except under the provisions of Section 143 no person shall construct or reconstruct any portion of any building within the regular line of the public street without the permission of the Chief Officer u/s 123.

26. Clause (4) provides :-

Whoever contravenes the provisions of Sub-section (3) shall be punished with fine which may extend to one thousand rupees and, in the case of a continuing contravention with an additional fine which may extend to rupees ten for every day during which such contravention continues after the conviction for the first such contravention, and the chief officer may-

(a) direct that the building be stopped, and

(b) with the previous sanction of the standing committee, by written notice, require such building or portion thereof to be altered or demolished in accordance with the provisions of such notice.

27. Section 143 requires the permission of the Chief Officer to be obtained for certain projections over public streets, and Clause (2) (b) is as follows :-

Any such owner or occupier putting up any projection as aforesaid without such permission or in contravention of such permission or orders, shall be punished with fine which may extend to twenty-five rupees; and if any such owner or

occupier fails to remove any projection in respect of which he has been convicted under this section, he shall be punished with further fine which may extend to five rupees for each day on which such failure or neglect continues.

28. The trial Magistrate convicted the applicants and fined them eight annas a day from the date of the first conviction to the date of the second complaint, a period of about eighteen months. On appeal the Sessions Judge reduced the amount of the daily fines, and also reduced the period to six months, but confirmed the convictions. The period was reduced to six months, by reason of Section 200 of the Act, in which it is enacted in the proviso to Clause (1) "that no prosecution for an offence under this Act or by-laws framed thereunder shall be instituted except within six months next after the commission of such offence,"

29. The first point raised by Mr. R. J. Thakor for the applicants is that there has been no "continuing contravention" of the provisions of the Act. He argues that these words in Sections 123(7) and 118(4) must refer to some further construction subsequent to the first conviction, and not merely to the failure to pull down or remove a building in respect of which a conviction has been had. I think this is the correct view. It appears to me to be the most natural interpretation of the words, considered in their context and in relation to the other provisions of the Act. The original offence made punishable by Section 123(7) is the beginning of any construction, alteration, addition or reconstruction contrary to the provisions of the Act or any by-law. The original offence made punishable by Section 118(3) is the construction or reconstruction of any portion of a building within the regular line of the public street without permission. Any further construction of the building can quite fairly be described as a continuance of the original offence. But if the building is completed at the time of the first conviction it is difficult to see how the offence described as above can be held to continue, or how there can be said to be a continuing contravention of the prohibitions. It would have been very easy for the legislature to make the failure to remove the building a punishable offence also, as has been done as a matter of fact in Section 143, and as was done in Section 472 of the City of Bombay Municipal Act III of 1888. That section is as follows ;-

Whoever, after having been convicted of

(a) contravening any provision of any of the sections, sub-sections or clauses mentioned in the first column of the following table, or of any regulation made thereunder, or

(b) failing to comply with any requisition lawfully made upon him under any of the said sections...

continues to contravene the said provision or to neglect to comply with the said requisition, or fails to remove or rectify any work or thing done in contravention of the said provision, as the case may be, shall be punished, for each day that he continues so to of land,...

The language of this section is interesting because it provides both for a continuing contravention and, separately, for failure to remove an offending building, the implication being that the latter would not be included in the former. No doubt it does not necessarily follow that the words "continuing contravention" in Sections 123 and 118 of the Act we are considering have the same restricted meaning as in the City of Bombay Municipal Act. But I think the language employed in the latter does afford some support to the applicants' contention that the restricted meaning suggested by them is the natural one.

