

LABROOY v. MUTTU KANGANY.

M. C., Colombo, 2,417.

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Municipal Councils' Amendment Ordinance, No. 1 of 1896, s. 30—Commencement of work without notice under s. 29—ss. 198, 199 of Ordinance No. 7 of 1887—Erection of building.

Section 176 of Ordinance No. 7 of 1887 was not intended to apply to substantial buildings with foundations.

The penal provision of section 199 of Ordinance No. 7 of 1887, as amended by section 30 of Ordinance No. 1 of 1896, applies only where a person has, under section 198, as amended by section 29 of Ordinance No. 1 of 1896, given to the Chairman of the Municipal Council written notice of his intention to erect a building, and has received directions from the Chairman with reference to such building. So that a person who has not given written notice under section 198, and who commences the erection of a building without having given four days' written notice of his intention to do so, as required by section 199, is not liable to prosecution under the latter section.

THIS was an appeal from a conviction under section 30 of Ordinance No. 1 of 1896 (which amended section 199 of the Municipal Councils' Ordinance, 1877) for commencing to erect a

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range of rooms without written notice to the Chairman of the Municipal Council, as required by that section.

W. Pereira, for accused, appellant.—The offence, if any, falls under section 176 of Ordinance No. 7 of 1887. The accused is said to have erected a range of rooms. Section 176 deals with the erection of any “range or block of huts, sheds, or buildings,” and the Chairman, with the consent of the Standing Committee, should have taken steps under that section. [BOXSER, C.J.—That section appears to me to refer to temporary buildings.] The accused was certainly not liable to prosecution under section 199. It is only a person who has given notice as required by section 198 that may be prosecuted under section 199. Section 198 requires notice of intention to erect a building to be given to the Chairman. Where a building is commenced without this notice, the Chairman may take steps under sub-section 3, but no prosecution can take place. Where, however, notice is given under this section, the Chairman may give certain directions, and what section 199 enacts is that, where the Chairman has given directions, a further notice of four days should be given before the building is commenced in accordance with those directions. The object apparently is to enable the Chairman to see that his directions are not disregarded in the initial work of the building. The omission to give this four days’ notice is made an offence, but this notice being necessary only where directions have been given by the Chairman, a person who builds without having given notice under the preceding section 198, and therefore without having received directions from the Chairman, can commit no offence under section 199.

Van Langenberg, for respondent.—Section 199 is independent of the provisions of section 198. Whether notice under section 198 has been given or not, the commencement of the erection of any building without four days’ notice would appear to be obnoxious to section 199.

BOXSER, C.J.—

In this case the appellant was convicted and fined Rs. 50 on the charge that he “did commence to erect a building, to wit, “a range of fourteen rooms, at No. 4, Vincent street, without a “written notice of the intention to commence the same having “been given to the Chairman of the Municipal Council at his office “by the person by or for whom such works are intended to be “commenced, in breach of section 30 of Ordinance No. 1 of 1896.” The Municipal Inspector in his evidence stated that, when he

visited the spot, he found the foundation down and the walls raised to the height of some 2 ft. when he inspected the building, and he says that the accused had no permit to build, and gave no notice before he commenced the work. But another Inspector (de Saram) says that the accused did apply for a permit, and was told that he must leave a space of 10 ft. from the side of the lane, which would imply that a notice of intention to build was given by the appellant, but whether that notice was in writing or merely oral does not appear. I gather from the language of the Inspector that the provisions of the Ordinance are not very strictly followed, for I do not find that the Ordinance makes any provision for permits.

The first ground of appeal urged was that this was not a building, but that it fell under section 176 of the Municipal Councils' Ordinance, No. 7 of 1887. That section provides that "it shall not be lawful for any person to erect any range or block of six or more huts or sheds or buildings.....without giving fourteen days' notice in writing to the chairman; and the chairman may, with the consent of the standing committee, refuse to grant permission, or may require such huts, &c., to be built in a particular way." If the case falls under section 176, the chairman would have no power to prohibit the building or to impose any restrictions or conditions without the consent of the Standing Committee. It was not proved that the Standing Committee were consulted at all in this matter. But in my opinion these buildings do not fall under section 176, because the evidence is that they are substantial buildings with foundations, and section 176 was not intended to apply to buildings of that description. It seems to me that they fall under section 198, amended by section 29 of the Amending Ordinance No. 1 of 1896. That section provides that "every person intending to erect or re-erect any building shall give notice in writing of his intention to the chairman, submit a plan..... together with specifications of the works intended to be constructed.....and shall obey all written directions given by the chairman." Sub-section 3 provides that "if any such building is begun or erected without giving notice.....the chairman may by notice require the building to be altered or demolished as he may deem necessary." When the specifications are submitted to the chairman, he may give written directions with regard to a number of matters—ventilation, drainage, and the like. And then follows section 199, as amended by section 30 of the Amending Ordinance, which provides that "it shall not be lawful for any person to commence any such works as in the last preceding section are mentioned.....until four days' written notice of

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“ the intention to commence the same has been given to the
 “ chairman,” and that “ any person commencing any works with-
 “ out having first given such notice as aforesaid to the chairman,
 “ or before the expiration of four days from the giving thereof, shall
 “ for every such default be liable, on conviction, to a penalty not
 “ exceeding fifty rupees.” It is difficult to see the object of that
 section. The notice is not to be acted upon for four days. That is
 clear; there is however nothing to prevent action being deferred
 for four months or for four years, so far as I can see. But whatever
 may have been the object of the section, it seems to me reason-
 ably clear that it refers to the commencement of works which are
 set out in the specification delivered under the previous section;
 and I think it was intended that, when you get permission from
 the chairman or directions from him, you ought not to act upon
 them until you have given at least four days’ notice of your inten-
 tion to commence to build. Sub-section 3 of the preceding section
 says what is to be done in the case of a building begun without
 previous notice. The chairman may order it to be pulled down,
 and I think the Legislature must have intended some change of
 meaning in changing the form of words from “ if any such build-
 “ ing is begun or erected without giving notice ”.....to
 “ commence any such works as in the last preceding section are
 “ mentioned.....” If the intention of section 199 be that
 contended for by the respondent, it would seem that; when a man
 has given notice under the 1st clause of section 198 of his intention
 to erect a building, he may, without incurring any penalty,
 commence to build at the expiration of four days therefrom
 without waiting to see if the chairman has any direction to give.
 In my opinion section 199 refers to commencement of works the
 specifications of which have been approved, expressly or by
 implication, by the chairman, and therefore I think the appellant
 has not brought himself within the purview of that section. No
 interpretation of these sections can be suggested which does not
 involve some difficulty, but I think that the one which was
 suggested by Mr. Walter Pereira, and which I have adopted.
 involves the fewest difficulties.