

1965 Present : G. P. A. Silva, J.

I. PANNATISSA THERA, Appellant, and **G. G. WEERASURIYA**
(Inspector of Prosecutions, Municipal Engineer's Department, Colombo),
Respondent

S. C. 129011964-M. M. C. Colombo, 23560

Corporation-Offence committed by it-Non-liability of a Director-Housing and Town Improvement Ordinance (Cap. 26S), sa. 5, 13 (1) (f)-Societies Ordinance, s. 3 (b).

Where an incorporated society erects a building in contravention of section 5 of the Housing and Town Improvement Ordinance, the proper party to be prosecuted is the society and not a Director who has acted on behalf of the society.

APPEAL from a judgment of the Municipal Magistrate's Court, Colombo.

G. T. Samerawickreme, with Sinha Basnayake, for Accused-Appellant. No appearance for Complainant-Respondent.

July 22, 1965. **G. P. A. SILVA, J.-**

The accused-appellant in this case Induruwe Pannatissa Thero was charged by the Inspector of Prosecutions, Municipal Engineer's Department, Colombo, with having between the 3rd May, 1961, and the 6th

September, 1963, caused certain building operations to be executed in contravention of section 5 of the Housing and Town Improvement Ordinance (Chapter 268 of the Revised Legislative Enactments of Ceylon, 1956) an offence punishable under section 13 (1) (/) of the said Ordinance. He was convicted of the said offence and sentenced to pay a fine of Rs. 100. The argument of counsel for the accused-appellant is based on two grounds, one being a question of law and the other a question of fact. The question of law which he submitted is that the building in question was erected by an incorporated body, namely, The Buddhist Academy of Ceylon, of which the accused-appellant was a Director as would appear from the application produced by the Inspector himself and not by the accused personally. The accused has signed this application as Director of the Institution which was run by The Buddhist Academy. The contention of counsel is that the proper party to have been made accused in this case is the Society. It would appear from Document 'PI' that The Buddhist Academy of Ceylon was registered as a specially authorised Society under section 3 (b) of the Societies Ordinance on the 18th of December, 1954, by the Registrar of Societies and that when the application was made for the erection of the building in the premises, the name of the applicant was given as The Buddhist Academy of Ceylon. Any person who signed the application would have, therefore, done so on behalf of the Society, namely, The Buddhist Academy. The document produced also shows that The Buddhist Academy of Ceylon has various officers and servants, etc., and once this Organisation was registered under the Ordinance it enjoys the privilege of being a body corporate and certain rights

and liabilities would thereafter accompany the registration. There is no doubt that the building which was put up on these premises would have accrued to the benefit of the Society and there is no suggestion that the income of such building would have accrued to the accused personally. All these matters show that the application was made and the building was put up for the purpose of the Society. In these circumstances, it appears to me that the proper course for the Municipal Council would have been to institute proceedings not against the accused in person, but against the Society itself. Counsel for the appellant has drawn my attention to a certain case reported in 1944 (1) All England Reports, page 119-Director of Prosecutions v. Kent and Sussex Contractors Ltd. and another[1 (1944) 1 All B. R. 119.]-in which similar proceedings were taken against an incorporated body for an offence committed by it. I think, therefore, that the contention that it is the Society and not the accused who should have been charged, is entitled to succeed. I accordingly set aside the conviction of the appellant and acquit him. I also order that the fine imposed by the Magistrate which has already been paid by the appellant be refunded to him.

Appeal allowed.

- End -