# Mani Ram vs State Through The Notified Area on 28 August, 1951

## Equivalent citations: AIR1952ALL40, AIR 1952 ALLAHABAD 40

## Author: Raghubar Dayal

## Bench: Raghubar Dayal

JUDGMENT

Desai, J.

1. The question "When a person residing in an area to which provisions of Sections 180 and 185 Municipalities Act, 1916, have been extended under Government Notification No. 72 MC/XI 70A dated 6-6-1917, gives notice to the Notified Area Committee of his intention to erect a building under Section 178 of the Act, and commences to erect it before the committee passes an order contemplated by Section 180 (1) and (2), and without calling its attention to its omission or neglect to make it in accordance with Sub-section (8) of Section 180, is he liable to be prosecuted under Section 185 o the Act as amended by Section 15, United Provinces Act II [2] of 1919?"

> referred to us has arisen in these circumstances : Mani Ram applicant, intending to make certain constructions within the limits of the Notified Area, Mahoba, intimated his intention to the Notified Area Committee, as required under Section 178, Municipalities Act, on 27-1-1948, shortly after without waiting for any orders of the Committee and without reminding it of the intimation given by him, he started the constructions. The Committee thereupon prosecuted him under Section 185, Municipalities Act; he has been convicted by the Court below. His revision application came up before a Bench of this Court which being of the view that the decision of this Court in Bafatan v. Emperor, 1933 ALL. L. J 1053 requires reconsideration, referred the question to this Bench.

2. The Municipalities Act was enacted in 1916, Section 178 of it requires that a person wishing to make certain constructions within the limits of a municipality must give notice of his intention to the Board. Section 180, as it stood in 1916, provided that the Board might refuse to sanction the work of which notice had been given or sanction it absolutely or subject to conditions and that if the Board neglected within a month of the receipt of the notice to pass any order on the intimation, the person might remind it and if it still neglected or omitted for a further period of fifteen days, it would be deemed to have sanctioned the work absolutely.

3. Section 185, as originally enacted, provided for the punishment of a person beginning a work without giving the notice required by Section 178, or in contravention of an order of the Board refusing sanction, or any written directions made by it. Section 337 allows the Government by Notification to declare any local area as a Notified Area and apply to it the provisions of any sections of the Act subject to sucb restrictiona and modifications as it may think fit.

4. In 1917 the Government issued a Notification constituting the Notified Area of Mahoba and applying to it the sections mentioned in the schedule attached to the notification without any modifications. The schedule includes Rs. 178 to 186, except Section 182. The provisions in SECTIONS 178 to 185 in the original Act were defective inasmuch as a person wishing to make a construction within a municipality was required to give intimation of his intention, but was not required to wait for the municipality to pass suitable orders on it. As the law stood then, he could start making the constructions immediately after giving intimation of his intention and might even finish the construction before the municipality had any time to consider the matter. To remove this defect the Municipalities Act was amended in 1919. Sub-section (5) was added to Section 180, providing that no person should commence any work of which he has given notice until sanction has been or deemed to have been given. A consequential amendment was made in Section 185 providing punishment for contravention of the provisions of this sub-section. No notification has been issued by the Government expressly applying these added provisions of Sections 180 and 185 to the Notified Area of Mahoba which continues to be governed solely by the notification of 1917. The contention of the applicant is that his case is governed by Sections 180 and 185 as they stood in 1917 (at the time of the issue of the notification) and not by the provisions added in them by the Amending Act of 1919. He had given intimation of his intention. He did not wait for the Board's sanction and did not call its attention to its omission or neglect to pass an order; but thereby he did not contravene any provision of the Act as it stood in 1916 or 1917. So if his case was governed by the Act as it stood in 1916 or 1917, he was not guilty and his conviction would have to be set aside. The Notified Area Committee contends that the case is governed by the Act as it stood in 1948 when be started making the construction.

