held that the provisions of s. 417(4) were a 'special law' within the meaning of s. 29(2) of the Limitation Act. In that case, the High Court has dealt with the decisions of the different High Courts on the question and with the reasonings for those decisions. As we agree with the conclusions of the High Court of Bombay, we do not think it necessary to repeat the observations made therein, bearing on the reasons given by the High Courts of Allahabad, Andhra Pradesh and Madras for coming to contrary conclusions.

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Sinha, C. J.

For the reasons given above, we hold that the view taken by the High Court of Punjab is entirely correct. The appeal is accordingly dismissed.

Appeal dismissed.

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(P. B. GAJENDRAGADKAR, K. SUBBA RAO, K. N. WANCHOO, J. C. SHAH AND RAGHUBAR DAYAL, JJ.)

United Provinces Municipalities Act, 1916 (*No. II of* 1916), *ss.* 298, 299(1) *and bye-law cl.* 3(*a*)—*"Market" meaning of—Whether bye-law ultra vires.*

The appellant-accused was charged with committing the offence under s. 299(1) of the United Provinces Municipalities Act, read with cl. 3(a) of the relevant bye-laws framed by Respondent No. 2. The case against the appellant was that he was running a market within the municipal area in which vegetables, fruits, fish and grains were sold. It was alleged that he was bound to take a licence for the aforesaid market under cl. 3(a) of the relevant bye-laws and since he had failed to do so, he had committed a breach of the said bye-laws. He was tried by the Tehsildar of Tanda on the said charge. The Tehsildar acquitted him. The Tehsildar held that he was running only a grain market and Respondent No. 2 (the Municipality) had no power to make bye-laws for the running of a purely grain market and so the impugned bye-laws were *ultra vires.* On appeal, the High Court set aside the order of acquittal and convicted the appellant under s. 299(1) of the Act read with cl. 3(a) of the relevant bye-laws. It has been

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found by both courts below in the present case that on the plot belonging to the appellant, more than four shops are kept and they sell food grains.

HELD: (i) These shops standing on the plot of the appellant constitute a market within bye-law 3(a).

(ii) There is no substance in the contention that the impugned bye-law 3(a) is invalid because it is inconsistent with s. 241(1) of the Act. There is no justification for adding the word "only" to the last part of s. 241(1) of the Act. If the word "only" cannot be added to the said section, then it must follow that in addition to the bye-laws made under heading F to s. 298, the Board may make other bye-laws in respect of the markets falling within the purview of s. 241(1), provided, of course, the said bye-laws are otherwise valid under s. 298.

(iii) Section 241(1) does not apply to the market which is run on the appellant's plot because it is a market for sale of grains.

(iv) There can be no doubt that cl. (d) of s. 298(2)(F) of the Act conferred power on respondent No. 2 to make a bye-law in regard to the establishment, regulation, and inspection of the market such as is run on the plot belonging to the appellant. If cl. (d) is held to justify the making of the impugned bye-law 3(a), the other clauses which prescribe the procedure for the application of licences, their grant and other incidental matters would be valid under cl. (dd) of s. 298(2)(F) of the Act. Therefore, there is no doubt that the impugned bye-law 3(a) and the other cognate bye-laws are justified by cls. (d) and (dd) of s. 298(2)(F) of the Act.

(v) It is now well-settled that the specific provisions such as are contained in the several clauses of s. 298(2) are merely illustrative and they cannot be read as restrictive of the generality of powers prescribed by s. 298(1). If the impugned bye-laws come within the purview of s. 298(1) of the Act, it cannot be said that the powers enumerated under s. 298(2) control the general words used by s. 298(1).

The impugned bye-laws in regard to the markets framed by respondent No. 2 are for the furtherance of municipal administration under the Act, and so, would attract the provisions of s. 298(1).

Emperor v. *Sibnath Banerji & Ors.*, A.I.R. 1945 P. C. 156, relied on.

(vi) The validity of the bye-laws must be tested by reference to the question as to whether the Board had the power to make those bye-laws. If the power is otherwise established, the fact that the source of the power has been incorrectly or inaccurately indicated in the preamble to the bye-laws, would not make the bye-laws invalid.

