

BOMBAY HIGH COURT

Emperor

Vs

Sale Mahomed Haji Ahmed

(Norman Macleod, Kt., C.J. Shah, J.)

09.01.1924

JUDGMENT

Norman Macleod, Kt., C.J.

1. The applicant in this case is the owner of certain premises at Don Tad street consisting of a ground-floor and three upper floors. At the top of the building there is a storage tank intended to supply water to the flushing tanks of the water closets below. It is admitted that in the present circumstances there is not sufficient pressure in the main for the water to rise to the storage tank, which, therefore, could only be kept filled with water brought up by artificial means.

2. On March 23, 1923, the applicant was served with a notice under the signature of the Deputy Health Officer, B-ward. The notice recited that upon inspection and examination it had been found that the water closets at the applicant's above-mentioned premises were not in good order or condition inasmuch as they were required to be kept in good order. That by itself is not very explicit. However the applicant was required within seven days from the service of notice to maintain such water closets in good order by pumping daily a sufficient quantity of water into the cistern from which the flushing tanks of the water closets were supplied. The applicant was warned that if he failed to comply with the requisition, he would be liable to the penalty prescribed by Section 471 of the Act as so amended, and his attention was specially drawn to Section 259-A of the said Act under which he was asked to employ a licensed plumber to execute or supervise the work therein described.

3. The applicant was then charged before the Chief Presidency Magistrate with not complying with this notice and was convicted and sentenced to pay a fine of Rs. 15.

4. It seems to us that the main point in the case has escaped the attention of the learned Magistrate. He said:--

It is admitted on behalf of the accused that there is a hand pump attached to the water pipe

on the ground floor, and it appears that if the pump is worked the water would reach to the storage tank. It is contended on behalf of the accused that the pump on the ground floor belongs to a tenant and that the Municipality cannot compel him to work the pump. On behalf of the Municipality it is contended that it is immaterial to whom the pump belongs but that inasmuch as the pump is already attached to the water pipe it is a fitting within the meaning of Sub-section 274 and 275, Bombay Municipal Act. I have carefully considered the arguments on either side and I think that the accused is bound to carry out the Municipal requisitions contained in the notice under Section 257(1) to keep the privies in good order. To do this he must get the pump attached to the water pipe worked so that the water may rise to the storage tank, and the privies must be flushed and thus kept in good order. It appears to me having regard to the fact that the pump is already attached to the water pipe and is a fitting and whether it belongs to him or not, I think the accused must be convicted of the offence with which he is charged.

5. Chapter IX of the Act deals with Drains and Drainage works and Section 246A and the following sections deal with water closets, privies, urinals, etc. Section 246A deals with the construction of water closets and privies.

6. Section 247 prescribes that it shall not be lawful newly to erect or to re-erect any building for or intended for human habitation, or at or in which labourers or workmen are to be employed, without such water closet or privy accommodation as the Commissioner may prescribe.

7. Under Section 248 the Commissioner may require the owner of such premises which he considers are not sufficiently provided with water closet or privy accommodation, to provide such or such additional water closet or privy accommodation as he prescribes.

8. Sections 250 and 251A deal with the construction and position of privies and water closets.

9. It will be observed that nothing whatever is said in any of those sections with regard to any obligation on the part of the owner of the premises to keep the cistern and the flushing apparatus connected with the water closet supplied with water.

10. Section 253 and the following sections deal with inspection of drains, water closets and privies, etc., and it is clear from Section 265 that in such cases the Inspector concerned has only to see that the provisions of the Chapter have been observed.

11. Under section 256, if under the Chapter it is found that any water closet or privy is not in good order or condition, the expenses of the inspection and examination shall be paid by the owner of the premises, and he shall fill in, reinstate and make good the ground, or portion of any building, drain or other work opened, broken up or removed for the purpose of such inspection and examination, at his own cost.

12. Then Section 257 deals with the requisitions which the Commissioner may make if the inspection and examination has shown that the water closet or privy is not in good order.

13. Under section 257(a)(ii) the Commissioner may require the owner to renew, repair, recover, or take such other order as he shall think fit to direct and to fill in, reinstate and make good the ground, building or thing opened, broken or removed for the purpose of such inspection and examination.

14. It seems to me that it is clear that all these sections to which I have referred, dealing with water closets, merely relate to the construction, position and proper maintenance of water closets, and have nothing whatever to do with the supply of water to such closets. The work which could be ordered to be done by the owner on the requisition of the Commissioner under Section 157 could only be executed by a licensed plumber under Section 259A and attention to that section is drawn in the notice given under Section 257, from which I gather that it was intended that under Section 257 only certain work could be requisitioned by the Commissioner to bring the condition of the privy or water-closet within the previous provisions of the Chapter, that is to say, with regard to their construction and maintenance. Nothing whatever is said throughout the Chapter with regard to the water supply. It seems to me, therefore, that the Commissioner was not entitled to give a notice under Section 257(1) in this case directing the landlord to maintain the water closet in good order by pumping a sufficient quantity of water into the cistern. It is quite possible that under some other section in the Act, the applicant might have been ordered to supply the storage cistern with water, but we are not concerned with that question in this application. This being a penal section it must be strictly construed, and in my opinion the Commissioner was not entitled to serve notice on the applicant under Section 257(1) in the circumstances of the case. I think, therefore, that the conviction must be set aside and the fine, if paid, refunded.

Shah, J.

15. I am of the same opinion.