5. The answer to the question referred to us depends solely upon the construction of the notification. It is the notification which has applied to the town of Mahoba the provisions of the Municipalities Act which are said to have been contravened by the applicant. It was the issue of the notification that made it obligatory upon the applicant to comply with the provisions said to have been contravened by him. The question is whether those provisions namely Section 180 (5) and the added provision in Section 185 have been applied to the Notified Area of Mahoba by the Government. As the Government has issued only one notification the question oomes to this does that notification apply the provisions of Section 180 (5) and the added provisions of Section 185 to the Notified Area ? This question is quite different from the question

-What were the provisions of Sections 180 and 185 in 1948 when the applicant commenced the construction ? If the two questions are not confused with each other, the answer to the question referred to us would be easier. The applicant is certainly cot governed by the sections as they stood in 1948; he is governed by the sections that were applied to the Notified Area. If the Government applied to the Notified Area the sections as they stood in 1917 together with all subsequent

amendments as and when made, the applicant would certainly be governed in 1948 by the sections as they stood in that year. But, as I said earlier, the Government has applied Sections 180 and 185 without any modifications or restrictions and without saying anything about future amendments. It does not appear to have considered the question of future amendments to the sections at all.

6. The notification simply said that Sections 180 and 185 would apply to the Notified Area. What sections were meant by this and whether it meant the sections as they stood at the time of the issue of the notification, or the sections together with all future amendments are answered by Section 28, U. P. General Clauses Act. It lays down that in any rule, bye-law or instrument made under any United Provinces Act, any enactment may be cited by reference to the number and year thereof and any provision in any enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained. So the Municipalities Act may be cited by reference to the number (II) and year (1916) The Act has been amended several times, but it remains Act No. II [2] of 1916, When one refers to "Act No. II [2] of 1916" the reference would be to the Act as it stands at the time of making the reference. If one spoke of "Act Mo. II [2] of 1916" in 1916, one meant the Act as originally enacted. If one spoke of "Act No. II [2] of 1916" in 1919, one meant the Act as it stood after the amendment of 1919. If one speaks of "Act No. II [2] of 1916" today, one means the Act as it stands today. Obviously, if one speaks of "Act No II [2] of 1916" today, one cannot possibly contemplate future amendments the reason simply is that one does not know anything about them and has no reason to anticipate them and no occasion for contemplating them. One can real with the Act today only as it stands today Consequently when in the notification the Government applied the provisions of Sections 180 and 185 to the Notified Area it applied the sections as they stood in 1917. Hal there been any amendment in them prior to the issue of the notification, the amended sections were meant and not the sections as originally enacted. Once the sections as they existed in 1917 were applied, any subsequent amendments for the purposes of Municipalities, by themselves, would have no effect in the Notified Area. If the Government intended that the Notified Area also should be governed by the amendments it should have issued notifications applying the amendments to the Notified Area, or should have made it clear in the notification that the sections together with all future amendments were applied. We are concerned with what the Government did and not with what was contained in Sections 180 and 185 in 1948. The sections as they existed in 1948 were not the sections applied to the Notified Area, either expressly or impliedly.

7. In Bafatan's a case, (1933 ALL. L. J. 1053) Iqbal Abmad J. held, Kendall J. concurring that the notification applied the sections as they stood at the time of its issue and that the subsequent amendments were not made applicable. The view taken by the learned Judges is, I say this with great respect, sound.

8. When certain sections of an Act are incorporated into a subsequent Act, the legal effect of the incorporation is, in the words of Lord Esher, M. R .

> "to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and, the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all. In re Woods Estate, (1886)

31 Ch. D. 607 at p. 615."

If this principle is applied in the present case, the legal effect of the Notification stating that Sections 180 and 185 were applied to the Notified Area would be the same as if it had said that 'the following provisions are applied to the Notified Area" and reproduced the contents of Sections 180 and 185. Naturally, the Notification would have reproduced the contents of the sections as they stood then, and the matter would have ended there. One would have had no occasion whatsover for referring to the Municipalities Act and one would not be concerned at all with the subsequent amendments. The Act might have been amended from time to time but the contents of the Notification would go on for ever. Under Section 54, Land Acquisition Act, as originally enacted, an appeal from an award to a District Judge could he in the High Court but no appeal could lie from the judgment of the High Court to the Privy Council. The Provincial Legislature of Bengal in 1911 enacted the Calcutta Improvement Act modifying the provisions of the Land Acquisition Act and constituting a tribunal which was to be a Court, except for the purposes of Section 54, Land Acquisition Act. The effect of this was that there could lie no appeal from an award of the tribunal to the High Court. Thereafter, in 1921, the Land Acquisition Act was amenied and Section 26(2) was added laying down that every award was a decree. After this the provincial tribunal gave an award from which there was an appeal to the High Court. A question arose whether an appeal could lie to the Privy Council from the judgment of the High Court and it was answered by the Privy Council in the negative: vide Secy. of State v. Hindustan Co-operative Insurance Society Ltd., 1931 ALL L. J. 475. On behalf of the appellant it was argued that Section 26(2) added in 1921 in the Land Acquisition Act should be read into the Provincial Act. This contention was rejected by Sir George Lowndes, who observed at page 479 :

