

(1937) 11 BOM CK 0010

**Bombay High Court****Case No:** Criminal Appeal No"s. 370-373 of 1937

Emperor

APPELLANT

Vs

Trikamlal Keshavlal

RESPONDENT

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**Date of Decision:** Nov. 29, 1937**Acts Referred:**

- Bombay Municipal Boroughs Act, 1925 - Section 129

**Citation:** AIR 1938 Bom 303 : (1938) 40 BOMLR 314**Hon'ble Judges:** Wassoodew, J; John Beaumont, J**Bench:** Division Bench**Final Decision:** Dismissed

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**Judgement**

John Beaumont, Kt., C.J.

These are four appeals by the Government of Bombay against decisions by the First Class Magistrate at Ahmedabad. The accused were charged u/s 193 of the Bombay Municipal Boroughs Act, 1925, with having committed a breach of Section 129. Section 129 provides :

If any building or land be at any time undrained, or not drained to the satisfaction of the Chief Officer, the Chief Officer, subject to the control of the standing committee, may by written notice call upon the owner to construct: or lay from such building or land a drain or pipe of such size and materials, at such level, and with such fall as he may think necessary for the drainage of the building or land.

2. The Chief Officer served notices on the accused, and the learned Magistrate held that they were not sufficient notices within Section 129. It seems to me plain that the notices were not sufficient for reasons going beyond those specified by the learned Magistrate. The notices called upon the several accused to submit a plan for laying out a six inches drain in their property and to get it passed by the engineering department and after laying out a 6" drainage line according to the passed plan and getting a connection only through the Municipality to join it therewith within thirty

days of the receipt of the notice. So that what the notice did was to call upon the accused to submit a plan, and then to lay a pipe in accordance with the plan which might be passed. But there is no power u/s 129 to require the accused to submit a plan. Section 129 gives power to the Chief Officer to require something to be done, and it is for him to say what he requires to be done and not for the owner of the house or buildings to submit proposals. As the only notice here was to submit a plan, and then lay a drain in accordance with the plan when passed, and as the plan has not been passed, it seems to me perfectly clear that there was no proper notice within Section 129, and therefore the conviction is wrong.

3. The appeals were really intended to raise a rather more general point, with which I will deal. The learned Magistrate expressed the view that a notice requiring the owner of the house to construct a six inches drain would be an insufficient notice, because it did not specify the other matters referred to in Section 129, namely, the materials, level and fall. On the other hand the Municipality take the view that the Chief Officer is not bound in his notice to give these details, and that it may be assumed that in respect of any matter in which the Chief Officer does not formulate his requirements, he has no definite views on the subject. But in my opinion the construction placed upon Section 129 by the learned Magistrate is right. I think that the Chief Officer is bound in his notice to specify the size, materials, level and fall which he requires in respect of the drain which he is ordering. If the notice does not give the particulars referred to in the section, and the house-holder lays a drain of such size and material, at such level, and with such fall as he thinks necessary, but which the Chief Officer does not approve, it would be open to the Chief Officer, even if he could not prosecute for a failure to comply with the first notice, to deliver a fresh notice requiring the drain to be laid in accordance with his requirements. That, I think, cannot be the meaning of the section. I think that the house-holder is entitled to know in the first instance what he is required to do, and that the duty of the Chief Officer u/s 129 is to give a notice specifying the drain which he requires, stating the size, material, level and fall, and that a notice which does not comply with those requirements is not a good notice within Section 129. The appeals, therefore, will be dismissed.