
(1938) 05 MAD CK 0019
In the Madras High Court

Vaiyapuri Chettiar

APPELLANT

Vs

The Municipal Commissioner

RESPONDENT

Date of Decision : 04-05-1938

Acts Referred:

Citation : AIR 1938 Mad 916 : (1938) 48 LW 657 : (1938) 2 MLJ 579

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The petitioner has been convicted under Sections 177 and 339 of the District Municipalities Act, in that he failed to carry out

the order of the Municipality of Salem to connect the roads on a plot which originally belonged to him with the Trichinopoly main road and to fill up

pits in a certain road.

2. u/s 176 of the District Municipalities Act the Municipality can grant permission for the construction of private streets and it may lay down

conditions under which that permission is accorded. u/s 177 it is prescribed that if any person makes or lays out any street referred to in Section

176 otherwise than in conformity with the orders of the Council, the Municipality may issue a notice calling upon him to carry out his agreement

within a certain specified reasonable time. If he fails to do so, the Municipality can take action u/s 177(2). Section 339 makes punishable any

neglect or refusal to do an act in compliance with any proper order of the Municipality; so that reading Section 177 with Section 339 a person can

be punished who, like the petitioner, has been given sanction u/s 176 to construct a private road and who has not complied with the conditions laid

down by the Municipality when that sanction was accorded.

3. It is argued that Section 177 can apply only to the present owner and not to a person who long ago parted with his rights; for it cannot be

expected that any person should do work to property in which he no longer has an interest. Far from Section 177 restricting the action to the

present owner, it clearly intends to have application only against the person who entered into the contract u/s 176. If by reason of parting with the

ownership an accused person to whom a notice has been sent u/s 177 is unable to comply with the order, then on general principles a Criminal

Court would doubtless refuse to convict; but the petitioner has not shown in the present instance that he has been prevented in any way from

complying with the terms laid down by the Municipality. Moreover, I think the learned Public Prosecutor is right when he says that although the

petitioner has sold all the house sites, yet he is still the owner of the roads.

4. The learned Advocate for the petitioner has rightly pointed out that in the original notice issued u/s 176 the petitioner was not called upon

specifically to erect a culvert as he was in the notice u/s 177. If however the petitioner had connected in a reasonable manner all his private roads

with the main road in accordance with the terms of his contract, then he might be in a position to plead that he could not be called upon to erect the

culvert. However that question does not arise in the present application.

5. It has further been contended that the action against the petitioner was barred by limitation u/s 347, as under that section a charge must be

brought within three months of the commission of the offence. The petitioner received his first notice Ex. D on 15th August, 1936; but it appears

that in response to that notice he sent a petition on 2nd September, 1936, to the Municipality, presumably protesting against the terms of the

notice. A reply Ex. E was then sent to him and the latter part of that reply is of the nature of a notice, for the petitioner was directed to comply with

the conditions of the licence granted to him within a month of the receipt of that order (namely, Ex. E dated 9th September, 1936). In default a

prosecution was threatened. The offence was committed on 9th October, 1936, when the month which was allowed to him under Ex. E had

expired; and the prosecution was launched in December - well within the three months allowed by Section 347.

6. Finally, it has been argued that the Criminal Court should have refused to

convict in view of the fact that the prosecution was launched as long as eight years after the notice u/s 176 was issued. Although I do not think that the explanation which the learned Public Prosecutor has thought fit to give on behalf of the Municipality is altogether satisfactory, yet undoubtedly the petitioner did deliberately disobey the terms of the agreement entered into by him and continued to disobey the order throughout the many years that had intervened between the date of the order u/s 176 and the launching of the prosecution. I do not consider therefore that the petitioner was entitled to any special consideration. The petition is therefore dismissed.