

Present: Jayewardene A.J.

1926.

INSPECTOR, SANITARY BOARD, WADDUWA, v.
PODI NONA.

28—P. C. Panadure, 2,364.

Housing and Town Improvement Ordinance—Permit to build—Chairman's power to cancel permit—Ordinance No. 19 of 1915, s. 13 (d).

The Chairman of a Sanitary Board has power to cancel a permit granted by him to erect a building and to direct the discontinuance of the building.

APPEAL from a conviction from the Police Magistrate of Panadure.

No appearance for accused, appellant.

Schokman, C.C., for complainant, respondent.

March 5, 1926. JAYEWARDENE A.J.—

This is an unfortunate prosecution. The accused, a woman has been convicted of failing to comply with a written direction of the Chairman, Sanitary Board, Kalutara, to discontinue the building of a house which she had been permitted to and had

1926

JAYEWAR-
DENE A.J.Inspector,
Sanitary
Board,
Wadduwa, v.
Podi Nona

commenced to build, an offence punishable under section 13 (1) (d) of the Housing and Town Improvement Ordinance of 1915, and sentenced to a fine of Rs. 30.

The facts show that the accused applied in the usual way to build a house on her land at Talapitiya, a village within the Sanitary Board limits of Wadduwa. Before her application was recommended the Inspector paid three visits to the land to satisfy himself that the application was in conformity with the requirements of the Ordinance. On February 14 last year she was granted permission to build, but in May the permit was cancelled. At this time the accused had commenced to build her house and had built up the walls to a certain height. After receipt of the notice cancelling the permit, she completed the walls and put on a roof. As the learned Magistrate remarks, had the accused ceased work without putting on the roof the inclement weather would most probably have destroyed the portion already built. The accused appears to have been almost compelled by circumstances to ignore the order of cancellation. It was contended for the accused that the order of cancellation was *ultra vires* and that a Chairman has no power to cancel a permit which he has once granted. I am unable to accept this view. When permission has been given under a misapprehension it is in my opinion open to the Chairman to withdraw such permission. For even where a building has been constructed with permission it cannot be occupied without a certificate of the Chairman that such a building as regards construction, drainage, and in all other respects is in accordance with law. In the present case the building is said not to be in accordance with the requirements of the Ordinance, as there is no road access to it. When the building was completed the Chairman might have refused to issue his certificate under section 15 on that ground.

The order of cancellation is, in my opinion, not *ultra vires*, and such an order would in many cases be most proper, for it would prevent a person from constructing a building for which he would not in the end be able to obtain the certificate required by section 15.

In the circumstances of this case the accused's disobedience should not be visited with a heavy fine. She has demolished her old house and has incurred expense in putting up the new one. The board cannot be exonerated from all blame in the matter. I would reduce the fine to Rs. 2.50.

Conviction affirmed.