
(1969) 08 CAL CK 0006
In the Calcutta High Court
Case No : Criminal Revision No. 166 of 1969

Amulya Ratan Choudhury

APPELLANT

Vs

Municipal Commissioners, Bongaon Municipality

RESPONDENT

Date of Decision : 28-08-1969

Acts Referred:

Bengal Municipal Act, 1932 — Section 15(2), 3(15), 3(22), 317, 321
Calcutta Municipal Act, 1923 — Section 363

Citation : (1969) 2 ILR (Cal) 516

Hon'ble Judges : N.C. Talukdar, J

Bench : Single Bench

Advocate : Surendra Nath Basu and Satyendra Chandra Sen, for the Appellant; Devaprosad Chaudhuri, for Opposite Party No. 2, for the Respondent

Judgement

N.C. Talukdar, J.—This Rule is against an order dated January 3, 1969, passed by Sri R. N. Samaddar, Magistrate, First Class, Bongaon, district 24-Parganas, directing the opposite party Petitioner Amulya Ratan Choudhury to demolish the impugned construction as having been constructed in clear violation of the directions given in the sanctioned plan u/s 330(I)(i) of the Bengal Municipal Act, 1932, in case No. C/456 of 1959.

2. The facts leading on to the Rule are chequered but can be put in a short compass. The case for the first-party opposite party No. 2, the Vice-Chairman, Bongaon Municipality, is, inter alia, that the second-party Petitioner Amulya Ratan Choudhury and his mother Sm. Sarojini Bala Choudhury had purchased a land on plot No. 719 of mouza Bongaon, P.S. Bongaon, within the municipal limits of the town of Bongaon, in front of the "Bangasree" cinema hall, and started a masonry construction in 1959 at the site without submitting any application to the Municipality for sanctioning the requisite plan; the facts came to the knowledge of the Municipality, and Sri K. P. Bhowmick, the Chairman, by his letter dated March 23, 1959, directed the above-mentioned second-party Petitioners to stop the construction of the building pending the submission of a

building and site plan by them and the approval thereof in terms of Section 317 of the Bengal Municipal Act, 1932. An application for sanction was thereafter submitted and the plan was sanctioned fraudulently, as alleged, on a suppression of material facts on March 25, 1959. The conditions which were imposed by the Chairman while sanctioning the plan, namely, to keep an open space of 4 ft. on the road-side and 2 ft. each on either side, were not conformed to by the second-party Petitioners and they continued the construction of the building in violation of the aforesaid conditions. They were, accordingly, directed to stop any further construction by a letter from the Chairman dated June 13, 1959, but the Petitioners proceeded to construct the building in defiance of the directions given by the Chairman, who went on leave, and Sri J. B. Bala, the Vice-Chairman, who took charge of the office of the Chairman in accordance with the provision of Section 54 of the Bengal Municipal Act, informed the Police and the Sub-Divisional Magistrate, Bongaon, and as a result there was an order for maintaining status quo. The Chairman in the meanwhile rejoined his duties and visited the place along with the Vice-Chairman and others and issued thereafter a notice u/s 333(1) of the Bengal Municipal Act upon the second-party Petitioners on July 21, 1959, and prayed on the following day before the learned Sub-Divisional Magistrate, Bongaon, u/s 330 of the Bengal Municipal Act, 1932, for necessary orders being passed for demolishing the impugned construction, and case No. C/441 of 1959 was started. Notices were issued upon the Petitioners, but on December 30, 1959, the case was filed by the learned Sub-Divisional Magistrate on a prayer made by the Chairman because his election was set aside. The Vice-Chairman Sri J. B. Bala, thereafter took over charge of the works of the Chairman and on August 1, 1959, he submitted a fresh petition before the learned Sub-Divisional Magistrate, Bongaon, u/s 330 of the Bengal Municipal Act, 1932, praying for demolition of the illegal construction made by the Petitioners and the present proceeding, being case No. C/456 of 1959, were started thereupon. The case on behalf of the Petitioners, inter alia, is that there has been no violation of the sanctioned plan as alleged or at all in constructing the building in question to warrant the present proceedings ; that the building in question consists essentially of shop rooms and, accordingly, does not come within the category of dwelling house or domestic building provided for in Sch. VI of the Bengal Municipal Act, 1932, and, therefore, the present proceedings are unwarranted and untenable ; that the terms and conditions which were imposed by the Chairman, Bongaon Municipality, in sanctioning the plan are arbitrary and without jurisdiction ; that neither the Chairman nor the Vice-Chairman of the Municipality had obtained any authority from the Commissioners of the Bongaon Municipality to lodge the present proceedings against the Petitioner and, as such, the learned Sub-Divisional Magistrate had erred in taking cognizance ; that the petition u/s 330 of the Bengal Municipality Act, 1932, by the Vice-Chairman having been filed during the pendency of the petition filed by the Chairman over the same subject-matter and the earlier petition having been disposed on December 30, 1959, the learned Magistrate should not have re-opened the same question once over again ; that the Bongaon Municipality had not framed any

