
(1940) 02 CAL CK 0003
In the Calcutta High Court

Amulya Charan Paul

APPELLANT

Vs

Chairman, Kanchrapara Municipality

RESPONDENT

Date of Decision : 23-02-1940

Acts Referred:

Bengal Municipal Act, 1932 — Section 317, 330

Citation : AIR 1940 Cal 336

Hon'ble Judges : Mohamed Akram, J;Mohamad Akram, J;Henderson, J

Bench : Full Bench

Judgement

Henderson, J.—This is a rule calling upon the Chairman of the Kanchrapara Municipality to show cause why an order made by the Sub-Divisional Magistrate of Barrackpore u/s 330, Bengal Municipal Act, should not be set aside. The order of demolition in question relates to a privy which has been constructed. Two law points were taken in support of the rule. It was first contended that the privy is saved under the provisions of Section 2 of the Act. The petitioner obtained sanction under the old Act in the year 1928. Under the provisions of that Act it was necessary for the petitioner to start the work within one year of the granting of the sanction. In his application to the Magistrate, the Chairman of the Municipality asserted that the construction was started stealthily long after the sanction had expired. The Magistrate was not satisfied with the statement and asked the Chairman for evidence. The Chairman replied and relied upon a statement made by a lady to the effect that the privy was not there. In showing cause, the petitioner asserted that the work had been commenced within a year of the granting of the sanction. We are quite satisfied that he abandoned this plea and did not press it at the hearing. No prayer was made for taking any evidence on the point. The petitioner merely put forward a legal argument to the effect that even though the sanction had lapsed it would still be saved under the provisions of Section 2 of the new Act. Inasmuch as the sanction had lapsed before the new Act came into force, there was nothing which could be preserved u/s 2.

2. The second argument was based upon the provisions of Section 319 of the Act. The learned Magistrate held that that Section did not come into play inasmuch as the petitioner did not himself comply with the provisions of Section 317. On an examination of the record we are satisfied that that is the correct view. The petitioner merely wrote a letter to the Chairman asking that another letter might be considered as a fresh application. In fact, it was nothing of the sort. Section 317 applies to persons who intend to erect a building. It has nothing to do with persons who start to erect surreptitious buildings, are caught red-handed and then stopped. As the petitioner himself did not comply with the terms of Section 317, he cannot invoke the aid of Section 319. The rule is discharged.

Mohamed Akram, J.

3. I agree.