

1948

*Present : Basnayake J.*

FERNANDO, Appellant, and NESADURAI (Court Inspector, Colombo Municipality), Respondent.

*S. C. 1,129—M. M. C. Colombo, 33,520.*

*Housing and Town Improvement Ordinance, section 5—Erection of building—Plans and specifications—Temporary platform.*

The building contemplated by section 5 of the Housing and Town Improvement Ordinance is one that involves plans, drawings and specifications. A temporary platform with an awning is not therefore such a building.

**A**PPPEAL from a judgment of the Municipal Magistrate, Colombo.

*H. Wanigatunga, with Charavanamuttu and T. A. de S. Wijesundera, for accused, appellant.*

*E. B. Wikramanayake, for complainant, respondent.*

*Cur. adv. vult.*

March 18, 1948. BASNAYAKE J.—

The accused appellant was convicted of a breach of section 5 of the Housing and Town Improvement Ordinance (hereinafter referred to as the Ordinance) and was ordered under section 13 of the Ordinance to pay a fine of Rs. 50.

The appellant is the owner of premises No. 261, Galle Road, Wellawatta, wherein he carries on a trade in firewood and vegetables. The present prosecution has arisen in connection with the arrangements made by him for exposing his vegetables for sale. In an open space about 85 feet square abutting on the road and between his firewood shed and the building adjoining his land he had placed two portable wooden platforms to make up for the difference in level between the road and this space. At either end of the platforms were two removable racks. He also had

a makeshift device for fixing a canvas awning by way of protection from sun and rain. The awning was rolled up when not in use. The vegetables were exposed for sale on the platforms and in the racks. It is admitted that these arrangements did not have the approval of the prescribed authority.

I shall now consider whether the arrangements above described bring the appellant within the ambit of section 5 of the Ordinance. That section reads: "No person shall erect or re-erect any building within the limits administered by a local authority, except in accordance with plans, drawings, and specifications approved in writing by the Chairman." The expression building is defined in section 2 of the Ordinance but that definition is not helpful as it is what one may call an extensive definition and not a restrictive definition. The meaning of the expression is in consequence left at large. It will be unsafe to make this case the occasion for attempting to define on expression which even the legislature has left alone, especially when one considers the words of caution expressed by Byles J. in *Stevens v. Gourley*<sup>1</sup> wherein he says "The imperfections of human language renders it not only difficult, but also impossible, to define the word "building" with any approach to accuracy. One may say of this or that structure, this or that is not a building; but no general definition can be given.; and our lexicographers do not attempt it."

The expression occurs throughout the Ordinance and it should be interpreted with due regard to its particular context when an appropriate case arises for consideration of the expression in that context.

Although a dictionary is not always a safe guide in the construction of a statute I have in the absence of a Judicial guidance or authority consulted the Standard Dictionary. It defines a building as an edifice for any use, that which is built as a dwelling house. The Oxford Dictionary defines it as a house or edifice. The platforms of the appellant together with their accompaniments fall far short of any of these meanings. The context of section 5 seems to my mind to indicate that contraptions so transient as portable platforms though accompanied by awnings are not contemplated by the expression building therein; but what is contemplated is something of a nature which involves plans, drawings and specifications. This view gains some support from the fact that the legislature took the precaution of expressly including outhouses and other appurtenances of a building within the scope of the expression "building". I am therefore of opinion that the appellant is not guilty of a breach of section 5 of the Ordinance.

The appeal is allowed and the conviction and sentence are set aside.

*Appeal allowed.*

<sup>1</sup> (1859) 7 C. B. N. S. 99.