> "The Sub-section in question, which was not enacted till 1921, cannot be regarded as incorporated in the local Act of 1911. It was not part of the Land Acquisition Act when the local Act was passed, nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made to that Act. It is at least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the local code. Nor, again, does Act XIX of 1921 contain any provision that the amendments enacted by it are to be treated as in any way retrospective, or are to be regarded as affecting any other enactment than the Land Acquisition Act itself....."
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> "It seems to be no less logical to hold that where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the Subsequent Act, can be deemed to be incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition."

This principle should govern the present case, though it deals with incorporation of certain provisions of an ct into a Notification issued thereunder and not into a subsequent Act. It makes no difference whether the incorporation is into a Notification or bye law or into a subsequent Act.

9. It is stated by Crawford in his "Statutory Construction", at page 618 :

> "The amended statute should also be construed as if it had been origiraliy passed in its amended form, since the amendment becomes a part of the original enactment."

But this is only for future events. Amendatory statutes are subject to the general principles relative to retroactive operation and an amendment will usually take effect only from the date of its enactment. Sutherland writes in his Statutory Construction, Edn. 3, vol. 1, p. 431, that "the Act or Code as amended should be construed as to future events as if it had been originally enacted in that form."

He adds in a footnote at p. 432:

> "An independent Act incorporating by reference the provisions of another Act is not affected by amendments made to the latter after the incorporation. But if one section of an Act or code incorporates by reference the provisions of another section of the same Act or code, a subsequent amendment of the latter is regarded as affecting the whole Act or Code, including the section incorporating the section amended by reference."

The present case is governed by the first sentence and not by the second sentence in the footnote. The Notification, though issued under the Municipalities Act, stands on the same footing as an independent Act. All that the second sentence means is that the reference in Sections 337 and 338 of the Act is not to the provisions as they were originally enacted but to the provisions as they stand at the relevant time. It cannot be argued that Sections 337 and 338 permit the Government to apply only those provisions which stood in the original Act. Had the Government issued the Notification in 1920, it would have been competent to apply the provisions of Sections 180 and 185 as they stood in 1980. Thus, Sections 337 and 338 permit the Government to apply the sections together with all previous amendments and even future amendments; whether the Government does all that is permitted or not, is a different question. The Act, as amended in 1919, is to be construed as if it had been originally enacted in that form only as to future events, that is, events taking place after the amendment. The event with which we are concerned is the issue of the Notification by the Government under Section 337 and not the act of making the constructions done by the applicant in 1948. Consequently, for the purposes of construing the Notification, Section 180 (s) and the added provision of Section 185 will not be deemed to have been present in the original Act of 1916. As a corollary they will not be deemed to have been present in the Act in 1917 at the time of the issue of the Notification.

10. The present case is similar to that of EMperor v. Rayavgouda Lingangouda, A. I. R. (31) 1944 Bom. 259. In 1941 the Government of Bombay delegated its powers under Rule 26, Defence of India Rules, to a District Magistrate. The rule was subsequently amended and the question arose whether the District Magistrate had power under the amended rule or not. It was answered by a Bench in the negative. Just as what was delegated to the District Magistrate was the power contained in the rule as it stood at the time of the delegation and not as it might stand after subsequent amendment, so

also what was applied to the Notified Area was the provisions contained in Sections 180 and 185 as they stood at the time of issuing the Notification and not as they might be amended in future.

