

Case Note: The petitioner has filed this petition against the fine imposed on him under Section 230(2) of Municipal Act.

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IN THE HIGH COURT OF PATNA

Decided On: 11.12.1945

Appellants: **Janak Sahu**

Vs.

Respondent: **Ranchi Municipality**

ORDER

Agarwala, J.

1. The petitioner who is a rate-payer in the Municipality of Ranchi was served with a notice purporting to be under Sections 228 and 229, Bihar and Orissa Municipal Act, stating that the well in his holding was insanitary and calling upon him to do certain things to it, inter alia facing it with cement to a depth of 25 feet, surrounding it with a pucca platform with a drain to lead off the water and with a coping three feet high. As he did not comply with the terms of this notice he was prosecuted. The Magistrate found that he was guilty of committing an offence punishable under Section 230(2), Municipal Act, and sentenced him to pay a fine of Rs. 45. He moved the Judicial Commissioner to refer the matter to this Court. The Judicial Commissioner found that the omission of the petitioner to comply with the notice amounted to an offence under Section 228 as well as under Section 230, Municipal Act, and declined to make the reference.

2. Section 228 empowers the Commissioners by notice to require the owner or occupier of any land inter alia to cleanse, repair, cover, re-excavate, fill up or drain off a private well which appears to the Commissioners to be injurious to the health or offensive to the neighbourhood and provides that the person who fails to comply with a notice by the Commissioners shall be liable to pay a fine not exceeding Rs. 50 and a further fine not exceeding Rs. 10 for every day during which the default is continued after the expiration of eight days from the date of service on him of the notice. Section 229 empowers the Commissioners by notice to require the owner of a well the water of which is used, or likely to be used, for drinking or culinary purposes to clean the same from time to time of silt, refuse or decaying matter and may also require him to protect the same from pollution in such manner as to the Commissioners may seem fit and to repair the well. If the owner does not comply with the notice under Section 229, the Commissioners are empowered by Section 230, to require the owner of the well to close it permanently or to fill it up with suitable material. A person who fails to comply with an order under Section 230, is liable to a fine not exceeding Rs. 50. No notice under Section 230, was issued on the petitioner calling upon him to close the well or to fill it up. There, therefore, can be no conviction in respect of his omission to comply with the notice in so far as it was a notice under Section 229 of the Act.

3. The question remains, however, whether the petitioner was liable to be convicted in respect of the notice in so far as it purported to be a notice under Section 228. What Section 228 empowers the Commissioners to do is to require the occupier of the land on which the well stands to cleanse it, repair it, cover it, re-excavate it, fill it up, or drain it off. There was certainly no notice to the petitioner that the Commissioners required him to cleanse it, cover it, re-excavate it, fill it up, or drain it off, and the only question is whether the notice can be construed as a notice to repair the well.

4. There is no evidence, however, that the condition of the well was such as to require repairs, nor did the notice call upon the petitioner to do any repairs. What he was called upon to do, as I have already stated, was to face the well with cement. If the well had been previously faced with cement, and the facing had broken or cracked, the notice must have been construed as a notice to repair the defects in the facing. But there is no indication in this case that there was any previous facing, or that the facing which the petitioner was required to do was for the purpose of repairing any part of the structure of the well which had broken or become disintegrated.

5. Further more, although at first sight Sections 228 and 229 appear to overlap, there is in fact a distinction between the conditions they are intended to deal with. Section 229 is intended to deal with water which is used or likely to be used for drinking or culinary purposes, and the Commissioners are empowered to take what steps may be necessary to protect such water from pollution or to repair a well containing such water. By no stretch of the imagination can the construction of the coping round the well be regarded as a repair of the well unless a preexisting platform or coping had become damaged or destroyed. Section 229, however, provides for the removal of nuisances caused by wells, tanks etc. which, by reason of their insanitary condition, have become injurious to health or offensive to the neighbourhood. The evidence in the case was directed to showing that the water in the well in question was used for drinking or culinary purposes, clearly indicating that what the prosecution had in view was the type of action provided for by Section 229, and not the action contemplated by Section 228. The prosecution appears to have misconceived the position.

6. It may well be that the water of this well being used for culinary or drinking purposes, the Commissioners were justified in requiring the petitioner to protect it from pollution by facing it with cement and surrounding it with a platform and coping. But in such a case the person called upon to do what the notice requires him to do cannot be prosecuted for failing to comply with the terms of the notice. The course that is to be pursued by the Municipality is not by way of prosecution under Section 229, but by way of Section 230, that is to say, to call upon the owner of the well to fill it or close it up. The rule must, therefore, be made absolute, and the conviction set aside. The fine, if paid, will be refunded.

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