P. Balakotiah v. *Union of India.* [1958] S.C.R. 1052 followed,

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(vii) The plea of *malafides* cannot be permitted to be raised for the first time in appeal for the reason that for proving *malafides* the appellant ought to have made appropriate allegations at the stage of trial and led evidence to prove them.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1 of 1962.

Appeal by special leave from the judgment and order dated August 29, 1961, of the Allahabad High Court in Criminal Appeal No. 379 of 1961.

B. C. Misra, for the appellant.

C. B. Agarwala and *C. P. Lal,* for the respondent No. 1.

September 20, 1963. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR, J.—This appeal by special leave raises a short question about validity of bye law No. 3 and other relevant bye-laws framed by respondent No. 2, the Municipal Board of Tanda, on the 21st January, 1958. The appellant Chaudhari Afzal Ullah is a resident of Tanda and owns a piece of land and super-structures standing on it along with the compound, in the town of Tanda. On his own land, within the compound, he has established a market in which food-grains are sold. The Chairman of respondent No. 2 served a notice on the appellant calling upon him to obtain a licence for running the said market, and on the failure of the appellant to comply with said notice, respondent No. 2 initiated criminal proceedings against the appellant. The appellant was tried by the Tehsildar of Tanda (Cr. Case No. 141/1960). The case against the appellant was that he was running a market in which vegetables, fruits, fish and grains were sold. It was alleged that under the relevant bye-laws, the appellant was bound to take a licence and since he had failed to do so, he had committed a breach of the said bye-laws and had thus rendered himself liable to be punished under section 299(1) of the United Provinces Municipalities Act, 1916 (No. II of 1916) (hereinafter called 'the Act'). The said Tehsildar held that the prosecution had failed to prove the fact that in the market established on the plot belonging to the appellant, vegetables, fruits and fish were sold; evidence showed that only grains were sold in the shops

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run in that market. The Tehsildar further held that there was nothing in the Act which empowered respondent No. 2 to make bye-laws for the running of a purely grain market, and so, his conclusion was that the relevant bye-laws which were alleged to have been contravened were *ultra vires*. That is why the Tehsildar acquitted the appellant.

Respondent No. 2 then preferred an appeal against the said order of acquittal in the High Court of Allahabad. It was urged on its behalf that though the shops situated on the plot belonging to the appellant sold only grains, they constituted a market within the meaning of the relevant bye-laws and it was obligatory upon the appellant to take a licence under the said relevant bye-laws. Respondent No. 2 also contended that the Tehsildar was in error in holding that it had no power to make bye-laws even in regard to a purely grain market. These pleas have been upheld by the High Court, with the result that the order of acquittal passed in favour of the appellant has been set aside and he has been convicted under s. 299(1) of the Act read with clause 3(a) of the relevant bye-laws. The High Court has sentenced the appellant to pay a fine of Rs. 20/-; in default, it has ordered that the appellant should undergo simple imprisonment for one week. It is against this order that the appellant has come to this Court, and in addition to respondent No. 2, the Board, he has impleaded the State of U.P. as respondent No. 1.

Mr. Misra for the appellant contends that the High Court was in error in coming to the conclusion that the relevant bye-laws are valid. He urges that the said bye-laws are invalid, because they are outside the authority conferred on respondent No. 2 to make bye-laws by s. 298 of the Act, and he further argues that they are invalid for the additional reason that they are inconsistent with s. 241 of the Act. Before dealing with these contentions, it would be relevant to consider the said bye-laws, indicate their scheme and refer to the specific bye-laws with which we are concerned. These bye-laws purport to have been framed under section 298 A(a), (b), (c) and J(d) of the Act. The preamble to the bye-laws avers that the said bye-laws had been sanctioned by the Commissioner as required by section 301(2) of the Act. The bye-laws thus framed are seventeen in number and in addition, they contain a clause prescribing the penalty. Bye-

law 3(a) reads thus:—

> "No person shall allow any land or building in his possession or control within the limits of the Tanda Municipality to be used as a market or shop for the sale of vegetables, fruits and grains unless a licence has previously been obtained from the Board in this behalf."

