

(1941) 10 MAD CK 0054

In the Madras High Court

In Re: Syed Murthuza Sahib

Date of Decision : 03-10-1941

Acts Referred:

Citation : AIR 1942 Mad 269 : (1941) 2 MLJ 1042

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The petitioner was granted a lease u/s 160(3) of the Local Boards Act for a period of one year to use a road side site of 1 or 2 cents to sell his wares, and in it he constructed a small shed. He did not quit the land at the end of the period of the lease and so a notice was sent to him, purporting to be one u/s 159 (1), requiring him to remove the shed which was on the 1 or 2 cents in Survey No. 851 of the Local Fund road and threatening that unless he removed the encroachment within a fortnight from the date of service of that notice further proceedings under the Act would be taken against him. He ignored this notice; and so the present case was instituted against him. He has been charged with having committed an offence punishable u/s 159 (1), read with Section 207 (1) (a) and (c) of the Madras Local Boards Act. He was sentenced to pay a fine of Rs. 25 and his conviction and sentence were upheld on appeal by the Joint Magistrate of Tindivanam.

2. It is fairly clear that the petitioner did not contravene the provisions of Section 159 (1). Section 159 (1) permits the president of a Local Board to issue a notice to the owner or occupier of any premises to remove or alter any projection, encroachment, or obstruction situated against or in front of such premises. This sub-section governs the extension or projection of a premises over or into a public road and not the erection of some structure independently of any existing premises. The very foundation for this sub-section is the existence of premises which have been extended into a public road.

3. Notice should have gone to the petitioner u/s 164 (2) and not u/s 159 (1). Section 164 (1) makes liable for payment of a penalty any person who occupies any land set apart for any public purpose without the previous sanction of the

Local Board. The petitioner entered into possession of this land with the sanction of the Local Board; but he however continued in possession without the sanction of the Local Board. It is argued that continuing in possession is not occupying. Occupying a land means "being on the land" and therefore includes continuing in possession as well as entering into possession. As the petitioner did not obtain the previous sanction of the Local Board to occupy that land during the period in question, he is liable to a penalty u/s 164 (1).

4. Section 164 (2) empowers the president to issue notice to such a person as is referred to in Section 164 (1). If a person occupying the land disregards the notice u/s 164 (2), then he becomes liable u/s 207 (1) (a) for contravening the provisions of one of the sections specified in the first column of Schedule VIII. Schedule VIII makes express mention of Section 164 (2). It was argued by the learned Public Prosecutor that Section 160 (6) would also apply. I do not think it would. Sections 160 (1) and 160 (2) refer to licences and Section 160 (3) to a lease. Section 160 (6) mentions only licences and not leases. There is a great difference between a licence and a lease, a licence being merely a permission whereas a lease conveys certain legal rights over the land to the lessee. While, however, Section 160 (6) gives the president of the Local Board the power to remove buildings and recover the costs for doing so from the owners, it does not create a punishable offence.

5. It is next argued for the petitioner that even though the petitioner was wrong in continuing in possession after the expiry of the lease, he did not commit a punishable offence by doing so, because the notice issued to him was a faulty one. What is punished, it is argued, is not the continuing in possession but the disobedience of a notice, and that if a notice is not a proper one then the disobedience of it cannot be an offence. It is true that the notice that was sent to the petitioner did not purport to be a notice u/s 164 (2), but one u/s 159 (1), but I do not think that this makes any material difference, because the notice made it very clear what was required of the petitioner. He was ordered to remove the shed which he had been permitted to put up under the licence that was previously granted to him and he knew that the president had power to order the removal of such shed and he knew that he was wrongfully in possession of that plot of land. By disobeying the lawful notice of the president, even though it was labelled Section 159 (1) and not Section 164 (2), the petitioner committed an offence.

6. I therefore find no sufficient reason for interfering in revision. The petition is dismissed.