11. Our attention was drawn to Sections 8, 24 and 20, U. P. General Clauses Act, bat I do not consider them at all relevant or of any assistance in the instant case. Section 8 deals with the effect of repeal and re-enactment of an Act on a reference to its provisions in another Act. The Municipalities Act has not been repealed and re-enacted; its amendment in 1918 cannot be deemed to be its repeal and re-enactment in another form. Further, it is not an absolute rule that the reference in another enactment or instrument to a provision repealed and re-enacted should be construed as a reference to the re-enacted provision. If a different intention appears, it may not be construed as a reference to the re-enacted provision. I have already said that the Government's intention appears to have been to apply the sections as they stood then and not as they might be amended from time to time. Section 24 deals with the repeal and re-enactment of a provision under which a Notification has been issued. We are not concerned here with the repeal and re enactment or even amendment, of SECTIONS 337 and 338 under which the Notification has been issued. Those sections remain as they were and no question of the effect on the Notification of any modifications in them arises. The General Clauses Act does not contain any provision dealing with amendments of enactments, not because the provisions dealing with the repeal and re-enactment apply to amendments but because there is no necessity of such provision. When an Act is amended, it continues in existence under the original name and style. When an Act is repealed and another Act is enacted in its place, the former Act is gone and any reference to it in another Act would not be deemed to be a reference to the replacing Act without a specific provision. Similarly, the amendment of a provision under which a notification has been issued would not affect the Notification, unless it becomes inconsistent with the amended provision. If it becomes inconsistent, it will become null and void and if it does not, it will continue in force even after the amendment. But when an enactment is repealed, it goes together with all notifications, bye-law and rules made under it and if there were no provision similar to that contained in Section 84, great inconvenience would be caused in having to issue fresh notifications, bye laws and rules under the re-enacted Act. Section 20 lays down that expressions used in a Notification will have the same meaning as in the Act under which the Notification is issued. We have to interpret the words "Sections 180 and 185" in the Notification; these words are not defined at all in the Municipalities Act. The Act gives the contents of the sections but does not define them. It does not even use the word "section" before the figures "180" and "185".

12. Among other cases cited before us is Harpal Singh v. State, A. I. R. (37) 1950 ALL. 562 decided by a Bench of which one of as was a member. The U. P. Maintenance of Public Order Act by Section 3 conferred certain powers upon the Provincial Government and by Section 11 authorised it to delegate its powers to District Magistrates. Accordingly the Provincial Government issued a Notification delegating its powers of Section 3 to District Magistrates. Subsequently Section 3 was amended and the powers conferred by it upon the Government were enlarged. It was held that the effect of the amendment was to enlarge the delegated powers also. With great respect to the learned Judges I think that the powers that were delegated to the District Magistrates were the powers that vested in the Government on the date of the delegation and that the subsequent increase in the powers of the Government had no effect on the District Magistrate's powers which continued as

before. The District Magistrates' powers could not have been enlarged unless the Government issued a fresh Notification delegating its enlarged powers That case does not appear to have been correctly decided and the decision is not binding upon us. Another is The State of Bombay v. Pandurang Vinayak, 52 Bom, L. R. 852. In 1948 the Bombay Government issued an Ordinance which came into force in certain areas. It contained a provision empowering the Provincial Government Go extend it to other areas and the Provincial Government issued a Notification extending it to other areas. The Ordinance was replaced by an Act which contained a provision that Sections 7 and 25, Bom fay General Clauses Act would apply to the repeal of the Ordinance. It was held by a Bench that at the most the Ordinance could be deemed to have been extended to the other areas and not the Act. Thy Notification would continue as before without any alterations, Its had extended the scope of the Ordinance to other areas and the word "Ordinance" used in it could not be replaced by the word "Act". After the repeal of the Ordinance there was no question of its extension to the other areas. Just as the Bench reiused to read the word "Act" for the word "Ordinance" in that Notification, so also we must refuse to read words not finding place in the Notification. Bramwell B, said in Fredricks v. Payne, (1872) 130 R. R. 670 at p. 671 :

> "The introduction of words into an Act of Parliament is open to serious objections, and should only be resorted to for the most cogent reasons, so as to avoid a repugnancy of construction, or something which is opposed to good sense."

The introduction of words into a Notification issued under an Act is open to the same serious objection. When the notification says that "Sections 180 and 185 are applied to the Notified Area", we cannot act as if it had said "Sections 180 and 185, together with all future amendments, are applied to the Notified Area." The remaining case is Auth Narain v. Government of U. P., 1949 ALL. W. R. 507. The question decided there was quite different, being whether the delegation by the Provincial Government of its powers of Section 3, Maintenance of Public Order Act operates for the original life of the Act or also for its extended life. No question arose there about the effect of any amendment of a provision.

