

Present: De Sampayo J.

1919.

ANTHONISZ *v.* FERNANDO.

715—*M. C. Galle, 10,149.*

*Ordinance No. 19 of 1915, s. 13 (b) and (c)—Alteration of buildings—
Deviation from plan—Mandatory order to demolish buildings.*

Accused who had obtained permission from the Chairman of the Municipal Council to make alterations to buildings according to a certain plan was prosecuted under section 13 (b) and (c) of Ordinance No. 19 of 1915 for deviating from the said plan. The Magistrate convicted the accused, and further ordered the accused to demolish certain parts of the buildings.

Held, that the mandatory order was irregular in the circumstances. The application for the mandatory order should be made by the Chairman.

The proceedings for this purpose should be taken after the conviction and not as part of the prosecution for the offence.

When an application is made, the party concerned should be called upon to show cause against it, and any order should be based on a judicial finding as to the necessity or expediency of demolition. Such demolition is not a matter of course, but the Court has a discretion to exercise in regard to it.

THE facts appear from the judgment.

Bawa, K.C. (with him Keuneman), for accused, appellant.

A. St. V. Jayawardene, for complainant, respondent.

October 24, 1919. DE SAMPAYO J.—

The accused is owner of premises Nos. 214 and 215 in China Garden, Galle. He obtained permission from the Chairman of the Municipal Council to make alterations to the buildings according to a certain plan. He has been prosecuted under section 13 (b) and (c) of the Ordinance No. 19 of 1915 for deviating from the said plan in making the alterations. When the plan approved by the Chairman and the plan of the buildings as altered are compared, there is certainly a more or less substantial deviation. The conviction of the accused is, I think, right, but the Magistrate, after imposing a fine on the accused for the offence, ordered the accused to demolish certain parts of the buildings, and to bring the outhouses indicated in the order into conformity with the approved plan. This order appears to me to be irregular. Section 13 (2) of the Ordinance

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provides for the making of mandatory orders for the demolition of unauthorized buildings, but it requires an application for that purpose to be made by the Chairman. In this case no application was made so far as the record shows. Moreover, it is clear from the language of the section that the proceedings should be taken after the conviction of an accused person, and not as part of the prosecution for the offence. When an application is made, the party concerned should be called upon to show cause against it, and any order should be based on a judicial finding as to the necessity or expediency of demolition. Such demolition is not a matter of course, but the Court has a discretion to exercise in regard to it. The principle to be observed may be gathered from such causes as *Hopkins v. Smethwich*¹ and *Masters v. Pontypool*.² The local case 707, M. C. Colombo, 1,804, S. C. Min. October 15, 1919, is an authority on this subject. Mr. Jayawardene for the complainant fairly stated that he was not able to support the proceedings, and was good enough to refer me to the Indian case *Chuni Lal Dutt v. Corporation of Calcutta*,³ which is quite in point. In the present case, not only had the accused no opportunity of showing cause, but the entire proceedings were less than summary, for there was no evidence taken at all, and all that the Magistrate did was to inspect the premises and compare the two plans. It is impossible to say that the Magistrate could in these circumstances have exercised a proper judicial discretion.

The conviction and sentence of fine are affirmed, but the mandatory order is set aside.
