
(1930) 04 MAD CK 0004
In the Madras High Court

The Chairman, Municipal Council

APPELLANT

Vs

S. Vasudeva Kamath

RESPONDENT

Date of Decision : 25-04-1930

Acts Referred:

Citation : AIR 1931 Mad 228 : 129 Ind. Cas. 635 : (1930) 32 LW 754 : (1930) 59 MLJ 479

Hon'ble Judges : Krishnan Pandalai, J

Bench : Division Bench

Judgement

Krishnan Pandalai, J.—This is a petition by the Chairman of the Mangalore Municipality to revise the order of the Sub-Divisional 1st Class

Magistrate of Mangalore reversing the conviction of the respondent by the Stationary 2nd Class Magistrate of Mangalore for an offence u/s 199

read with Section 338 of the District Municipalities Act and acquitting him.

2. The facts are short and practically not in dispute. The respondent is the owner of a compound T.S. No. 127 in the market ward of Mangalore

Town. He wanted to erect a new latrine in that compound and made an application to the Municipality on 14th March, 1928, for permission to

construct the latrine. The application was accompanied by a site plan and a plan of the building, Exhibits A, A-1 and A-2. The place where the

respondent wanted to construct the latrine was the north-east corner of the property. It is in evidence that the Health Officer of the Municipality

and the Sanitary Inspector inspected the spot when the respondent was present and they, finding that the proposed location of the latrine was

unsuitable, pointed out to the respondent a spot at the north-western corner of the property where it might be constructed. The permission was

accordingly granted and communicated to the respondent by the order of the Chairman, dated 26th of March, 1928, and a license of permission to erect the latrine at the north-western corner was granted in the usual form of a license with conditions. (See Exhibits D and D-I.) On the 10th April the respondent wrote Exhibit C to the Municipal Health Officer stating that he had asked for permission to construct the latrine at the north-eastern corner but was surprised to find that the permission was to construct the latrine at the north-western corner and suggested that the words ""western and ""west"" in the license were a clerical error for ""eastern"" and ""east"" and requested that the alleged error may be corrected and the license returned with its enclosures. It is admitted that the Municipality has not corrected the so-called error or returned the license to the respondent permitting him to construct the latrine at any other place except that mentioned in the license returned by the respondent. The Municipality, however, moved in the matter by asking the Health Officer to again inspect the place. That Officer did so and reported that the place already pointed out is the most suitable, but that the petitioners and his neighbours are objecting, and that there is no other site which is less objectionable. The visit of the Health Officer and the Sanitary Inspector to the spot after the petition, Exhibit C, is spoken to P.W. 1, who also says that the respondent was then present and learnt the result of the visit, namely, that there was no other site except the one already pointed out to him. This appears to have been on or about the 28th April, 1928. In this state of affairs the respondent wrote Exhibit I to the Chairman of the Municipal Council on the 19th of September, 1928, saying that the license had not been returned to him after correction and that unless the license for the place shown by him in his application, namely, the northeastern corner, were granted to him before the end of October, 1928, he would commence the construction without the permission. Upon this, one Mr. Madhava Rao, Councillor for the ward, at the request of the Chairman visited the property and made another suggestion as to the location of the latrine, and the Chairman requested the Health Officer to communicate to the respondent the site selected by Mr. Madhava Rao as suitable. But the Health Officer protested that the place selected by Mr. Madhava Rao was quite insanitary being only 2 feet from a place of worship used by the local people and that it is very close to the main road adjoining which

there is a mutt as well as a temple. He insisted that the north-western corner which had been already pointed out and for which permission had

already been given was the only site suitable from a sanitary point of view. Therefore the proposal of Mr. Madhava Rao was never communicated

to the respondent, and the position was just the same as when the respondent returned the license for correction. The respondent thereupon began

the construction of the latrine where he wanted, that is, at the northeastern corner. The Municipal Sanitary Inspector discovered this early in

January, 1929. Thereupon, on the 2nd of January, 1929, a notice was issued to the respondent by the Health Officer to stop the work. He refused

to do so. The Chairman sent another notice on the 8th January. The respondent still persisted and justified himself on the ground that he had

already by his letter of the 19th of September, 1928, intimated his intention to commence the construction of the latrine, if no license was issued to

him by the end of October, 1928. He also informed the Chairman that the latrine had been completed ""yesterday evening"". Thereupon this

prosecution was started against the respondent for constructing the latrine without permission.

3. The Stationary Sub-Magistrate held that the respondent was guilty under Sections 199 and 338 of the District Municipalities Act, although in his

view the respondent had been hardly treated by the Municipality by no reply being sent to him to his letter of the 19th September, 1928. He,

therefore, fined the respondent Rs. 15. In appeal, the Sub-Divisional Magistrate set aside this conviction on two legal grounds: first, according to

the Magistrate, it was not a case of construction of a building without permission, because permission had already been granted, although it was for

a different site; and secondly, according to the Magistrate, the offence fell not u/s 338 of the Act but u/s 317 of the Act.