13. Some light may be thrown by Collier v. Worth, (1875) l EX. d. 464 on the question under discussion. In 1822 an Act was passed prohibiting the public from selling any fish within the "town" of Rochdale, except in the market places thereof. In 1876 Worth gold fish in M street which then was a main thorough-fare of Rochdale town. In 1122 its site was green fields and was not within the market places of Rochdale. Worth, on being prosecuted, contended that be did not sell fish within the town of Rochdale as it existed when the Act was enacted. The contention was overruled. Cleasby, B. observed that in one sense the Act was passed with reference to the state of the town as it then stood, but he observed that from its very nature a town is of varying extent and its limits from time to time will depend upon the number of its inhabitants. He referred to the preamble of the Act alluding to an increase in the population and buildings and presumed that the Legislature intended to provide for a subsequent addition to the numbers of houses and inhabitants. Grove J., agreeing, said that the expression "the town of Rochdale" is not limited to the town as it existed at the time of the passing of the Act but meant the town for the time being. The present case stands in contrast to that case. A town in its very nature is of varying extent and the preamble of the Act itself contemplated increase in the size of Rochdale. It cannot be said that an enactment is in its very

nature of varying extent and that the Government Notification alluded to any amendments in it. Nor can it be said that the expression "Sections 180 and 185" is not limited to the sections as they stood at the time of the issue of the Notification. If the "town of Rochdale" meant the town as it stood at the time when the fish was sold, Sections 180 and 185" meant the sections as they stood when the Notification was issued. The relevant point of time is the time when the act was done. In that case the act was done when Worth sold the fish; in the present case the act was done when the Government issued the Notification.

14. The instant case must be distinguished from cases where an enactment incorporates or adopts the entire law regarding a particular matter contained in another enactment. For example, several enactments have adopted the Civil Procedure Code for governing the procedure in enquiries under them. It has never been even contended that those enactments have adopted the Civil Procedure Code which was current at the time when they were enacted and that subsequent amendments in it would not be deemed to have been adopted. It has been taken for grant. ed in all such cases that the Civil Procedure Code that is current at the time when the enquiry takes place would govern it. For example in suits under the U. P. Tenancy Act of 1939 the procedure laid down in the Civil Procedure Code barring certain sections was to be observed. This has not been taken to mean that the Civil Procedure Code that was current in 1939 was to be followed. In a suit tried in 1948 the Civil Procedure Code that was current in 1948 was to be followed. When the legislature adopted the entire law on a particular subject, it is legitimate to presume that it adopted it together with all subsequent amendments. Bub when a legislature adopts only particular provisions out of an enactment the same presumption cannot be drawn and the presumption that can be drawn would be that the legislature selected those provisions out of the enactment on account of their particular contents and that it intended to apply only those contents. The matter can be considered from another angle. A provision in an enactment that a certain act to be done under it would be done in the manner prescribed in another enactment is for the future. What has been done or what is a matter of the past is simply permitting the act to be done in that manner. What is the manner would be considered when the act is about to be done, and the manner would be ascertained from the law that would be in force at that time. In the instant case, on the other hand, Sections 180 and 185 were applied to the Notified Area in 1917; people in the Notified Area became liable under these sections from 1917. The notification did not leave anything to be done in future.

15. If the Government wanted to apply the amended provisions of the two sections to the Notified Area it had to issue a fresh notification in 1919. That notification could have been to the effect that Sections 180 and 185 of the Act were applied to the Notified Area. It would have been in exactly the same form and language as the notification of 1917. But merely because an exactly similar notification is required to be issued again after an amendment, it cannot be argued that the later notification is superfluous. The fact is that there is distinction between a notification issued in 1917 and a notification issued in 1919 after the Municipalities Act was amended; the former would apply Sections 180 and 185 as originally enacted while the latter would apply the sections as amended, In order to make the matter clear the second notification could say that Sections 180 and 185 as amended were applied to the Notified Area.