bye-laws for the purported violation whereof the Petitioner could be prosecuted ; that the person really interested in the prosecution is a private complainant, namely Khagendra Nath Basu, the Manager of Bangasree cinema house and it was at his instance that the ball was set rolling ; and that in any event there should be no total demolition of the premises in question in view of the facts and circumstances of the case. The case, thereafter, had a chequered career and ultimately came to the file of Sri R. N. Samaddar, Magistrate, First Class, Bongaon, for being tried u/s 330 of the Bengal Act XV of 1932. Nine witnesses were examined on behalf of the first party-opposite parties and eight on behalf of the second-party Petitioners while one Court witness was examined in the case and several documents were proved in course of the trial, as a result whereof the learned trying Magistrate by his order dated January 3, 1969, passed the order of demolition as referred to above u/s 330(I)(i) of the Bengal Municipal Act, 1932. This order has been impugned and forms the subject-matter of the present Rule.

3. Mr. Surendra Nath Basu (Sr.), Advocate (with Mr. Satyendra Chandra Sen, Advocate), appearing in support of the Rule on behalf of the Petitioner Amulya Ratan Choudhury, made a five-fold submission. The first contention of Mr. Basu is that the proceedings having been instituted against joint owners, the ultimate order that was passed for demolishing the entire structure has been bad in law and improper. The second contention advanced by Mr. Basu is about a purported non-conformance to the material provision of Section 332 of the Bengal Municipal Act, 1932, because the complaint was not lodged by the Commissioners in a meeting. Mr. Basu next contended that the learned Magistrate has materially erred in his interpretation of the provision of Sch. VII of the Bengal Act XV of 1932, in not considering that the same applies to dwelling houses and not to shops, which the impugned constructions ultimately are. The fourth submission of Mr. Basu is that a notice u/s 321 of the Bengal Municipal Act, 1932, is the sine qua non of a prosecution u/s 331 of the said Act and the same having not been conformed to, the resultant proceedings stand vitiated. The fifth and the last submission of Mr. Basu is that, in any event, in view of the facts and circumstances of the case and the nature of the construction, it is expedient in the interests of justice that the learned Magistrate should have considered as to whether any partial demolition of the same was possible and the failure on his part to take the same into consideration and pass necessary directions for the same, has resulted in a failure of justice. In this context, Mr. Basu pinpointed the expression "or so much thereof as contained in Section 330 of the Bengal Municipal Act, 1932, and contended that some meaning must be given thereto to give effect to the intention of the Legislature in that behalf. Mr. Devaprosad Chaudhuri, Advocate, appearing on behalf of the opposite party No. 2, the Vice-Chairman of Bongaon Municipality, has joined issue. Mr. Chaudhuri has contended that the first submission made on behalf of the Petitioner centering round the purported institution of a proceeding against joint owners and the ultimate order passed therein for demolition of the entire

house, is more technical than real and is even ruled out by the averments made in the petition upon which the present Rule was obtained. Mr. Chaudhuri referred to the admission made on behalf of the Petitioner in para. 2 of the petition before this Court in this connection that his mother had died on July 1, 1968, much before the impugned order was passed. With regard to the second contention raised by Mr. Basu, Mr. Chaudhuri submitted that the same is misconceived inasmuch as the complaint in the instant case was lodged by the Vice-Chairman of the Municipality, and in view of the provisions of Sections 51 to 54 of the Bengal Act XV of 1932 the said objection is not maintainable in law or on merits. The third submission of Mr. Basu, according to Mr. Chaudhuri, does not stand on a better footing inasmuch as the said argument overlooks the definitions of a "dwelling house" and of a "house" as provided for in Section 3, Sub-sections (15) and (22) respectively. Mr. Chaudhuri contended in this context that the said definition is a complete answer to the objection raised on behalf of the Petitioner and there is no cloud on the question as was sought to be made out. Mr. Chaudhuri next submitted that the fourth contention of Mr. Basu is also unwarranted and untenable inasmuch as the Legislature never intended that the provision of Section 321 of the Bengal Act XV of 1932 are in any way the condition precedent for instituting a proceeding u/s 330 of the said Act and to hold so would be circumscribing the intention of the Legislature unnecessarily. With regard to the fifth and the last submission of Mr. Basu, Mr. Chaudhuri contended that this, in fact, is a construction which was carried out in blatant disregard of the provisions of the Municipal Act and in spite of the notices served from time to time upon the delinquent and, in fact, the matter is a serious one because even the plan that was sanctioned was not sanctioned properly leaving much room for doubt as to how the same could have been obtained and even the conditions mentioned therein have been observed only in their breach. The second branch of Mr. Chaudhuri's contention in this behalf was that the construction is of such a nature that no fruitful purpose would be served by directing remand for ascertaining as to whether it was possible to avoid a complete demolition of the entire structure.

