
(1928) 06 BOM CK 0006

In the Bombay High Court

Case No : Criminal Reference No. 27 of 1928

The Bombay Municipality

APPELLANT

Vs

Yenkanna Ellsppa Balaram

RESPONDENT

Date of Decision : 26-06-1928

Acts Referred:

City of Bombay Municipal Council Act, 1988 — Section 402(1), 403(1)(a)

Citation : AIR 1928 Bom 413 : (1928) 30 BOMLR 1128 : (1928) ILR (Bom) 780 : 113 Ind. Cas. 506

Hon'ble Judges : Patkar, J;Murphy, J

Bench : Division Bench

Judgement

Patkar, J.—In this case the accused, on February 11, 1927, submitted plans to the Municipal Commissioner to erect a structure designed to be let as small shops on the side of the compound of his building along Balaram street. The plans were approved by the Municipality and the structure was erected in compliance with the Municipal requirements. The structure consists of blocks abutting on Balaram street. The shops are let to tenants on monthly rental varying from Rs. 20 to Rs. 35. There is no inter-communication between the shops. Each tenant is independent of the other. The blocks were divided into sixteen shops. One tenant sold flowers, another sold toys and the rest of the tenants sold fruits of various kinds. The shops looked like stalls or booths. The customers purchased the goods standing on the pavement of the road and had no right to enter the shops. The fruits left unsold were kept in the shop overnight and the shutters were padlocked.

2. The accused was charged u/s 402. Clause (2), for establishing a new private market for the sale of articles of human food without the sanction of the Commissioner; u/s 403, Clause (1)(a), for keeping open a private market without a license granted by the Commissioner; and u/s 471 of the City of Bombay Municipal Act, III of 1888.

3. The Presidency Magistrate, Second Court, has, u/s 432 of the Criminal

Procedure Code, referred for the opinion of the High Court the following questions ;?

(1) Whether the shops and user constitute a private market within the meaning of 83. 402 and 403.

(2) Whether fruits are articles of human food within the scope of Section 402 t

(3) Whether the owner is liable to the penalty prescribed in Section 471 upon the admitted facts of the case?

4. The first question, therefore, is whether the row of shops constructed by the accused falls within the expression "private market" u/s 402, Clause (1), and Section 403, Clause (1)(a), of the City of Bombay Municipal Act. There is no definition of the word "market" in the Act or in the Bombay General Clauses Act, The Municipal Act, by Section 398, classifies markets into Municipal and private markets. Section 399 refers to a building or land which may be acquired by the Municipality for the purpose of establishing a new Municipal market, and authorizes the Commissioner to build and maintain such Municipal markets and such stalls, shops, sheds, pens and other buildings or conveniences for the use of the persons carrying on trade or business in, or frequenting, such Municipal markets. Section 402 prohibits a person from establishing a new market for the sale of things specified in Clause (2) of Section 402, and Section 403 prohibits a person from keeping open a private market without a license from the Commissioner. Section 405 authorizes the Commissioner to require the owner, farmer or occupier of any private market to comply with the requirements mentioned in the section, and Section 406 empowers the Commissioner to make regulations for sanitation in any market-building. Section 410 prohibits the sale of meat or fish intended for human food, but does not prohibit the sale of fruit, in any place other than a Municipal or private market. In the absence of any definition in the Municipal Act, it is difficult from the above-mentioned sections to form any definite idea as to the meaning of a private market though a general description of a market may be inferred from them.

5. Reference was made on behalf of the prosecution to Halsbury's Laws of England, Vol. XX, p. 4. The common law definition of a market involves a franchise conferring the right to hold a concourse of buyers and sellers and is inapplicable to the private market referred to in the sections under consideration. Reference was also made to several dictionaries as to the meaning of the word "market," which, according to the prosecution, would signify a concourse or gathering of buyers and sellers or a definite place where traders who are retail sellers of a specific class of commodity or commodities are in the habit of awaiting buyers every day in shops or stalls. Reference was also made to the definition of a market in the Calcutta Municipal Act III of 1899 as including "any place where persons periodically assemble for the sale of meat, fish, fruit, vegetable or live stock."