30. On the other hand I do not think that Mr. G. N. Thakor, who appears for the Municipality, gains anything by the comparison which he asks to make between the language of Section 123(7) and that of Section 96(5) in the District Municipal Act of 1901, to which Section 123(7) corresponds. The offence made punishable by old Section 96(5) was the beginning or making of any building or alteration or addition contrary to the provisions of the Act or of any by-law. There was no provision about a continuing contravention, but the insertion of that provision in the new Section 123(7) does not seem to imply in any way that it was meant to cover a mere failure to remove a building erected contrary to the provisions of the Act. In fact a comparison of the language of the two sections rather suggests that the provision about continuing contravention is meant to apply to further construction of a building after the first beginning. The words in Section 96(5) of the Act of 1901 are "whoever begins or makes any building..," Fawcett J. in *Emperor Vs. Chhaganlal Motiram Mehtaji*, :-

I think that due effect should be given to the words " or makes " in Section 6(5). They show that it is not only the mere beginning of a building that is punishable, but its continuance even to completion without the requisite permission,... In other words, it is a continuing offence.

Now in the new Section 123(7) these words " or makes" do not appear; and the provision about continuing contravention was necessary, therefore, to cover the case of a building which has not merely been begun but continued even to completion in contravention of the Act.

31. The insertion of the provision about continuing contravention in Section 123(7) can, therefore, be perfectly well explained without supposing that it was intended to cover the failure to remove a building. Moreover, there does not appear to be the slightest necessity for such a wide construction of the words. The new Act, like the old, gives the Municipality ample powers for dealing with buildings constructed in contravention of the Act or bylaws". Section 123 (7) itself provides that the Chief Officer may by notice require that the offending building be demolished. Failure to comply with such a notice is punishable u/s 198, and u/s 192 the Chief officer may, if necessary, demolish the building himself and recover the cost.

32. There is this further point to be noticed. Cases may not infrequently occur when it is not necessary to go so far as to demolish a building because of a

contravention of the building rules. The person responsible may have to be prosecuted and fined, because the law must be maintained; but sometimes that may be enough, and the building may be allowed to stand. If, besides being fined, the owner is also to be required to demolish the building,, he may fairly expect that he will be so informed by a notice, otherwise how is he to know what his position is ? If no notice is sent, it would surely be most unreasonable that the Municipality should be able to come down upon him after eighteen months, or even within six months (to adopt the Sessions Judge's view of what is permitted by the Act), and get him fined so much a day for the whole period. That seems to me to be the obvious answer to the construction placed upon these sections by the Sessions Judge, namely, that they give the Municipality a choice of remedies. When the Act provides a direct, straightforward and perfectly effective method of securing the removal of a building which has been erected in contravention of the law, there is no reason why the legislature should be supposed to have provided an alternative method which is indirect and liable to become both capricious and oppressive.

33. We have not been referred to any authority which is inconsistent with what is on the face of it the natural interpretation of the words " continuing contravention." But the case of *Marshall v. Smith* (1873) L.R. 8 C. P. 416 is a very good authority in support of it. The facts there were that Marshall was convicted and fined for building a wall four and a half inches in thickness, in contravention of a by-law requiring party-walls to be nine inches at least in thickness. He was afterwards convicted under another by-law which provided that-

In case any offence under any of the foregoing by-laws shall continue, the person offending shall be liable to a further penalty...for each day during which such offence shall continue.

It was held that the failure to remove the wall was not a continuing offence and that the conviction was bad. An attempt was made to distinguish this case on the ground that the words in the by-law were " continuing offence," not " continuing contravention." But as in each case the offence consists of the contravention of certain rules the two expressions must mean the same thing. It was also pointed out that in consequence of the decision in *Marshall v. Smith* a new Section 158 of the Public Health Act 1875, was enacted, which provided that:-

where an urban authority may under this section pull down or remove any work...the existence of the work during its continuance in such a form and state as to be in contravention of the by-law shall be deemed to be a continuing offence, but a penalty shall not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the by* law was broken.

Since that change in the law the position of course is different in England. But there is no provision corresponding to the above Section 158 in the Act with

which we have to deal. *Marshall v. Smith* was cited by Rankin C. J. in *The Corporation of Calcutta v. Ananta Dhar* 32 C. W. N. 696 as "the leading case...which has never been dissented from in England," and he held in the case before him that where the Calcutta Municipal Act made it an offence to make a roof or external wall of inflammable materials, the suffering the roof to remain after conviction was not a continuation of the offence.

