

1947

*Present: Howard C.J.*

SILVA, Appellant, and WANIGASEKERA (Sanitary Inspector),  
Respondent.

*S. C. 754—M. C. Gampola, 13,267*

*Housing and Town Improvement Ordinance—Erection of building—Does it include boundary wall?—Chapter 199, s. 5—Meaning of word “appurtenances”.*

A building within the meaning of section 5 of the Housing and Town Improvement Ordinance does not include a boundary wall.

**A** PPEAL from a judgment of the Magistrate, Gampola.

*E. F. N. Gratiaen, K.C.* (with him *Ivor Misso*), for the accused, appellant.

*S. W. Jayasuriya* (with him *C. Chellappah*), for the complainant, respondent.

*Cur. adv. vult.*

October 27, 1947. HOWARD C.J.—

The appellant in this case appeals against his conviction under section 13 (1) (a) and (e) of the Housing and Town Improvement Ordinance (Cap. 199) of the offence of erecting a building to wit a boundary wall in front of premises No. 16, Malabar Street, Gampola, of which he was the owner without getting plans, drawings and specifications approved in

<sup>1</sup> (1804) 10 Ves. 315.

<sup>2</sup> (1915) A. C. 366.

<sup>3</sup> (1900) 1 Ch. at p. 318.

<sup>4</sup> (1869) 21 L. T. N. S. 227.

writing by the Chairman of the Urban Council in contravention of section 5 of the Ordinance. The Magistrate held that a boundary wall attached to the house by two arms is an appurtenance to the house and that section 5 is sufficiently wide to cover it. Section 5 of the Ordinance is worded as follows:—

“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 relevant parts of section 13 are worded as follows:—

“13. (1) Any person who shall—

(a) commence, continue, or resume building operations in contravention of any provision of this Chapter;

(b), (c) and (d) . . . . .

(e) fail to remove or pull down any building or alteration to any building erected or made for a temporary purpose under a permit issued by the Chairman, within the time specified in such permit; or

(f) . . . . .  
or if such person cannot be found, the owner of the building in question, shall be liable on summary conviction to a fine not exceeding three hundred rupees, and to a daily fine of twenty-five rupees for every day on which the offence is continued after conviction.”

“Building” is defined in section 2 as follows:—

“‘building’ includes the outhouses or other appurtenances of a building.”

Mr. Gratiaen, on behalf of the appellant, has invited my attention to the fact that special provision is made for the control of the building of masonry boundary walls in section 108. He also refers to the definition of “building” in section 2 of the District Councils Ordinance (Cap. 195). This definition states that “building” includes any house, hut, shed or roofed enclosure, whether used for the purpose of a human habitation or otherwise, and also any wall. Section 87 of the Urban Councils Ordinance (No. 61 of 1939), makes special provision for licences for boundary walls. Having regard to the wording of these provisions Mr. Gratiaen contends that the definition of “building” in section 5 does not include “a wall”. Mr. Jayasuriya on the other hand maintains that the words “other appurtenances of a building” must be given a wide meaning and would include any wall erected within the premises. In this connection he refers to the 2nd edition of Nortor on Deeds at p. 274 where it is stated that in a conveyance of land the word “appurtenant” must be given a wide interpretation. But I do not think it follows that the same interpretation should be given to the word “appurtenances” when used in the penal provisions of a statute as is given to this word when it occurs in a conveyance. Mr. Jayasuriya also cited the case of *Bowes v. Law*<sup>1</sup>, in which it was held that the building of a wall to the height of 11 feet was a

<sup>1</sup> (1870) L. R. 9 Equity Cases, 636.

breach of a covenant that "no buildings" except dwelling houses not to cost less than £200 each should be erected. This case again was concerned with the construction of a covenant in a conveyance. Moreover I observe that James V. C. at p. 641 stated that the word "buildings" is perhaps an ambiguous expression, and certainly in its ordinary way it does not signify a wall. Mr. Jayasuriya also cited the case of *Trim v. Sturminster Rural District Council*<sup>1</sup>. This case raised a question with regard to the definition of "house" in section 188 of the Housing Act, 1875. At pages 515-516 Slessor L.J. in the course of his judgment stated as follows:—

"The question for the decision of this Court is whether, in coming to that conclusion, the learned judge was correct in law. In my opinion, he was wrong in law in coming to any such conclusion. In the definition to which I have referred certain specific matters are mentioned, that is to say, any yard, garden and outhouses, and then follows the word "appurtenances". That word has had applied to it, through a long series of cases mostly dealing with the meaning of the word in demises, a certain limited meaning, and it is now beyond question that, broadly speaking, nothing will pass, under a demise, by the word "appurtenances" which would not equally pass under a conveyance of the principal subjectmatter without the addition of that word, that is to say, as pointed out in the early case of *Bryan v. Wetherhead*<sup>2</sup> that the word "appurtenances" will pass with the house, the orchard, yard, curtilage and gardens, but not the land. That view, as far as I understand the authorities, has never been departed from, except that in certain cases it has been held that the word "appurtenances" may also be competent to pass incorporeal hereditaments. Certainly no case has been cited to us in which the word "appurtenances" has ever been extended to include land, as meaning a corporeal hereditament, which does not fall within the curtilage of the yard of the house itself, that is, not within the parcel of the demise of the house."

Mr. Jayasuriya has contended that following the reasoning in this case the house in question in the present case must include anything within its curtilage and hence includes a boundary wall. Again I do not think that the facts of *Trim v. Sturminster Rural District Council* can be applied to the facts of the present case which must be decided on the particular wording of the Housing and Town Improvement Ordinance. The phraseology employed in this Ordinance leaves it open to doubt whether the definition of "building" in section 2 includes a "wall". In these circumstances as sections 5 and 13 impose penal provisions they must be strictly interpreted and must leave no room for doubt that "building" does include a "wall". The appeal is therefore allowed and the conviction set aside.

*Appeal allowed.*

<sup>1</sup> (1938) 2 K. B. D. 508.

<sup>2</sup> Cro. Car. 17.