

(1922) 05 CAL CK 0019
In the Calcutta High Court

Akshay Kumar Chand

APPELLANT

Vs

The Commissioners of Bogra Municipality

RESPONDENT

Date of Decision : 31-05-1922

Acts Referred:

Citation : 75 Ind. Cas. 506

Hon'ble Judges : Chotzner, J;Asutosh Mookerjee, J

Bench : Division Bench

Judgement

1. This is an appeal by the defendant in. an action in ejectment. The disputed land was the subject-matter of a lease granted by the Chairman of the Municipal Corporation at Bogra to the appellant on the 28th April 1909. The document was registered on the 18th August 1909. The defendant went into occupation of the land and paid rent to the Municipality for a period of six years. On the expiry of the term of the lease the Municipality requested the defendant to vacate the land, but he insisted that the lease included a covenant for renewal which entitled him to continue in occupation. Thereupon the present suit was instituted on the 19th December 1918. The Courts below have decreed the suit on the ground that the lease granted by the Chairman was void, as such lease could have been granted only by the Comissioners at a meeting.

2. One of the questions in controversy in the Trial Court was, whether there was in fact a Resolution of the Commissioners at a meeting for the grant of this lease. The book which contains the minutes of the meetings of the Commissioners was produced and no Resolution could be traced there in. In these circumstances, the Courts below have inferred that there was in fact no Resolution to grant the lease adopted by the Commissioners at a meeting. The concurrent decisions of the Courts below have been challenged before us on two grounds, namely, first, that the Court of Appeal below should have held that the burden lay upon the Municipality to establish that the lease had been granted in contravention of the Statute and that the Municipality had failed to discharge this burden; and, secondly, that as rent has been received by the Corporation on the basis of the

lease for a term of six years, the lease has been ratified by the Commissioners. In our opinion, there is no foundation for either of these contentions. 3. Section 34 of the Bengal Municipal Act, 1884, provides that the Commissioners at a meeting may sell, let, exchange or otherwise dispose of any land not required, for their purposes. Section 44 then provides that the Chairman shall, for the transaction of business connected with the Act, or for the purpose of making any order authorised thereby, exercise all the powers vested by the Act in the Commissioners. If this stood by itself it might have been interpreted to cover a case within the scope of Section 34. But the proviso to Section 44 ordains that the Chairman shall not act in opposition to or in contravention of any order of the Commissioners at a meeting or exercise any power which is directed to be exercised by the Commissioners at a meeting. The grant in this case by the Chairman would be void, unless the lease had been sanctioned by the Commissioners at a meeting. The burden clearly lies upon the defendant to establish that the requirements of the Statute were fulfilled. He has failed to discharge that burden. In the normal course of events the Resolution adopted at a meeting of the Commissioners must be recorded and Section 43 provides that minutes of the proceedings of a meeting of the Commissioners shall be entered in a book to be kept for the purpose and shall be signed by the President of the meeting, and such book shall be open to the inspection of the tax-payers. Under Sub-section (5) of Section 78 of the Indian Evidence Act, proceedings of a Municipal body in British India may be proved by a copy of such proceeding certified by the keeper thereof. The minute book has been produced and there is no trace of a Resolution on the subject. Consequently, the position is that there is no valid lease as was held in the case of *Jagannath Saha v. Chairman of Berhampur Municipality* 4 Ind. Cas. 55 : 9 C.L.J. 286.

3. On behalf of the appellant, a grievance was made that a stranger in his position could not be expected to be acquainted with the nature and extent of the powers of Municipal Corporations. There is clearly no force in this contention. As was explained by Alderson, B, in *Macgregor v. Dover & Deal Railway Company* (1852) 18 Q.B. 618 at p. 631 : 7 Railw Cas. 227 : 22 L.J.Q.B. 69 : 17 Jur. 21 : 19 L.T. (O.S.) 316 : 88 R.R. 715 : 118 E.R. 233 where a Corporation is constituted by a Statute, all persons and Corporations are presumed to know the nature and extent of its powers. It was open to the defendant at the time when he took the lease, to make his position safe by insisting upon a copy of the Resolution of the Commissioners at a meeting, if such Resolution was ever adopted. It has finally been contended that as a rent was paid by the defendant to the Corporation for a period of six years, there was ratification by the Commissioners. There is no foundation for this contention. The transaction was ultra vires and could not be validated by ratification in the manner suggested.

4. We are consequently of opinion that the decree made by the Subordinate Judge is correct and this appeal must be dismissed with costs.