

Jan. 17, 1910 Present: The Hon. Mr. J. P. Middleton, Acting Chief Justice,
and Mr. Justice Wood Renton.

THE CHAIRMAN, DISTRICT ROAD COMMITTEE,
KALUTARA, v. BASTIAN.

Thoroughfares Ordinance, No. 10 of 1861, s. 86—Building—Pandal.

A pandal or ordinary temporary decorative and jubilant erection of poles and palm leaves is not a building within the meaning of section 86 of Ordinance No. 10 of 1861.

The "building" contemplated in the section is a building of a permanent character.

A PPEAL against a judgment of the Police Magistrate of Kalutara (J. E. de Silva, Esq.).

The accused was charged with having erected a building (a pandal) along a road without notice to the Chairman, District Road Committee. He was acquitted.

The Attorney-General appealed.

The case was first argued before Grenier J., who referred it to a bench of two Judges.

Van Langenberg, Acting S.-G., for the appellant.—This building is "along" the road; it is "by the side of the road." "Along" does not mean "on" (*Chairman, D.R.C., v. Gurunnanse*¹). A "pandal" is a "building." Counsel also cited *Corporation of Leicester v. Browne*.²

B. F. de Silva (with him *Cooray*), for the respondent, not called upon.

January 17, 1910. MIDDLETON A.C.J.—

This was an appeal by the Attorney-General as representing the Chairman of the District Road Committee of Kalutara against an acquittal of the defendant, on a charge of having erected a building along a thoroughfare without giving notice in writing to the Chairman of the District Road Committee, contrary to the terms of section 86 of Ordinance No. 10 of 1861. The case was referred to a Court of two Judges by my brother-Grenier. The building in question was not described in the evidence, but was admitted to be what is known as a pandal or ordinary temporary decorative and jubilant erection of poles and palm leaves.

The only point raised by the learned Solicitor-General was whether the Magistrate was right in holding that such an erection was not a building within the meaning of the section. There is no definition

¹ (1909) *Cur. L. R.* 164.

² 62. *L. J. M. C.* 22

of the word " building " in the Ordinance, and that word has been widely and differently construed by decisions under the Public Health Act in England (see *Stroud's Legal Dictionary*, " Building ").

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In the *Corporation of Leicester v. Browne*¹ justices were upheld in finding as a fact what in their opinion was a " building " under section 3 of the Public Health Act, 1888.

In the present case our section 86 shows from its context, I think, that the building contemplated in the second line must be of a permanent character, as the learned Magistrate holds in his judgment. The object of the section is to be found in the caption to section 84, i.e., to enable the District Committee to prevent encroachments, latent or otherwise, or a permanent character upon thoroughfares, and to prohibit temporary erections on thoroughfares for the purpose of building alongside them without giving due notice, and the Ordinance not only applies to rural, but urban thoroughfares. It is conceivable that a building might be erected in such a way on the owner's land alongside the public thoroughfare as to involve some encroachment on the public thoroughfare, especially in a town; and the first part of the section is, in my opinion, directed against this possibility.

I think the Magistrate was right in holding that the pandal in question was not a building within the meaning of the section, and I would dismiss the appeal.

WOOD RENTON J.—

I am of the same opinion. The caption of the group of sections to which 86 belongs, the terms " wall " and " fence, " which are associated with it, and the reference to encroachment in the latter part of the section, all seem to me to point to the conclusion that the enactment in question is directed against encroachments and encroachments of a permanent character.

Appeal dismissed.