34. I hold, therefore, that the failure to remove a building in respect of which a person has been convicted u/s 123 (7) or 118 (4) is not a continuing contravention within the meaning of those sections. The conviction of the applicants in Applications Nos. 458, 460 and 461 is illegal and must be set aside.

35. As regards Section 143(2)(b), on the other hand, the language appears to me to be perfectly explicit:

...if any such owner or occupier fails to remove any projection in respect of which he has been convicted under this section, he shall be punished with further fine...

It was urged that the words "after notice to remove it" should be understood, but the words are plain and unambiguous, and there is no need to imply any such proviso. The convictions under this section in Applications No. 459 and 508 are correct, or rather would be correct, provided that the prosecutions were not time-barred.

36. That brings us to the consideration of Section 200. The trial Magistrate does not seem to have considered the point of limitation. At any rate there is nothing about it in his order ; the cases were tried summarily. The Sessions Judge took the view that as the offences are continuing ones (and the offence u/s 143(2)(b) is a continuing one) a fresh cause of action arises every day. The other view, which is the one contended for by the applicants, is that the words "within six months next after the commission of such offence" mean, in the case of a continuing offence, within six months after the first commission thereof. The words would seem to be capable of either construction. But the construction which found favour with the Sessions Judge involves what seems to me the very unreasonable result that there would be practically no bar of limitation at all. The Municipality might do nothing for ten years, or for fifty years, and then, as long as the building continued to exist, might prosecute and recover a fine for the preceding period of six months. This process, moreover, might apparently be continued indefinitely, and turned into a source of: revenue. It is pretty obvious, I think, that that is not what the legislature intended. The question of the proper construction of a limitation clause of this kind has arisen before, but, so far as the authorities cited to us are concerned, it has not been necessary to decide it. In *Narain Chandra Chatterjee v. Corporation of Calcutta* ILR (1909) Cal. 545 there had been a prosecution for failure to comply with a notice to remove an obstruction on a public street, under a bylaw. The by-law was held to be ultra vires in so far as it created a continuing offence after notice. But Jenkins C. J. said (p. 548) :-

Had the bye-law been correctly framed, it would have been a question whether limitation would not run from the time when the offence was first committed, for it is to be noticed that the words of the section are that the complaint must be made within three months next after the commission of but offence. There are authorities which bear on the point, but the question does not arise in the view I take of this case, and I therefore do no more now than guard myself against being taken to accede to the argument that has been addressed to us on that point.

These remarks of Sir Lawrence Jenkins were referred to by Fawcett J. in *Emperor Vs. Chhaganlal Motiram Mehtaji*, which I have already cited in another connection. Fawcett J. said (p. 738):-

We still have to consider whether the effect of the proviso to Section 161(1) (of the Act of 1901) necessitates a qualification, by enacting that the prosecution must be within six months of the time, when the alleged offence was first committed. Sir Lawrence Jenkins...seems to have been inclined to answer that question in the affirmative...He did not, however, actually decide that point....

Nor did Fawcett J. himself decide it, as it was not necessary to do so in that case either. But in the present case the point must be decided one way or the other, and in my opinion it should be decided. In the sense that limitation for a prosecution for a continuing offence runs from the time when the offence was first committed, or, where the offence consists in the failure to remove a building after conviction, from the date of the conviction. The other construction might, as I have shown, have unreasonable consequences. In this connection I may refer again to Section 158 of the English Public Health Act of 1875, which was enacted in consequence of the decision in *Marshall v. Smith*. I have quoted the section already ; it is given in *Welsh & Son v. West Ham Corporation* [1900] 1 Q. B 324. It seems to me worth noting that, though this provision was expressly enacted in order to make the mere existence of a work or building a continuing offence, it was also enacted at the same time that a penalty should not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the by-law was broken. I do not think it can be doubted that those words mean that time runs from the first commission of the offence, and does not begin to run from day to day as long as the work or building is in existence.

37. As the prosecution in all these cases was not instituted until more than eighteen months after the first conviction, the second convictions are illegal, including the convictions u/s 143(2).

38. I would, therefore, set aside the convictions in all the cases and direct that the fines, if paid, be refunded.