6. It is urged, on the other hand, on behalf of the accused that the shops are

separated from each other, that the owner of one shop has no right to go to another shop, and there is complete absence of control by the accused on the actions of the shopkeepers. The accused let his shops to several persons and most of them chose to use those shops for sale of fruit. One shopkeeper sells flowers and another sells toys. It is urged on behalf of the accused that no control can be exercised by the accused over the several shop-keepers and he had not made it a condition of letting the shops that they should be used for the sale of fruit. Reference was also made to the definition of "market" given by Jevons in The Encyclopedia Britannica, Vol XVII, p. 731 (13th Edition) as "any body of persons who are in intimate business relations, and carry on extensive transactions in any commodity."

7. In *In re the Petition of Raja Paba Khoji* I.L.R (1885) BOM. 272 it was held that selling vegetables on the of a house was not using the "as a market" within the meaning of Section 66 of the Municipal Act (Bombay) VI of 1873. In *Queen Empress v. Magan Harjivan* I.L.R (1886) Bom. 106 it was held that the shop used by the accused for the sale of their own commodities was not a "market" within the meaning of Section 66 of Bombay Act VI of 1873. West J. in considering the question relied on the case of *Mayor, &g., of Manchester v. Lyons* (1882) 22 Ch. 287 and referring to other cases, adopted the view that the mere selling in a private shop not within the limits of a market place, marketable articles on market days was not an injury to the market in point of law. This view was followed by the Madras High Court in *Queen-Empress v. Baodur Bhai* I.L.R (1887) Mad. 216. It would, therefore, follow that a single shop selling fruit would not constitute a market. Does a row of shops dealing in the same commodity, i.e., fruit, constitute a market? In Bombay, there are several rows of shops dealing in the same commodity and owned by the same individual. Such a row of shops would hardly constitute a private market unless the owner had control over the actions of the shop-keepers and the right to compel the shop-keepers to sell a particular commodity at particular hours. It has not been suggested that in this case the accused had bargained with the several tenants that they should sell fruit. The shop-keepers are monthly tenants and are not bound to sell a particular commodity, nor are they bound to keep the shops open at stated hours. The public have no access to the interior of the shops. In Stroud's Judicial Dictionary, a market is defined as "a public time and appointed place of buying and selling; also purchase and sale."

8. The structure of the accused, therefore, is nothing more than a collection of shops, and does not, in my opinion, constitute a private market.

9. It is not, therefore, necessary to consider questions Nos. 2 and 3, but as they have been referred to us for our opinion, we record our opinion.

10. The second question is whether fruits are articles of human food within the scope of Section 402. The learned Magistrate is very doubtful as to whether fruits are articles of human food within the scope of Section 402, Clause (2). Section 414 would suggest that fruit is an article which is intended for human food. It

was not disputed on behalf of the accused that fruit is an article of human food, and that if the row of shops constitutes a market, it would fall within Clause (2) of Section 4,02.

11. The third question is whether the accused has established a new private market or has kept open a private market. Establishing and keeping open a private market would import certain control on the buying and selling conducted in the private market. A person establishing a market would presumably have the right of stopping the vendor from bringing goods to the building or the open place for the purpose of sale, and the right of preventing the concourse of buyers from having access to it for the purchase of the goods. The accused in the present case has absolutely no control over the buying and selling conducted in these shops. One of the shop-keepers sells toys and another flowers. They may keep their shops open or closed. I am, therefore, of opinion that even if the point is stretched in favour of the Municipality and the row of shops is considered to constitute a private market, though I hold that it is not a private market, the accused is not guilty of establishing or of keeping open a private market.

12. My answer, therefore, to the first and the third question is in the negative and to the second question is in the affirmative.

13. We make no order as to costs.

Murphy, J.

14. The main point arising out of the reference is the meaning to be attached to the expression "private market" as used in Sections 402(2) and 403(1) of the City of Bombay Municipal Act; but the distinction between a Municipal and a private market is not disputed, and the actual point for decision is the meaning to be assigned to the word "market". There is no definition of the word in the Act in which it is used, or in the Bombay General Clauses Act, and we must consequently fall back on the ordinary or accepted signification of the word, and on what is to be derived as to the sense in which it is used, from the context in which it is to be found, in the Act in question.

15. The common law requisites of a market involve a franchise, and arose out of historical facts different from those of Bombay, and the definitions of a market in English law and cases are of little or no help in arriving at a conclusion.

