

1929

*Present : Akbar J.*MUDALIYAR OF GALLE *v.* ADDERAMAN.86—*P. C. Galle, 34,541.*

*Sea sand, removal of—Prohibition by Government Agent—Belt of sea-shore—Ordinance No. 12 of 1911, ss. 3 and 5.*

A Government Agent has no right to prohibit the removal of sand from large tracts of the seashore.

The power vested in him under section 5 of Ordinance No. 12 of 1911 can only be exercised to prohibit the removal of sand from a particular spot or place on the seashore within the meaning of the section.

**A** PPEAL by the Attorney-General from an acquittal. The accused was charged with illicitly removing sea sand from certain belts of the seashore, an area prohibited under section 5 of Ordinance No. 12 of 1911. The prohibition was made by the Government Agent of the Southern Province and published in the *Government Gazette*.

*Samarawickreme, C.C.*, for complainant, appellant.

*Rajapakse (with D. E. Wijewardene)*, for accused, respondent.

March 12, 1929: AKBAR J.—

This is an appeal by the Attorney-General from the acquittal of the accused, who was charged with illicitly removing sea sand from the shore behind the devata bazaar within a prohibited area under section 5 of Ordinance No. 12 of 1911.

The Government Agent of Galle, by a notice of prohibition dated July 4, 1927, and published in the *Government Gazette* of July 8, 1927, purporting to act under section 5 of the Ordinance, prohibited the removal of sea sand, &c., from the seashore within four belts. The first one is a belt of nearly 12 miles between Bentota and Balapitiya, the second a belt of 18½ miles between Balapitiya and Gintota, the third a belt of 6½ miles between Gintota and Waggalmodera, and the fourth a belt of 11 miles between Waggalmodera and Goiyapana. There is a note to this prohibition that sand may be removed, on permits issued by the Government Agent, from four different places. It seems to me that the Government Agent has entirely misunderstood section 5 of the Ordinance and the essential difference between an order of prohibition under that section and a proclamation by the Governor in Executive Council under section 3. Under the latter section the Governor in Executive Council may

proclaim any part of the seashore as an area from which no sand, &c., may be removed except on a licence from the Government Agent. If the Government Agent refuses the licence the aggrieved party has the right of appeal to the Governor in Executive Council (section 8). Under section 5 of the Ordinance the Government Agent may prohibit the removal of sand, &c., "from any spot or place on the seashore within his Province adjoining or near any public road, thoroughfare, public work or public building, or adjoining or near any part of the Ceylon Government Railway," if such removal is likely to injure such road, thoroughfare, &c. The section then obliges the Government Agent to give notice of such prohibition in the best possible method so as to ensure sufficient publicity.

There is this great difference between the scope of the two sections. The Governor in Executive Council prohibits removal from a definite tract of seashore, and permits are to be given for removal from certain parts of this tract by the Government Agent. Under section 5, the Government Agent prohibits the removal from a particular "spot or place," of sand, &c., but sand, &c., can be removed from other parts so long as it is not the spot or place indicated.

The Government Agent by his proclamation has at one stroke covered an area of 47 miles, and he has stated in a note that sand can be removed, within this enormous belt, at certain defined places on permits issued by him. In my opinion the word "spot" must mean a particular spot on the seashore. The word "place" must be interpreted *ejusdem generis* with the word "spot." Although marginal notes are not part of an Ordinance, yet it might be mentioned that the marginal note to section 5 is to the same effect.

The Police Magistrate's judgment is a well-reasoned one, and I approve of all the points he has brought forward against the prosecution. As a matter of fact he has found that there was no notice at the spot, or within 6 miles of it, prohibiting removal. I cannot understand how the Government Agent can expect the public to read a notice hidden away in the *Government Gazette*. Even the proclamations by the Governor in Executive Council, under section 3, made in the past have only covered a modest one or 2 miles, but the Government Agent's prohibition is more ambitious and covers no less than 47 miles.

I see no grounds for allowing the appeal, and I would therefore dismiss it.

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*Appeal dismissed.*