16. I have already said that it was an omission on the part of the legislature not to have provisions in Sections 180 and 185 similar to the provisions added in them under the amendatory Act, What is omitted in an enactment can sometimes be supplied by Courts but this is not a case in which the omission could be supplied by Courts. Courts could not fix an arbitrary number of days for which a person intimating his intention to make a certain construction should wait before starting the construction. The period for which be should wait before starting the construction has got to be fixed by the legislature. In the present case it could have been fixed even by the Government while issuing the notification. When the Government itself did not care to supply the omitted provisions I do not think a Court should undertake to do it.

17. My answer to the question referred to us is "No".

Bind Basni Prasad, J.

18. I had the benefit of going through the judgment of my learned brother, Desai J. and agree with the answer given by him to the question referred to this Full Bench. I desire to add the following.

19. The applicant has been convicted under Section 185, U. P. Municipalities Act, 1916 as it stands now. The question is whether to the notified area Mahoba, Sections 180 and 185 apply in their present form, or in the form in which they stood when the notification of 6.6.1917, was issued by the Government under Section 338 (1) (a) of the Act. If it is the latter then no offence was committed by the applicant. If it was the former, be is punishable under Section 185.

20. Sub section (5) of Section 180 runs as follows:

> "No person shall commence any work of which notice has been given under Section 178 until sanction has been given or deemed to have been given under this section."

This did not exist in 1917. It was added by the Amending Act of 1919 (U. P. Act II [2] of 1919). A consequential amendment was made also ill Section 185 so as to provide the contravention of the provisions of Section 180 (5) punishable. Prior to the Amending Act of 1917, if a person commenced work without the sanction given or deemed to have been given, it was no offence.

21. For the determination of this point, it is necessary first to examine the scope of the U. P. Municipalities Act, 1916. As its preamble shows, it is an Act primarily for municipalities in this province. The Act was made "to consolidate and amend the law relating to municipalities." It is a long Act containing 389 sections and nine schedules devoted to municipalities only, save chap. XII containing three sections only which relate to notified area. Section 337 provides for the constitution of notified areas, and Section 338 (1) (a) provides for the extension of the Acts applicable to municipalities to such areas. Clause (a) of Sub-section (1) of Section 338 provides;

> "(1) The Provincial Government may by notification (a) apply or adapt to a notified area the provisions of any section of this Act, or of any Act, which may be applied to a municipality, or part of such section, or any rule, regulation or bye law in force or

> which can be imposed in a municipality under the provisions of this or any other Act, subject to such restrictions and modifications, if any, as it may think fit."

22. It is important to note here that the laws relating to municipalities do not ipso facto apply to notified areas in the form in which they were enacted for the municipalities. They apply subject to such adaptations, restrictions and modifications as the Provincial Government may deem fit to make in them. Two conclusions emerge from these provisions. Firstly, the Municipalities Act is compound Act dealing not only with one topic, but with two topics, namely the municipalities and the notified areas. What could have been the subject-matter of two separate Acts has been dealt with in one single Act. The provisions relating to notified areas may be different from those for the municipalities. That is the intention of Section 338 and that is the position which we find from the notification of 6 6 1917. Learned counsel for the opposite party has sought to distinguish the authorities relied upon on behalf of the applicant and referred to by my learned brother Desai J. from the facts of the present case on the ground that hero we are dealing with one Act only and not with a case in which the provisions of one Act have been incorporated into those of the other. This is a distinction without a difference, for in reality even in this single Act, the provisions of law relating to municipalities are sought to be incorporated for the notified areas by means of a notification. Secondly when the intention of the law is not to apply the law of the municipalities to the notified areas in its entirety, it would be defeating that intention to hold that subsequent amendments made to that Act which in terms have not been applied to notified areas by any notification of the Provincial Government under Section 338 also apply to them. The section contemplates that the Government should consider whether a law relating to municipalities shall apply to notified areas. Such a consideration has not been bestowed upon the application of the amendment made by Act II [2] of 1919.

23. The notification of 6-6-1917, did not provide that future amendments in the Municipalities Act shall also apply to the notified areas. If there were such a provision, the amendment of 1919 would have applied and the applicant would have been guilty. In the absence of such a provision, Ss. 180 and 185 as they stood in 1917 apply to him.

