

**Emperor Vs. Nanabhoy Bezanji Choksey**

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**Court :** Mumbai

**Decided On :** Jul-17-1907

**Reported in :** (1907)9BOMLR932

**Judge :** Chandavarkar and ;Heaton, JJ.

**Appeal No. :** Criminal Reference No. 31 of 1907

**Appellant :** Emperor

**Respondent :** Nanabhoy Bezanji Choksey

**Judgement :**

Chandavarkar, J.

1. The question referred to this Court by the learned Chief Presidency Magistrate is as follows:-'Did the act of the accused under the circumstances described mean 'erection or re-erection' within the meaning of Section 349 C of the Municipal Act or a 're-construction' within the meaning of Section 342'. We think that it is a question of fact which must be determined on the evidence and circumstances of each case, Addressing ourselves to the question of law arising in the case before us it is this :-what is the meaning of 're-erection ' or "re-construction ' as these terms are used in Sections 349 C and 342 of the Act respectively. In Section 349 the words are 'shall be erected or re-erected ' which means that to erect a building is different from re-erecting it. The word 'erect' is defined by the legislature in Section 337 (2). There is no definition of re-erection. Re-erection must mean something which is excluded from the definition of 'erecting a building' in para 2 of Section 337. Therefore re-erection would apply to all buildings which are not included in that paragraph. A building with a ground floor to which after it has been in existence for some years the owner wants to add one or more storeys would fall within 're-erection,' provided it is not of the description mentioned in the definition of erection. The proviso to Section 349 0 makes that quite clear. It speaks not only of a building to come into existence in future but of a building which is already in existence at the time of the proposed re-erection. It says that the Commissioner may, by special order, grant permission for the erection of such a building of more than two storeys or for the construction of one or more additional storeys if satisfied that such building will be or is of thoroughly sound material and construction'. That is, a building with a ground floor already in existence is re-erected if one or more storeys are added to it. In construing this section I think we ought to bear in mind the object of the legislature and the mischief which was intended to be struck at. We think therefore that the Magistrate ought to deal with this case on the evidence bearing in mind the object of the section and the construction we have pointed out. With this answer the reference must be returned to the Chief Presidency Magistrate.

Heaton, J.

2. I entirely concur with the conclusion that the word 're-erect' used in Section 349 C is something different from the word 'erect' defined in Section 337. The use of the word 're-erect' as well as 'erect' in Section 349 C brings within that section a class of cases excluded from Section 337, Clause (2). In this particular case there are two ways in which the accused may conceivably have committed an offence :-

(1) He may have pulled the old building down to the plinth so as to bring himself within the meaning of Section 337. This is a question of fact.

(2) Although he may not have pulled the building down to the plinth, yet he may have re-erected it within the meaning of Section 349 C. That again is a question of fact to be determined by the Magistrate.

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