There is an explanation to this bye-law which shows that "market" means and includes any place or places for buying and selling, *inter alia,* grains where more than four stalls or shops are kept on any plot of land owned by the same owner or owners, or where wholesale transaction by way of auction or sale of more than twenty maunds is carried on. It is thus clear that if on any plot, more than four stalls or shops are kept and they sell grains, they constitute a market within bye-law 3(a). It has been found by both the courts below in the present case that on the plot belonging to the appellant, more than four shops are kept and they sell grains. Thus, there can be no doubt that these shops constitute a market within bye-law 3(a). It is not disputed that if bye-law 3(a) is valid, the appellant would be under an obligation to obtain a licence as required by it.

Bye-law 3(b) provides that no person shall sell or expose for sale any fruit, vegetable or grain in any market or shop (not licenced by the Board) and not being a Municipal market or shop.

Bye-law 4 prescribes conditions which have to be satisfied before a licence can be granted. Bye-law 5 specifies the officer who can act as a licensing officer. Bye-law 6 requires that the place occupied by the shops shall be properly paved and drained. Bye-law 7 authorises the relevant authorities to inspect the shops. Under bye-law 8, sale of vegetables, fruits and grains which are rotten or unfit for human consumption is prohibited. Bye-law 9 requires the shop-keepers to remove rotten stuff and prescribes that the shops shall be kept clean and tidy. Under bye-law 10, sale of certain fruits and vegetables can be stopped if such sale is likely to spread disease or may prove injurious to health. Similarly, under bye-law 11, a person suffering from contagious disease can be prevented from working on the shop for the sale of fruits, vege-

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tables and grains. Bye-law 12 prescribes the penalty of forfeiture of licence if any rubbish or other injurious matter is allowed to be collected or deposited by a shop-keeper. Bye-law 13 provides that on an application for licence, the licensing officer may either grant the licence or for reason to be recorded refuse to grant it. Under bye-law 14, the power to cancel or suspend a licence is given to the licensing officer. Bye-law 15 provides for an appeal against certain orders, whereas bye-law 16 prescribes a fee for granting a licence which may amount up to Rs. 1,000/- depending upon the services rendered by the Board. Under bye-law 17, the life of the licence is limited to a year ending on March 31 next following the date from which it takes effect. The concluding paragraph provides for a penalty for breach of any of the bye-laws and prescribes that a fine up to Rs. 500/- may be imposed and if the breach continues, a fine of Rs. 10/- every day may follow. That, in short, is the scheme of the bye-laws.

Let us now look at the relevant sections of the Act before addressing ourselves to the question as to whether the impugned bye-law 3(a) and the other bye-laws passed by it are *ultra-vires*. There are only two sections of the Act which are relevant for our purpose in the present appeal; they are sections 241 and 298. Section 241(1) reads thus :—

> "The right of any person to use any place, within the limits of a municipality, other than a municipal market, as a market or shop for the sale of animals, meat or fish intended for human food, or as a market for the sale of fruit or vegetables, shall be subject to bye-laws (if any) made under heading F of s. 298."

Section 298 confers power on the Board to make bye-laws. Section 298(1) reads thus :—

> "A board by special resolution may, and where required by the State Govt. shall, make bye-laws applicable to the whole or any part of the municipality, consistent with this Act and with any rule, for the purpose of promoting or maintaining the health, safety, and convenience of the inhabitants of the municipality and for the furtherance of municipal administration under this Act."

Section 298(2)-F which consists of six sub-clauses deals with bye-laws which can be made in respect of markets, slaughter-houses, sale of food, etc. The two sub-clauses of s. 298(2)-F which are material read thus :—

"(d) Providing for the establishment, and except so far as provision may be made by bye-laws under sub-head (c) for the regulation and inspection of markets and slaughter-houses, of livery stables, of encamping grounds of sarais, of flour-mills, of bakeries, of places for the manufacture, preparation or sale of specified articles of food or drink, or for keeping or exhibiting animals for sale or hire or animals of which the produce is sold, and of places of public entertainment or resort, and for the proper and cleanly conduct of business therein;

(dd) Prescribing the conditions subject to which, and the circumstances in which, and the areas or locality in respect of which, licences for the purposes of sub-head (d) may be granted, refused, suspended, or withdrawn, and fixing the fees payable for such licences, and prohibiting the establishment of business places mentioned in sub-head (d) in default of licence granted by the board or otherwise than in accordance with the conditions of a licence so granted."