24. Sections 8, 20, 24 and 28, U. P. General Clauses Act, 1904, have also been referred to in the course of the arguments in support of the contention that the amended Sections 180 and 185, U. P. Municipalities Act, 1916, apply to the applicant. None of them is of any such help. The condition precedent to the application of Sections 8 and 24 is that there must be a repeal and re-enactment of the provisions of any enactment. That is not the position here. Here there has been only an amendment. There is a sharp difference between a repeal and an amendment.

25. Section 20 provides:

> "Where, by any United Provinces Act, a power to issue any notification, order, scheme, rule, form or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form or bye-law shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act conferring the power."

26. The question is what was the meaning of words and figures "Sections 180 and 185" appearing in the notification of 6-6-1917 in 1948 when the offence is alleged to have been committed. The word "section" is defined in Sub-section (40) of Section 4, U. P. General Clauses Act as follows: " 'Section' shall mean a section of the Act or Regulation in which the word occurs."

27. A perusal of the opening sentence of Section 4 and the provisions of Section 20, U. P. General Clauses Act, shows that this definition would apply to all the U. P. Acts and notifications issued thereunder "unless there is anything repugnant in the subject or context". While therefore, a section cited in a notification means ordinarily the section as it stands for the time being together with the amendments made thereunder, in the present case it has not that meaning, as the context indicates otherwise. It has already been shown above that the intention of Section 338, Municipalities Act, is to apply its various sections to the notified areas not necessarily in the form in which they stand for the time being, but with such adaptations, restrictions and modifications as the Government may think fit. That being so, it follows that an amendments to the Act made subsequent to the notification cannot be applicable to the notified areas unless the Government has considered the question of its application to such areas. The word and figures "Sections 180 and 185" in the notification, therefore, do not mean those sections together with their future amendments.

28. Section 28 provides for the citation of enactments. The meaning which I assign to it is that in the notification of June 6, 1917, the sections mentioned in it are the sections as they stood on that day. If the notification had been issued subsequent to the amendment of 1919, the word and figures "Sections 180 and 185" would have meant those sections as they stood amended.

29. My learned brother, Desai J., has already considered the case law cited at the bar. I may refer only to two of them. The first one is the Secy. of State v. Hindustan Co-operative Insurance Society Ltd., 1931 ALL. L.J. 475, Sir George Lowndes observed at p. 479:

> "Where certain provisions from an existing Act have been incorporated into a subsequent Act, no addition to the former Act, which is not expressly made applicable to the subsequent Act, can be deemed incorporated in it, at all events if it is possible for the subsequent Act to function effectually without the addition."

30. Although in the present case, we have not two Acts before us, the principle underlying the above observations applies to this case with equal force. Here we have the case of incorporation of the laws applicable to one type of local authorities, namely the municipalities after adaptation, modification and restriction for another type namely the notified areas.

31. Dealing with the effect of the amendment made in 1921 in the Land Acquisition Act, 1894, upon the Calcutta Improvement Act, 1911, which incorporated certain provisions of the former Act after certain modifications, their Lordships observed :

> "But their Lordships think that there are other and perhaps more cogent objections to this contention of the Secretary of State, and their Lordships are not prepared to hold that the sub-section in question, which was not enacted till 1921, can be

> regarded as incorporated in the local Act of 1911. It was not part of the Land Acquisition Act when the local Act was passed, nor in adopting the provisions of the Land Acquisition Act is there anything to suggest that the Bengal Legislature intended to bind themselves to any future additions which might be made to that Act. It is at least conceivable that new provisions might have been added to the Land Acquisition Act which would be wholly unsuitable to the local code. Nor, again, does Act XIX of 1921 contain any provision that the amendments enacted by it are to be treated as in any way retrospective, or are to be regarded as affecting any other enactment than the Land Acquisition Act itself. Their Lordships regard the local Act as doing nothing more than incorporating certain provisions from the existing Act, and for convenience of drafting doing so by reference to that Act, instead of setting out for itself at length the provisions which it was desired to adopt."
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> These observations apply to the present case also.

32. The second case to which I may refer is of this Court. Bajatan v. Emperor, 1933 ALL, L.J. 1053. It is on all fours with the facts of the present case and I respectfully agree with the decision reached in it.

