

1958

Present : Weerasooriya J.

RAJATHURAI, Appellant, and PUBLIC HEALTH INSPECTOR,
VALVETITHURAI, Respondent

S. C. 42—M. C. Point Pedro, 3626

Housing and Town Improvement Ordinance (Cap. 199)—Re-erection of part of a building without approval of Chairman—Is it an offence?—Sections 2, 5, 6 (2) (k), 13 (1).

By Section 5 of the Housing and Town Improvement Ordinance—

“No person shall erect or re-erect any building within the limits administered by a local authority, except in accordance with plans, drawings and specifications approved in writing by the Chairman.”

Held, that the Section refers to the erection or re-erection of a building (as defined in Section 2) and not to a re-erection of a part of a building.

Accordingly, a prosecution for a contravention of Section 5 cannot be maintained if the evidence shows that a building was re-erected partly before the date specified in the charge and partly subsequent to that date.

APPPEAL from a judgment of the Magistrate's Court, Point Pedro.

S. Nadesan, Q.C., with *D. Vivekanandan*, for Accused-Appellant.

M. M. Kumarakulasingham, for Complainant-Respondent.

Cur. adv. vult.

November 14, 1958. WEERASOORIYA, J.—

The accused-appellant is the owner of premises Nos. 1&3, Valvettithurai. He was charged with having on the 22nd July, 1957, re-erected at those premises a building without plans, drawings and specifications approved in writing by the Chairman, Town Council, Valvettithurai, in breach of section 5 of the Housing and Town Improvement Ordinance (Cap. 199) and with having thereby committed an offence punishable under section 13 (1) of the said Ordinance. He was after trial convicted by the Magistrate and sentenced to pay a fine of Rs. 150. The present appeal is against his conviction and sentence.

The case for the prosecution is that premises Nos. 1 & 3 consisted of a dilapidated old building the roof of which had collapsed and that the accused removed the roof, demolished the inner walls of the building and built in their place, but on a different foundation, new walls over which he constructed a concrete flat roof. Although the outer walls of the old building continue to stand, once they are demolished what is essentially a new structure will have replaced the old building. It would seem, therefore, that there has been a re-erection of a building within the meaning of section 5 of the Housing and Town Improvement Ordinance, as held by the Magistrate. He has also held that the re-erection was without the approval in writing of the Chairman, Town Council, Valvettithurai, as required under that section. These findings I see no reason to disturb.

While on the basis of these findings the accused may be said to have acted in contravention of section 5, and to have committed an offence punishable under section 13 (1) of the Housing and Town Improvement Ordinance, the question that arises is whether the commission of such offence on the 22nd July, 1957 (being the date specified in the charge) has been brought home to him.

Velupillai and Murugan, two of the prosecution witnesses, gave evidence that they went to the premises on that date and they saw the internal walls being demolished and that a new foundation had been laid. They also stated that when they again inspected the premises in the early part of October, 1957, the new walls had come up to a height of about one foot. The witness Vythilingam has stated that when he visited the premises on the 29th October, 1957, the walls had been built to a height of about nine or ten feet, and it was only when he went there again on the 4th November, 1957, that he saw the new structure complete with a flat roof.

Section 5 of the Housing and Town Improvement Ordinance refers to the erection or re-erection of a building (as defined in section 2) and not to a re-erection of a part of a building. As pointed out by Garvin, J., in *Jansz v. Municipal Council of Colombo*¹, the re-erection of a part of a building is treated in the Ordinance as an alteration in an existing building—vide section 6 (2) (k). On this interpretation of section 5, and even if all the evidence to which I have referred is accepted, the

¹ (1933) 34 N. L. R. 337.

re-erection of the building had taken place only between the 29th October and the 4th November, 1957, and certainly not on the 22nd July, 1957. In the event of my reaching this conclusion I was invited by Mr. Kumarakulasingham to treat the date 22nd July, 1957, stated in the charge as an error which is not material in terms of section 171 of the Criminal Procedure Code. I am unable, however, to say that the accused was not misled by the error.

I set aside the conviction of the accused and the sentence passed on him and remit the proceedings for a fresh trial before another Magistrate on a charge framed in accordance with the provisions of sections 168 (1) and 169 of the Criminal Procedure Code.

Case remitted for fresh trial.

