

(1918) 01 BOM CK 0042

Bombay High Court

Case No: None

Nagindas Chhabildas

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Jan. 25, 1918

Acts Referred:

- Bombay District Municipal Act, 1901 - Section 113, 122

Citation: AIR 1918 Bom 207 : 45 Ind. Cas. 503

Hon'ble Judges: Shah, J; Marten, J

Bench: Division Bench

Judgement

Shah, J.

The point raised in support of this application is that the putting up of the shop-board by the applicant was duly authorised under Sub-section 1 of Section 113 and was, therefore, exempt from punishment either u/s 122 or u/s 113 of the Bombay District Municipalities Act of 1901. It is argued that it was duly authorised u/s 113 as it was in accordance with bye-law 8 of Chapter XIV of the Bye-laws of the Surat City Municipality.

2. The board put up is in accordance with bye-law 8. But the applicant has clearly contravened bye-law 10, Sub-clause 3, which requires that the owner shall duly pay in advance the fees prescribed by rules u/s 46 (i). It is an admitted fact that the prescribed fee was not paid. It is urged, however, that this bye law 10 is not applicable to such a projection, and even if applicable, it is ultra vires of the Municipality to levy any fees. The bye-law provides that projections may be permitted only on the conditions which are laid down in the three sub-clauses, and u/s 113 it is open to the Municipality to prescribe the extent to which, and the conditions under which, shop-boards may be allowed to project over public streets. The bye-law, therefore, in my opinion, is clearly applicable to the projection such as we have in this case.

3. I do not see how it is ultra vires in view of the power which the Municipality has under the Section to prescribe the extent to which and the conditions under which such projection may be allowed. I do not see any reason to think that the power to prescribe the conditions does not include the power to levy fees before the projections are permitted. Section 70 of the Bombay District Municipalities Act was referred to as showing that the power to charge fees was limited in the manner stated in that section. But it seems to me that under the terms of the section when permission is given for putting up any projection, the Municipality may charge a fee for such permission. There is nothing in the words of the section to justify the applicant's contention that the word "permission" there means "written permission" as contemplated by the first part of Section 113, Sub-section 1, or that it means permission given in each specific case and not a general permission subject to certain conditions. I feel clear that the fee which is prescribed by bye-law 10 is within the powers conferred on the Municipality by the Bombay District Municipalities Act, which provides that when permission is given for putting up any projection, the Municipality may charge a fee for such permission. Here the permission granted is general subject to the payment of the prescribed fee. I am, therefore, of opinion that the contention that this part of the bye-law is ultra vires must be disallowed. No other point has been urged on behalf of the applicant, I would, therefore, discharge the Rule.

4. Marten, J.--We have here the advantage of a clear judgment from the learned Sessions Judge, Mr. Murphy, with which I entirely agree. In the first place it is clear, I think, that the Municipality have purported to prescribe the payment of certain fees as a condition under which the projecting shop-boards are to be allowed under Chapter XIV, bye-law 8. Those conditions are specified in bye-law 10, which begins: Projections may be permitted only on the following conditions", one of which viz., condition (iii) is that the owner shall duly pay in advance certain fees prescribed by rules u/s 46 (i). Then if one turns to the rules, which are in another lengthy volume, one finds in Rule 236 that the annual fees for shop-boards shall be as shown in Schedule F; and at last in Schedule F one discovers that these fees are 8, 6 or 4 annas per running foot according as the public street in question is class 1, 2 or 3.

5. It was contended before us that the "projections" referred to in bye-law 10 did not include the projecting shop-boards mentioned in bye-law 8. This contention appears to me untenable. Bye-law 10 refers to projections generally, and Sub-section 3 incorporates by reference the above rules of the Surat Municipality, and it is clear from these rules and in particular from Rule 236 already mentioned that the Municipality require fees for shop-boards. Therefore, by erecting his shop-board without first paying those fees I think the applicant broke the condition which the Municipality purported to impose on such erection.

6. The next point taken by the applicant is that if bye-law 10 does cover projecting shop-boards, it is ultra vires as the Municipality had no power to prescribe the

payment of fees as a condition u/s 113 of the Act. But when one turns to Section 113, one finds that the Municipality may prescribe the extent to which and the conditions under which shop-boards may be allowed to project.

7. The condition which they have imposed inter alias is that certain fees should be paid in advance. In my opinion they are entitled to impose a monetary condition, and this view is borne out by Section 70 of the Act. I accordingly think that the Rule should be discharged.