Mr. Misra contends that bye-law 3(a) is invalid, because it is inconsistent with s. 241(1). For the purpose of this argument, he assumes that the said bye-law is not justified by any of the clauses of s. 298(2)-F. He argues that s. 241 provides that the appellant's right to use his own place for the purpose of running a market can be regulated only by a bye-law which is framed under s. 298(2)-F and by no other bye-law. The form in which the argument is thus presented at once discloses the fact that Mr. Misra is adding the word "only" to the last part of s. 241(1). When s. 241(1) provides that the right of a person to run a market as therein indicated shall be subject to bye-laws, if any, made under heading F of s. 298, Mr. Misra assumes that it means that the regulation can be imposed only by bye-laws made under the said heading. We see no justification for adding the word "only" in that behalf. If the word "only" cannot be added to the said section, then it must follow that in addition to

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the bye-laws made under heading F to s. 298, the Board may make other bye-laws in respect of the markets falling within the purview of s. 241(1), provided, of course, the said bye-laws are otherwise valid under s. 298. That is the first answer to Mr. Misra's argument.

The second answer is that s. 241(1) does not apply to the market which is run on the appellant's plot, because it is not a market for the sale of fruits or vegetables, or for the sale of animals, meat or fish intended for human food; it is a market for sale of grains and such a market does not appear to be included under section 241(1).

Besides, as we will presently point out, the impugned bye-law can be justified under s. 298(2)-F (d) & (dd) and, therefore, even if s. 241(1) was held to be applicable to the market of the appellant, the requirement of the said section is satisfied. Therefore, we do not think there is any substance in the contention that the impugned bye-laws are invalid because they are inconsistent with s. 241(1).

The next point to consider is whether these bye-laws are justified by s. 298. We have already read clauses (d) & (dd) of s. 298(2)-F. Section 298(2)-F deals, *inter alia,* with markets, and in the absence of any definition of the word "market" prescribed by the Act, it would be legitimate to take the word "market" occurring in s. 298 (2)-F (d) in its dictionary meaning. If four or more shops are selling grains on the plot belonging to the appellant, they make a market in the ordinary sense of the word and clause (d) confers power on the Board to make bye-laws providing for the establishment, and for the regulation and inspection of markets. There can be no doubt that the power to regulate the establishment of markets which is specified in this clause would sustain the relevant bye-law framed by respondent No. 2. Mr. Misra attempted to argue that the markets referred to in this clause must be markets run for the sale of specified articles of food or drink, or keeping or exhibiting animals for sale, and he suggested that this condition was not satisfied by the market in question. In our opinion, this argument is entirely misconceived. What the clause purports to do is to authorise the making of bye-laws providing for the establishment, regulation and inspection of markets and several other places. The latter clause on which Mr. Misra relies

does not qualify the word "markets" which occurs in the earlier part. Therefore, there can be no doubt that clause (d) conferred power on respondent No. 2 to make a bye-law in regard to the establishment, regulation and inspection of the market such as is run on the plot belonging to the appellant.

Clause (dd) which flows as a consequence of clause (d) empowers the Board to prescribe the conditions subject to which and the circumstances in which licence may be granted, and if clause (d) is held to justify the making of the impugned bye-law 3(a), the other clauses which prescribe the procedure for the application of licences, their grant and other incidental matter would be valid under clause (dd).

