
(1892) 03 MAD CK 0031
In the Madras High Court

Queen-Empress

APPELLANT

Vs

Veerammal

RESPONDENT

Date of Decision : 30-03-1892

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 438

Citation : (1893) ILR (Mad) 230

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

Best, J.—In Criminal Revision Case No. 95 of 1892. One Veerammal has been convicted by the Second-class Magistrate of Periyakulam

in the Madura District, of "" building contrary to the terms of a license ""--an offence punishable under Sections 180 and 263 of the Municipal Act

No. IV of 1884 (Madras), and sentenced to pay a fine of one rupee, and further ordered to pay a fine of four annas for every day during which the

offence is continued.

2. The Acting District Magistrate, being of opinion that the conviction is illegal, has referred the case for the orders of this Court u/s 438 of the

Code of Criminal Procedure.

3. The following are the facts of the case: The abovementioned Veerammal being desirous of building a house on her own land applied to the

Municipal Council at Periyakulam for a license as required by Section 180 of the Act. The application was considered at a meeting on 10th March

1890, when it was resolved that "" a piece of land (5 x 33 feet) is required for widening the lane. Leaving this portion at the east side of the place on

which the building is to be constructed, the remaining portion may be built;""

and an endorsement to the above effect was made on the petition. But the building was erected on the whole land. Hence the prosecution and conviction under Sections 180 and 263, notwithstanding an express finding by the Magistrate that the accused "" has really a right to the place. "" The Second-class Magistrate was of opinion that, though the accused had this right to the place,"" as "" the Municipality would not allow her to enjoy it,"" the fact of her having constructed, "" whether rightly or wrongly, contrary to the terms of the license "" was sufficient to constitute the offence, and that she must seek redress "" by getting the order cancelled in appeal to proper authorities or by putting the Chairman or other authority responsible for the order in the Civil Court for its cancellation.

4. As is correctly observed by the Acting District Magistrate with regard to this suggestion of the Second-class Magistrate, there is no appeal allowed by law; and the Civil Courts cannot cancel a license, but can only award damages.

5. The question is whether the Second-class Magistrate was right in declining to consider the legality of the order of the Municipal Council which was challenged by the accused.

6. I am of opinion that the Magistrate ought to have considered the legality of the order and declined to convict on his finding it to be illegal.

7. It is clear on a perusal of Section 180 that no power is thereby conferred on the Municipal Council of depriving owners of the legitimate use of their land. The object of the section is no other than to ensure the safety and sanitation of buildings to be newly erected. What the Council has to consider under the section is the plan of the proposed building; and the grounds on which the same can be disapproved are such as are stated in clause 4.

8. I agree with the District Magistrate in finding that the order of the Municipal Council, on which the prosecution in this case was based, was not a legal order, and that the conviction is therefore unsustainable.

9. I would therefore set aside the conviction and sentence and order refund of the fine realized.

Muttusami Ayyar, J.

10. I concur.

Best, J.

11. Criminal Revision Case, No. 96 of 1892.--This case also relates to the same Veerammal, who has been further convicted by the Second-class

Magistrate of Periyakulam of omission to comply with a notice given to her by the Municipal Council, u/s 263, clause 2, of the Municipal Act (IV

of 1884), to pull down within one week the building constructed on the portion of her land which had been reserved for the formation of a lane,

when license was given to her to build on the rest of her land. The conviction is u/s 264 of the Act, and the sentence "" a fine of Rs. five (5) for the

offence and a further fine of Rs. two (2) for every day during which the said offence is continued.

12. The notice given to Veerammal by the Municipal Council is as follows:-- ""On your petition applying for permission to build a house,

endorsement No. 391, dated 24th March 1890, was given to you that, as it had been resolved at the meeting to open a lane from Ellupottal to the

Varahanadhi and as a space of 5 English feet east to west and 33 English feet north to south out of your house-site in the eastern side would be

required when the lane shall be opened, you might build your house on the remaining portion, leaving the aforesaid space for the road. It having

come to notice that you were building beyond the space mentioned in the license granted to you and on the portion required for the lane, you were

prosecuted for having acted contrary to the terms of the license, and the Magistrate convicted and punished you u/s 263 (1) of the Municipal Act.

You should, within a week. pull down the building constructed on the ground without license and vacate it. This notice is given u/s 263 (2) of the

Municipal Act. If you do not act in accordance with this notice within one week, you will be prosecuted u/s 264 of the said Act.

13. This notice contains a distinct admission that the portion of land which the Commissioners wished to be reserved for the lane which they had

resolved to newly open was a portion of Veerammal's house-site.

14. As already observed in disposing of the connected case No. 95, Section 180 of the Municipal Act gives the Municipal Council no power to

deprive owners of the legitimate use of their land. What the Council has to consider when an application is made to it under that section is whether

the proposed building is objectionable on any of the grounds stated in clause 4 of

the same section. If private property is required for any public purpose by a Municipal Council, it must be acquired in a legal manner (cf. Act X of 1870) and not in the exercise of the power conferred on the Councils for the limited purpose of securing the safety and sanitation of towns.

15. The order of the Council directing Veerammal to abstain from building on a portion of her land was therefore ultra vires; and their further notice directing her to remove the building for no other reason than that it had contravened such order was illegal, and therefore not one that she was bound to obey.

16. I would, therefore, set aside the conviction and sentence and direct that the fine realized be refunded.

It appears that a sum of not less than Rs. 214 has been realized under that part of the Second-class Magistrate's sentence which imposed "" a

further fine of Rs. 2 for every day during which the said offence is continued. "" Though Section 264 prescribes such further fine, I do not think it

can be imposed prospectively. The proper course seems to me to be to institute further prosecution, if there is occasion for it, and allow the

accused an opportunity of defending herself before the further fine is imposed.

Muttusami Ayyar, J.

17. I concur.