

Seth Daulatram Lakhani

Vs

Chairman, Gauripur Town Committee and Another

Criminal Appeal No. 145 of 1972

(Syed M. Fazal Ali, A. D. Koshal JJ)

22.03.1979

JUDGMENT

FAZAL ALI, J. –

This appeal must succeed on a very short point. Apart from the question of the application of the Act or the Amended Act or Notification it appears that no notification was produced before the court that the Brick Kiln put up by the appellant was on a land within the notified area of the municipality, so as to amount to an encroachment. PW 1 who is the Municipal Town Committee Overseer has not at all stated that this Brick Kiln fell in the notified area of the Municipality. On the other hand, the witness in cross examination stated thus :

We have not furnished any area of our encroached land in this case. No materiel also was placed in this case to show that the land encroached is within our Municipality.

From the statement of this witness it is manifest that the prosecution did not furnish any area of encroached land nor any material to show that the land encroached was within the municipality. In this view of the matter, the prosecution launched against the appellant was completely misconceived. We, therefore allow, the appeal, set aside the conviction and sentence passed on the appellant and acquit the appellant of the charges framed against him. The fine, if paid, be refunded.

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