33. My learned brother, Desai J. has observed that if an enactment adopts the entire law contained in another enactment, then subsequent amendments to the latter would be deemed incorporated in the former. In this connection he has referred to the incorporation of the Code of Civil Procedure in the U. P. Tenancy Act, 1939. With great respect, I may say that perhaps the proposition has been stated rather too broadly. At all events, the question does not arise in the present case and it is not necessary to express any opinion on this point. My learned brother, Dasai J. has also observed :

> "When an Act is repealed and another Act is enacted in its place, the former Act is gone and any reference to it in another Act would not be deemed to be a reference to the replacing. Act without a specific provision."

34. With great respect, I may say that according to Section 8, U. P. General Clauses Act, 1904, the references to the old Act in the incorporating Act will be deemed to be the references to the replacing Act, unless a different intention appears.

35. I too would answer the question referred to the Full Bench in the negative.

Raghubar Dayal, J.

36. I have been through the judgments of brothers Bind Basni Prasad and Deasi JJ. and agree that the answer to the qaestion referred to the Full Bench shall be in the negative.

37. I may note very briefly my reasons :

38. Under Section 338, Municipalities Act the Provincial Government had to apply by notification or adapt to a notified area the provisions of any section of the Municipalities Act. By its Notification in 1917 the Government applied the provisions of Sections 180 and 185. It follows that whit was contained in those sections at the time of the notification was applied and that, therefore, what was added to those sections subsequent to the notification would tot apply to the notified area.

39. Chapter XII, Municipalities Act, relating to notified areas in fact amounted to an enactment authorising the Provincial Government to create notified areas and to enact laws for those areas. It could create the areas by notification and could also enact by notification. The only limitation to the enactment of laws was that it had not to make a law which was not applied or could not have been applied to a municipality as Section 338 Sub-section (1) Clause (a) authorised the application or adaptation of the provisions of any section of the Municipalities Act or of any Act which can be applied to a municipality or any rule, regulation or bye-law in force or which could be imposed in municipalities under the Municipalities Act subject to such restrictions or modifications, if any, as it might think fit. It should follow that the notification under Section 338 really amounted to an enactment by the Provincial Government and any reference in such enactment to the sections of the Municipalities Act would mean an incorporation of the provisions of those sections in that enactment. It is settled rule that the incorporation of provisions of another Act in a certain Act amounts to the actually writing of those provisions in the latter Act. It should, therefore, follow that what is added to Sections 180 and 185, Municipalities Act subsequent to the notification of 1917 could not be taken to be incorporated in the notification issued by the Government.

40. I may add that the amendments to Sections 180 and 185, Municipalities Act, were by way of addition and not in the nature of repealing the original provisions and re-enacting them with modifications and that, therefore, the provisions of Section 8, General Clauses Act, do not apply. For the same reason and also for the additional reason that the notification of 1917 was issued under Section 338 Municipalities Act, and not under Section 180 or 185 of that Act, Section 21, General Clauses Act, will also not apply. It is very doubtful that words 'the expressions' used in Section 20, General Clauses Act include the words 'section so and so'. Section 180 is merely a mode of citation with respect to the provisions contained in Section 180. Section 28, General Clauses Act, supports this view.

41. It is not necessary to discuss the correct, ness of the view expressed by me in Harpal Singh v. State, A. I. R. (37) 1950 ALL. 562, about the non-necessity of a fresh notification under Section 11, U. P. Maintenance of Public Order (Temporary) Act, 4 of 1947 by which the Provincial Government had delegated its powers under Section 4 to the District Magistrates after there had been certain amendments in Section 4. (Order by the Division Bench D/. 19 9-1951).

Raghubar Dayal and Desai, JJ.

42. In view of the answer of the Full Bench to the effect that when a person residing in an area to which provisions of Sections 180 and 185, Municipalities Act, 1916, have been extended under Government Notification No. 72 MC/XI-70A, dated 6 6 1917, gives notice to the Notified Area Committee of his intention to erect a building under Section 178 of the Act and commences to erect

it before the committee passes an order contemplated by Section 180 (1) and (2), and without calling its attention to its omission or neglect to make it in accordance with sub Section (3) of Section 180, he is not liable to be prosecuted under Section 185 of the Act as amended by Section 15, U. P. Act II [2] of 1919, we allow the revision, set aside the conviction of the applicant under Section 180, Sub-section (5), Municipalities Act and acquit him of that offence. We further direct that the fine, if paid, be refunded.