4. It seems to me that the Magistrate's opinion is wrong on the first point. To say that where a Municipality gives permission for a building in a

particular place, it amounts to a permission to build at another place, is, in my opinion, not in keeping with either sense or law. The permission

granted by the Municipality was a permission to erect the latrine at the northwestern corner of the property. It was not a permission to erect it

elsewhere, and to say that the Municipality permitted the erection of the latrine and that the variation of the location is a matter covered by Section

205 of the District Municipalities Act is to impute to the Municipality what it did not do and to make non-sense of the careful provisions of the

District Municipalities Act and the rules thereunder as to construction of buildings. I have not the least doubt that, so far as permission was needed

to the construction at the place where it was built, the latrine was constructed without any permission whatever. The view on this point of the Sub-

Divisional Magistrate is clearly wrong.

5. But the learned Advocate for the respondent attempted to support the order of the Sub-Divisional Magistrate on two other grounds. His first

point was that the case comes under Sections 201 and 202 of the District Municipalities Act, which say that the Chairman shall within thirty days of

the approval of the site u/s 200 grant or refuse permission for the construction and on his failure to give or refuse his approval of a building site or

his permission to execute any work, the Council shall be bound, on the written request of the applicant, to determine whether the approval or

permission should be given or not, and that if the Council does not, within one month from the receipt of such request, determine the question, such

approval or permission shall be deemed to have been given. His second argument is that the Chairman or the Municipal Council could not refuse

permission to erect the latrine at the spot pointed out by the respondent as the refusal could not fall within any of the grounds mentioned for such

refusal in Section 203 of the District Municipalities Act.

6. Both these contentions are, in my opinion, incorrect. By Section 108 the Chairman is not empowered to grant permission to construct a building

until the site has been approved, and by Section 199 the construction or reconstruction is not to be begun until the Chairman has granted

permission for the execution of the work. What happened in this case was that the respondent was told in writing that he could have permission to

construct his latrine on condition that he erected it at a place mentioned in the license. This had no other meaning and was known by the

respondent to have no other meaning than that the site proposed by him for the latrine was not approved. His own letters show that beyond

possibility of doubt. Immediately after the receipt of the license, he returned it to be corrected thereby showing that he knew that the site proposed

by him was not approved. Again in his letter of the 19th September he wrote to

the Chairman saying that his license had not been corrected and intimated that, unless it was so returned before the end of October, he would proceed to construct the latrine without any permission. There is no warrant for the argument that there was any failure by the Chairman to intimate his refusal of the site proposed by him to the respondent.

Therefore, Section 202 which only applies on default of a decision by the Chairman has no application to the case. It may also be added that, even

if that section had any application, the respondent did not apply to the Municipal Council to make his own decision, nor wait for one month for the

Council to do so. He has written no letter to the Municipal Council throughout the correspondence. His letter of the 19th of September is

addressed to the Chairman. The first argument, therefore, fails.

7. The argument based upon Section 203 is that the work proposed by the respondent would not contravene any provision of any law or some

specified order, rule, declaration or by-law made under any law as required by Section 203, Clause (1). In short, the argument comes to this, that

under the District Municipalities Act and the rules thereunder, there is no power in the Chairman or the Council of a Municipality to decide the

location of a latrine proposed to be constructed by the owner of property in a Municipal area and to refuse permission if the proposal is to locate it

in an insanitary or otherwise objectionable spot. I find myself unable to concur in this view. By Section 191, Clause (1), the Governor-General in

Council is enabled to make rules, among other things, for the regulation or restriction of the use of sites for building. Rule (1) of the rules made

under this power says that ""no piece of land shall be used as a building site, if the Council considers that the site is insanitary, or that it is dangerous

to construct a building thereon."" It is argued that this only applies to cases of sites being considered insanitary or dangerous for the construction of

buildings thereon generally, such as the place being a bog or a marsh or a feverish area and that it does not apply to the selection or exclusion of

sites on the ground of their being sanitary or insanitary for specific purposes such as erection of latrines. I do not find sufficient ground to restrict the

generality of the language in the way suggested. I think the rule applies to and prohibits the erection of buildings on lands insanitary or dangerous

both, where the insanitary or dangerous character applies to all kinds of

buildings or only to a particular class of buildings intended to be erected

thereon. By reason of this rule, the Chairman or the Council of a Municipality- would, in my opinion, be entitled to refuse the approval of a

particular site for the erection of a latrine on the ground that such erection would be insanitary. That was what happened in this case.

8. On the second ground on which the Sub-Divisional Magistrate based his decision, namely, that the offence was not one falling u/s 338 of the

District Municipalities Act but u/s 317, I think he was right. Section 338 applies to cases where no penalty has been specially provided by the

Act, whereas this was a case of commencing the construction of a building without permission of the Chairman which is specifically provided for by

Section 317 read with Section 199. But this was not enough to acquit the respondent as both the offences were summons cases. What the Sub-

Divisional Magistrate should have done was, to alter the conviction to one under the proper section and pass such sentence as he thought fit in

appeal. The result is that the order of the Sub-Divisional Magistrate acquitting the respondent is set aside and the papers in the appeal will be sent

back to him for hearing and disposal according to law.