The scheme of the six clauses under heading F is clear. Clauses (a) to (c) deal with places which are used as slaughter houses or as markets or shops for the sale of animals and other commodities mentioned in clause (a). Clause (b) in particular deals with a bye-law which prescribes the conditions subject to which places mentioned in clause (a) should be run; and clause (c) deals with a bye-law providing for the inspection of such places. Clause (d) is wider in its sweep and it takes in places covered by clause (a) and adds some other places, such as markets in their generic sense. Therefore, there is no doubt that the impugned bye-law 3(a) and the other cognate bye-law are justified by clauses (d) and (dd) of s. 298(2)-F.

Even if the said clauses did not justify the impugned bye-law, there can be little doubt that the said bye-laws would be justified by the general power conferred on the Boards by s. 298(1). It is now well-settled that the specific provisions such as are contained in the several clauses of s. 298(2) are merely illustrative and they cannot be read as restrictive of the generality of powers prescribed by s. 298(1) vide *Emperor* v. *Sibnath Banerji & Ors.* (1). If the powers specified by s. 298(1) are very wide and they take in within their scope bye-laws like the ones with which we are concerned in the present appeal, it cannot be said that the powers enumerated under s. 298(2) control the general words used by s. 298(1). These latter clauses merely illustrate and do not exhaust all the powers conferred on the Board,

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so that any cases not falling within the powers specified by section 298(2) may well be protected by s. 298(1), provided, of course, the impugned bye-laws can be justified by reference to the requirements of s. 298(1). There can be no doubt that the impugned bye-laws in regard to the markets framed by respondent No. 2 are for the furtherance of municipal administration under the Act, and so, would attract the provisions of s. 298(1). Therefore we are satisfied that the High Court was right in coming to the conclusion that the impugned bye-laws are valid.

It is true that the preamble to the bye-laws refers to clauses A (a), (d) & (c) and J (d) of s. 298 and these clauses undoubtedly are inapplicable; but once it is shown that the impugned bye-laws are within the competence of respondent No. 2, the fact that preamble to the bye-laws mentions clauses which are not relevant, would not affect the validity of the bye-laws. The validity of the bye-laws must be tested by reference to the question as to whether the Board had the power to make those bye-laws. If the power is otherwise established, the fact that the source of the power has been incorrectly or inaccurately indicated in the preamble to the bye-laws, would not make the bye-laws invalid (vide *P. Balakotaiah* v. *Union of India & Other*)(1).

Mr. Misra then attempted to argue that the relevant bye-laws have been passed *mala fide* out of spite and enmity for the appellant. His contention was that the appellant's shop is the only shop in the locality and bye-law 3(a) has been passed maliciously in order to hit the appellant. We do not think we can allow this point to be raised for the first time in appeal. No doubt Mr. Misra referred to the fact that Aftab Ahmad has admitted that there is no other grain market in Sakrawal except the one run by the appellant, but that, in our opinion, can hardly afford a basis on which the plea of *mala fides* could be judged. Sakrawal appears to be a locality in the town of Tanda, and so, a statement even if it is taken at its face value, cannot possibly justify the assumption that there is only one grain market in the whole of the town of Tanda. Besides, for proving *mala fides* the appellant ought to have made appropriate allegations at the stage of trial and led evidence to prove them.

(1) [1958] S.C.R. 1052.

Therefore, the plea of *mala fides* cannot be permitted to be raised.

Mr. Misra then suggested that bye-law 16 which prescribes fee up to Rs. 1,000/- is invalid, because it is unreasonable. Even this plea cannot be considered at this stage for two reasons: it has not been raised in the courts below and it is patently premature, because no fee has yet been imposed on the appellant; besides, the said bye-law merely authorises the Board to levy a fee up to Rs. 1,000/-, but it specifically adds that the amount levied by way of fee would depend upon the services rendered by the Board. That is why it would be impossible to deal with the attack against this bye-law in the abstract.

Mr. Misra also argued that the High Court should have allowed his client to take two additional points before it. These pleas are that the bye-laws had not been published in the local paper as required by section 94(3) of the Act and had not been made by a special resolution as required by s. 298(1). As the High Court has pointed out, these are pleas of fact and should have been taken at the trial. In our opinion, therefore, the High Court was fully justified in not allowing the appellant to take these pleas for the first time at the appellate stage.

The result is, the appeal fails and is dismissed.

Appeal dismissed