L.N. Gadodia and Sons Ltd. Vs The State

Court: Bombay High Court

Date of Decision: Dec. 16, 1955

Acts Referred: Bombay Municipal Corporation Act, 1888 â€" Section 381(1)(i)(d)

Citation: (1956) 58 BOMLR 392

Hon'ble Judges: Bavdekar, J

Bench: Single Bench

Judgement

Bavdekar, J.
This is an application for revision arising from the conviction of the applicant recorded u/s 381(1) (i)(d) of the Bombay

Municipal Corporation Act and the sentence of fine of Rs. 30 passed upon him by the learned Presidency Magistrate, 19th Court, Esplanade,

Bombay.

2. The applicant in this case is a company and owns godowns standing on some land in Zaoba''s oart. The applicant stores cloth bales in them. It

appears from the record that the Commissioner issued a notice purporting to be u/s 381(1) (ii) of the Bombay Municipal Corporation Act calling

upon it to abate what he considered the nuisance caused by storing the cloth bales and thread bobbin boxes in the godowns by removing them

from the godowns. The applicant failed to comply with the terms of this notice and was thereupon prosecuted for the offence u/s 381 of the

Bombay Municipal Corporation Act.

3. The defence of the applicant was that enough precautions were taken to see that there was no fire and the godowns were only opened for the

purpose of taking and giving delivery of cloth bales. The prosecution alleged that in case of a fire happening in the neighbourhood, the risk of the

fire spreading was enhanced because of the storage of the cloth bales and the thread bobbin boxes as fire engines could not operate in the land in

which the godowns were situated. It was the applicant''s case that it was not true that the risk of fire was enhanced because the fire engines could

not operate in the land in which the godowns were situated.

4. The learned trial Magistrate treated this case u/s 381(1) (i)(d), and coming to the conclusion that the notice was good has convicted the

applicant. It has come in revision.

5. Now, the Chief Officer of the Fire Brigade was examined in this case, and he gave evidence which was accepted by the learned trial Magistrate

that the premises were so situated that if there was a fire, fire engines would not be able to operate properly. It is obvious, therefore, that if in any

such premises cloth bales are stored, the risk of fire spreading is increased. But in any case the Assistant Health Officer who exercises the powers

of the Commissioner appears to have issued the notice in this case u/s 381(1)(ii) of the Act. Clause (d) of Section 381 (1) makes

any premises...which in the opinion of the Commissioner is...in any other respect, a nuisance as defined in Clause (z) of Section 3.

a nuisance for the purpose of the section. The premises are to be deemed, therefore, to be a nuisance for the purpose of the section if the

Commissioner holds the opinion that they are a nuisance as defined in Section 3 Clause (z).

6. Then we come to the definition in Section 3, Clause (z). That section define ""nuisance"" as any place which may be dangerous to life or injurious

to property. Now, the Assistant Health Officer, who passed in this case the order, deposed that he had got before him the report of the Fire

Brigade Division. That report stated that inasmuch as the lane was narrow the fire engine could not operate properly there ""due to huge stocks of

paper, wooden packing cases, cloth-bales etc."" and there was a serious fire risk created in the narrow lane. It was upon this report that the

Assistant Health Officer, who said that it was before him, issued a notice that the storing of the cloth bales and thread bobbin boxes there created a

nuisance and called upon the applicant to abate the nuisance under the provisions of Section 381(1)(ii). Now, it is obvious that inasmuch as there

was a report before the Assistant Health Officer that the storing of cloth bales among others in a godown in this narrow lane created a serious risk

of the spread of fire, he could reasonably come to the conclusion that the premises were a nuisance.

7. It is said however that what amounted to a nuisance in this case was not the premises themselves, but the fact that the applicant was storing cloth

bales there. It is contended that though the storing of the cloth bales and thread bobbin boxes increased the risk of fire, that did not render the

premises a nuisance; nor has the Commissioner so found them. What he found was that the premises became a nuisance because of the use to

which they were put. Reliance is placed upon a passage in Halsbury that where action is to be taken for abating a nuisance in regard to a premises,

the premises must be a nuisance because of the condition in which they are. Where the premises become a nuisance because of the use to which

they are put, then the premises cannot be called a nuisance. It has got to be remembered, however, that this passage in Halsbury is based upon the

case of The Queen v. Parlby (1889) 22 Q.B.D. 520, in which Wills, J. pointed out that the effect of the English Act was that the premises had to

be in such a state as to be prejudicial to health or a nuisance. But that is because the English Act defined "nuisance" in that manner. Clause (1) of

Section 91 of the Public Health Act, 1875, provided that for the purposes of that Act any premises in such a state as to be a nuisance or injurious

to health shall be deemed to be nuisance liable to be dealt with summarily in the manner provided by the Act. This precluded the inclusion in the

definition of "nuisance" given by Section 91 of the Public Health Act, 1875, those premises which were a nuisance not because of the state or

condition in which they were but because of the use to which they were put. The learned Judge also pointed out that if the intention was to include

in the definition premises which were a nuisance not because of the state in which they were but because of the use to which they were put, cls. 4

and 5 of Section 91 of the Public Health Act, 1875, would be redundant. Clauses 4 and 5 of Section 91 read as under:

91. For the purposes of this Act....

4. Any accumulation or deposit which is a nuisance or injurious to health:

5. Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates, whether or not members of the same

family:...

shall be deemed to be nuisances liable to be dealt with summarily in manner provided by this Act:...

Now, the definition which we have got in the Indian Act does not use the words ""the state"", and under that definition the premises which are in the

opinion of the Commissioner a nuisance u/s 3(z) of the Act are to be deemed to be a nuisance. If we go to the definition in Section 3(z), what this

reduces itself to is that where in the opinion of the Commissioner any premises are likely to cause danger or annoyance or may become dangerous

to life or injurious to property, then the premises are a nuisance. The Act does not say anything about why or in what manner the premises should

be likely to cause danger or become dangerous to life or injurious to property before the Commissioner could opine that they were a nuisance;

whether this should be on account of the state in which they are, or on account of the use to which they are put. It is obvious therefore that if the

Commissioner comes to the conclusion that the premises had become a nuisance because of the storage of articles there which increased the risk,

of fire, then he was entitled to take action for abatement of the nuisance u/s 381(1)(ii) of the Bombay Municipal Corporation Act. The notice which

was issued by the Commissioner was consequently perfectly valid. The applicant admittedly failed to comply with it. He was therefore properly

convicted.

8. Rule will therefore be discharged.

9. I am asked to give the applicant time for removing the cloth bales from the premises; but inasmuch as the learned Government Pleader says that

no action will be taken if the applicant removed the bales within a period of two months from the date of this order, no further action is necessary.