16. The ordinary meaning of the word "market" is that of a concourse of buyers and sellers occurring periodically at a certain spot, for the purpose of retail trade; but the word is used in many senses, and a market may be held in a building, or enclosure, or in the open, as in a market place, and the concourse may occur daily or weekly and be held for the purpose of buying or selling any kind of article. The meaning of the word given in the standard dictionaries to which we have been referred, consequently varies, and the result seems to be that a market is one of those events which, owing to the variety in the instances, is incapable of definition in the true sense of that word, that is, by the

characteristic or crucial mark common to all the instances, and that, it is a thing which can only be described.

17. There are references to markets in Sections 398 to 410. Section 399 refers to stalls, shops, sheds, pens, and other buildings, as incidents of a market and Section 401 prohibits the sale of any animal or article in a market without the Commissioner's license; while in Section 402(2) the sale of animals to be used for human food, or any other article intended for such use, is likewise prohibited unless the seller has a license for the market. Section 406 gives the Municipal Commissioner powers to make rules for the regulation of markets, and Sections 407 and 408 refer to the levy of stallages in Municipal markets, while Section 409 gives power to expel from such markets persons who contravene the terms of their licenses. In Section 410 is to be found a prohibition of the sale of any four-footed animal, meat and fish for food, in any place except in a Municipal or private market.

18. These references appear to contemplate a building or place set apart for the purpose of a collection of shops or stalls, dealing in a particular commodity or class of commodity, where the public is expected to come fairly regularly to purchase such commodities; and some corporate character and common regulation of the sellers at such places the control in the case of Municipal market being vested in the Commissioner, and in the case of private markets in the licensee. At least, this is the most general description which I can extract from the sections in question.

19. The answer to the reference, therefore, almost resolves itself into the question, whether the row of shops which has been challenged as a market has sufficient resemblances to the Municipal or private markets in the city, and the meaning of the word in its usual sense, to justify the conclusion that it is an instance falling in the same class.

20. The facts are stated in the learned Presidency Magistrate's order.

21. The building consists of a row of sixteen shops or stalls, rented to tenants fit Rs. 20-35 according to size. At the date of the reference, one of the tenants sold flowers and a second toys, The remainder sold fruit of different kinds. There is no room for customers in the shops in which the shopman sits on a plinth with his wares around him, and with his customers as they stand on the foot-path, The shops are open from 7 to 10 a. m. and again from 3 to 8 p. m. The shops are closed by means of shutters which are padlocked at night.

22. The only common tie among the tenants is that they have the same landlord, and that fourteen of the sixteen deal in similar wares.

23. The resemblances between this row of shops and a private or Municipal market are, that all the shops are owned by the same landlord, and again the similarity of the articles they deal in.

24. But neither of these characteristics seems decisive in converting the row of

shops into a private market, for I suppose it is not unusual for a row of shops to be owned by a single landlord, and the circumstance of shops in which similar articles are sold being found in groups, is one which is common in Bombay city, as was admitted in the argument at the bar. Yet none of these groups of shops, though they may be referred to casually as "the cloth market," or the "silk market," has ever been held technically to constitute a "market."

25. The decisive fact, at any rate, the only one which I can find in the Act, seems to me to be contained in Section 410. This section provides that:

(1) Except as hereinafter provided, no person shall, without a license from the Commissioner, sell or expose for sale any four-footed animal, or any meat or fish intended for human food, in any place other than a municipal or private market;

Provided that nothing in Sub-section (1) shall apply to fresh fish sold from, or exposed for sale in, a vessel in which it has been brought direct to the seashore after being caught at sea.

26. It would seem to follow from this section that a group of shops selling such commodities would constitute a private market. Since the sale of such articles is forbidden in any place which is not a market, either private or Municipal; but fruit is not one of the commodities specified in the section.

27. Sections 414 and 415 further provide for inspection by the Commissioner of certain articles including fruit exposed for, or hawked about for sale; and for their seizure when unwholesome, and appear to contemplate the sale at any rate of fruit, otherwise than in a market.

28. Considering the ordinary meaning of the word "market" and the context in which the expression is used in the Act, I think that something more is meant than a collection of shops dealing in the same or similar articles and owned by the same landlord, which are the only grounds on which it is urged that this particular case should be held to be a "market."

29. In my opinion, therefore, the answer to the first point in the reference should be, that the structure and row of shops in question do not constitute a private market within the meaning of Sections 402(2) and 403(1)(a) of the Bombay City Municipal Act. It is unnecessary to record a finding on the remaining points of the reference; but if one is desired, I agree in the findings on these two points come to by my learned brother Patkar J.