(1957) 01 CAL CK 0007

In the Calcutta High Court

Administrator, Howrah Municipality — APPELLANT

Vs

Abal Gowala — RESPONDENT

Date of Decision : 24-01-1957

Acts Referred:

Calcutta Municipal Act, 1923 — Section 386(1)
Calcutta Municipal Act, 1951 — Section 2

Citation : (1958) CriLJ 174 : (1958) 1 ILR (Cal) 419

Hon'ble Judges : Debabrata Mookerjee, J

Bench : Single Bench

Judgement

Debabrata Mookerjee, J.—This is an appeal by special leave on behalf of the Administrator, Howrah Municipality, directed against an order of Sri A. K. Roy, Magistrate, First Class, Howrah, dated the 28th September 1956, whereby the respondent was acquitted of an offence u/s 386(1) of the Calcutta Municipal Act, 1923, as extended to Howrah.

2. On the complaint of the Municipality, the respondent was put on trial for using certain premises for keeping cattle for sale without a licence. The defence was that the Municipality was not entitled to refuse a licence u/s 386(1) of the Act when it had already granted licences to the respondent under Sections 175 and 179 of the Act. Some evidence was tendered by the Municipality, but no witnesses were called by the respondent, and the learned trying Magistrate acquitted him of the offence charged. The Municipality has appealed.

3. Mr. Roy, appearing on behalf of the Municipality, has argued that the order of acquittal is based on a complete misconception of the law. The learned Magistrate seems to have thought it curious that the respondent should be prosecuted u/s 386(1) of the Calcutta Municipal Act, 1923, when as a matter of fact, the Municipality has already accepted license fees on account of trade, profession and calling and on account of scavenging tax. The Magistrate further seems to have doubted if the Municipality was not improperly withholding a health licence u/s 386(1) of the Calcutta Municipal Act, 1923, for reasons best

known to itself. He held in the end that the Municipality had been ill-advised to start a prosecution in the present case, and in that view of the matter made an order acquitting the respondent which is now under challenge.

4. Section 386 of the Calcutta Municipal Act, 1923, as extended to Howrah, provides that no person shall use or permit to be used any premises for any of the purposes mentioned in the section without or otherwise than in conformity with the terms of a licence granted by the Municipality in that behalf. One of the purposes stated is a purpose which in the opinion of the Municipality is dangerous 4o life, health or property or likely to create a nuisance. Another purpose stated is that of keeping horses, cattle or other four-footed animals for sale or hire or for sale of the produce thereof.

5. There can be no doubt that the Municipality has a discretion in the matter of granting licences for use of premises for certain purposes. Section 386 is, in my view, quite independent of Sections 175 and 179 of the Act. Section 175 which deals with tax on profession, trade and calling occurs in Ch. XII of the Act. Section 179 dealing with scavenging tax occurs in Ch. XIII. Both these Chapters are in Part IV of the Act dealing with taxation. Section 386 is a section to be found in Ch. XXXVI which occurs in Part V dealing with public health, safety and convenience. There cannot I be the slightest doubt that the purposes of these three sections are not identical. There is no overlapping, and it is quite consistent for the Municipality to issue licences under Sections 175 and 179, and yet refuse to issue a licence u/s 386 of the Act. It must, therefore, be held that the learned Magistrate completely misdirected himself in holding that since the Municipality had accepted licence fees under Sections 175 and 179, it could not in law refuse to accept the fee u/s 386 of the Act.

6. On behalf of the respondent it has been argued that since the Municipality has not declared the area in question as one prohibited for the purposes referred to in Section 386 of the Calcutta Municipal Act, 1923, the Municipality was not within its rights in refusing a licence. I think this argument completely overlooks the scheme of the sections. By not making a declaration in accordance with Section 387 of the Act in respect of a certain area, the Municipality does not forfeit its rights to refuse to issue a licence u/s 386 of the Act. If any authority was at all needed for this proposition it is be found in the case of Corporation of Calcutta Vs. Sm. Sumeria Bewx, , where it has been held that the fact that a person has been granted licences under Sections 175 and 179 which are granted on the basis of such a person de facto carrying on a particular profession in a particular premises, does not entitle: him as of right to a licence u/s 386 of the Act for using the said premises for the purpose of the profession. The authority concerned may refuse such a licence. It is, therefore, quite clear that although the Municipality of Howrah levied trade license fee and scavenging tax on the respondent, the Municipality was in no way obliged to accept the fee u/s 386 of the Act and issue a permit or licence thereunder.

7. It has next been urged on behalf of the respondent that Section 2 of the

Calcutta Municipal Act, 1951, having repealed the Calcutta Municipal Act, 1923, the provisions of the latter as extended to Howrah have been automatically repealed; that being so the present prosecution was misconceived. The answer to this criticism is to be found in Section 614 of the Act of 1951. That section provides that the Calcutta Municipal Act, 1923, as extended to the Municipality of Howrah under that Act and in force immediately before the commencement of the Act of 1951 shall continue to be in force until the provisions of the Act of 1951 are extended to that Municipality under the last mentioned Act. It is, therefore, plain that the Calcutta Municipal Act of 1923, as extended to Howrah, is quite alive, and that being so, the prosecution under that Act cannot be said to be misconceived.

8. Complaint Is made on behalf of the respondent that he cannot be compelled to take out the licence, as he is not the person in possession of the premises. Section 386 is quite widely worded. It says that no person shall use or permit to be used any premises for any of the purposes mentioned in the section without or otherwise than in conformity with the terms of the licence. The person may not use the premises himself. He must not permit it to be used in contravention of Section 386. Still it is perhaps a matter requiring some investigation as to whether the respondent can properly be prosecuted u/s 386. There can be no-doubt as respects the legal position, but the question of fact may require further investigation.

9. In the result this appeal is allowed, and the order of acquittal is set aside and the respondent is directed to be re-tried in accordance with law by another Magistrate to be nominated by the District Magistrate of Howrah.

