

# **BOMBAY HIGH COURT**

The State

Vs.

Manilal Jethalal

Criminal Appeal No. 1020 of 1952

(Bavdekar and Chainani, JJ.)

18.12.1952

## **JUDGMENT**

### **Bavdekar, J.**

1. This is an appeal by the Government of the State of Bombay against the acquittal of the respondent in respect of an offence under Rule 10 (e) of Chapter XII of the Bombay Provincial Municipal Corporations Act, 1949.
2. The prosecution case was that permission was given to the respondent in the present case to construct a godown in his land, Revision Survey No. 361 of the City of Ahmedabad. This permission was granted to him on 26.11.1946, on the express condition not to use the premises as a factory. It appears that he wanted to revise the plans of the godown. So on 17.3.1947, again permission was given to him to use the premises, which he had already constructed as a godown, for storage of materials, but again subject to a condition not to use them as a factory. Subsequently it was found that the respondent had installed machinery in the godown for the purpose of running a factory, and the Municipality has, since that discovery, been attempting to get the factory removed without any success. Ultimately a notice was given to the respondent to remove the factory, but he failed to do so, when he was prosecuted.
3. Now, the offence in this case was alleged in the complaint, which was filed by the Jilla Inspector of the City of Ahmadabad, to have been committed on 22.5.1951. It is not in dispute that the respondent was using the building, which he had constructed, for the purpose of a factory on that date, and the only one of the defenses taken in the lower Court which survives in this appeal is whether the respondent contravened Rule 10 (e) of the rules made under the Bombay Provincial Municipal Corporations Act, 1949.
4. The respondent in this case admittedly had obtained permission to use the premises, which he

had constructed, as a godown for storage of materials. This permission could be availed of by him even after the coming into force of the Bombay Provincial Municipal Corporations Act, 1949. It had come into force on the date upon which the offence in the present case had taken place. But that permission merely empowered the respondent to use the premises, which he had constructed, as a go down and specifically prohibited him from using them as a factory. Rule 10 (e) of the rules framed under the Bombay Provincial Municipal Corporations Act, 1949, says :

"No person shall, without the written permission of the Commissioner or otherwise than in conformity with the terms of such permission, use or permit to be used as a godown, warehouse, workshop, workplace, factory any building or part of a building not originally constructed or authorized to be used for any such purpose respectively."

The use of a building for a factory must consequently be covered by a written permission of the Commissioner, which means, the permission obtained under the Act, unless the building, which is used as a factory, was originally constructed for a factory, or had been authorized to be used for the purpose of a factory. As I have already mentioned, the permission obtained by the respondent before the Act only permitted him to use the building, which he had constructed, for a godown. It was not, therefore, a building, which was originally constructed for a factory; nor was it a building, which had been authorized to be used for a factory. There was consequently the written permission of the Commissioner under Rule 10 (e) necessary. The respondent admittedly had no such permission. The learned trial Magistrate was, therefore, in error in acquitting the respondent.

5. Mr. Purshottam on behalf of the respondent raises a contention, however, that in this case the complaint which has been filed by the Jilla Inspector, and the Jilla Inspector was not authorized by the Commr. to take proceedings under Section 69 of the Bombay Provincial Municipal Corporations Act. He points to Section 481, under which the power to take, or withdraw from, proceedings in respect of an offence committed under the Act is given to the Commissioner, and argues that the complaint must be filed either by the Commissioner, or by some person, to whom the Commissioner has delegated his powers to take proceedings under the powers given to the Commissioner by Section 69 of the Bombay Provincial Municipal Corporations Act. Now, it is quite true that the object of Section 69, sub-sections (1), is to empower the Commissioner to delegate his powers under the Act to other Municipal officers, with a view that the Commissioner may not himself be burdened with the duty of deciding whether any action should be taken against a person, who, it is alleged, has committed an offence either against the Act or the rules. It is also true that whenever the Act gives any power to a Commissioner, the power must be exercised by him, or by an officer, to whom the Commissioner's power is delegated under the provisions of Section 69. But we do not think that it would be correct to restrict the meaning of the words "take proceedings" to actually filing a complaint. The object of Section 481 is that whenever it is alleged that any person has committed an offence under the Municipal Act, or under the rules framed under the Act, he should not be prosecuted, unless either the

Commissioner himself, or some responsible officer has had an opportunity of applying his mind to the question as to whether a prosecution should or should not be instituted. But once this has been done, there does not seem to be any particular necessity for requiring that, if it is decided to prosecute, the complaint must actually be lodged by the Commissioner, or the officer, to whom his powers are delegated. It is quite true that the words "take proceedings" may mean to lodge the complaint oneself. But we think that that is not the only meaning which can be given to those words. It also means to do an act by which a prosecution would be lodged. Similarly, in the case of withdrawal, the words "withdraw from proceedings" can also be interpreted to mean to do an act by which the withdrawal will be lodged. It has got to be remembered that the words "take or withdraw from proceedings" find a place only in the Bombay Municipal Corporation Act and the Bombay Provincial Municipal Corporations Act. The other Municipalities in the State of Bombay are governed by the Bombay District Municipal Act, or the Bombay Municipal Boroughs Act, and the words which are used in those two Acts are, confining ourselves to the question of launching a prosecution, "order that the proceedings be taken". Mr. Purshottam on behalf of the respondent says that the Bombay Provincial Municipal Corporations Act, 1949, was enacted long after the Bombay District Municipal Act and also the Bombay Municipal Boroughs Act. The Legislature must have known that these two Acts have used the words "order that proceedings be taken". When, therefore, in 1949 they provided by Section 481 that in the case of Provincial Municipal Corporations the proceedings must be taken by the Commissioner, they must have intended that the complaint should be lodged by the Commissioner himself, or by an officer to whom he had delegated his powers under Section 69. Now, it is quite true that the Legislature had before it the Bombay District Municipal Act and the Bombay Municipal Boroughs Act. But we find that the Bombay Provincial Municipal Corporations Act is modelled on the Bombay Municipal Corporation Act, and the words which that Act uses are "take or withdraw from proceedings." One can see easily why the word "take" is used. It was desired to combine in one clause the two powers, the power to launch proceedings and the power to withdraw proceedings, and if the words "withdraw from proceedings" were used, it was not easy to use the words "order proceedings to be taken" in combination with the words "withdraw proceedings." That was why, in our view, the words "take or withdraw from proceedings" were used in the City of Bombay Municipal Act. If the Legislature had in such a case really wanted that the complaint should actually be either of the Commissioner or an officer empowered by him, it would have been perfectly easy to use the words which find place in several Acts, for example, "except upon a complaint in writing of the Commissioner or an officer to whom he has delegated his powers". On the whole, therefore, we think that we should interpret the words "take proceedings" to mean "order proceedings to be taken".

6. We, therefore, set aside the acquittal of the respondent and convict him of the offence with which he was charged. We sentence him to pay a fine of Rs. 200.

Accused convicted.