4. Having heard the learned Advocates appearing on behalf of the respective parties and on going through the evidence and the legal materials on the record, I will now proceed to determine the various contentions raised on behalf of the learned Advocates appearing on behalf of the Petitioner as also the opposite party No. 2-The first contention made by Mr. Basu as to the order of demolition of the entire structure being bad because of the institution of the proceedings against joint owners it is thin enough as would be borne out by the averments made in para. 2 of the petition on which the present Rule was issued, stating clearly and categorically that Sarojini Bala Choudhury died on July 1, 1968, much before the impugned order was passed by the learned Magistrate. I agree with the submission made by Mr. Chaudhuri in this behalf and the first contention raised by Mr. Basu fails. The second contention put forward by Mr. Basu does not stand on a better footing. The objection taken by him about a purported non-

conformance to Section 332 and Section 15(2) of the Bengal Municipal Act, 1932, because the proceedings were not instituted by the Commissioners in a meeting, is not warranted and tenable in view of the material provisions of Sections 51 to 54 of the said Act and also in view of the fact that the present proceedings were instituted by the Vice-Chairman of the Bongaon Municipality, who is a person authorised in this behalf to launch such proceedings. The second contention of Mr. Basu accordingly fails. The third contention of Mr. Basu relating to the interpretation of Sch. VI, S.C. of the Bengal Municipal Act, 1932, referring to dwelling house and other domestic buildings and not to shops which really these constructions are stated to be, is not also borne out by the definition of "dwelling house" and "house" as provided for u/s 3, Sub-sections (15) and (22) of the said Act. "Dwelling house" means a masonry or framed building constructed, used or adapted to be used wholly or principally for human habitation while a "house" includes any hut, shop or warehouse. In view of the said definition, the contention raised in this behalf by Mr. Basu is not maintainable and fails. The next contention of Mr. Basu that an inspection u/s 321 of the Bengal Municipal Act, 1932, is the condition precedent for the institution of the proceedings u/s 330 of the said Act, is unwarranted and untenable. A reference to the provisions of the said two sections would clearly indicate that one is not dependent upon the other and it was not meant to be so by the Legislature. There has not been, accordingly, any non-conformance as alleged or at all on the part of the Municipality in starting the present proceedings. Mr. Chaudhuri in this connection referred to the evidence of the Vice-Chairman, who is P.W. 6 in this case, and the notice that was served upon the Petitioner and proved as Ex. 9 and submitted that even on merits the objection taken by Mr. Basu is not maintainable. In any event, as I hold that Section 330 of the Bengal Municipal Act is not in any way dependent upon a conformance to the provision of Section 321 of the said Act, I overrule, therefore, the fourth contention raised on behalf of the Petitioner by Mr. Basu.

5. There is a considerable force, however, behind the fifth and the last submission made by Mr. Surendra Nath Basu (Sr.), Advocate on behalf of the Petitioner, in support of this Rule. The Gravamen of Mr. Basu's submission is that some meaning and effect must be given to the intention of the Legislature as incorporated in Section 330 of the Bengal Municipal Act, 1932, mentioning as it does the expression "or" so much thereof. The canons of interpretation abhor redundancy and on a proper interpretation of the said provisions it should be held that unfettered discretion has been given to the learned Magistrate as to whether the ends of justice would be served by ordering a total demolition or a partial demolition. It is pertinent in this context to refer to the deviations complained of and to catalogue the same for the purpose of properly determining the point at issue. The learned Magistrate has found that the building has been constructed in clear violation of the directions given in the sanction of the plan which was submitted by the opposite parties themselves and that the sanction was in all probability obtained through questionable means in the shortest

possible time. The learned Magistrate has found further that the directions given in the sanctioned plan were disregarded and no place was left by the opposite parties either on the road side or on two sides, as provided for under the rules enjoined under the Act and that, to make confusion worse confounded, the dimensions of the rooms have been changed and the wall towards the north was clearly made vulnerable by using two 5" walls created side by side and composite 10" wall making it quite insecure ultimately for building a first-floor thereupon. As to the merits of the said finding I wholly agree with the learned Magistrate in view of the material evidence on record which has been traversed in some details by the said learned Magistrate, and sitting here in Revision I do not find any reason to set aside the same. But as I have observed, there is much force behind the submission of Mr. Basu as to whether there is any scope for partial demolition saving unnecessary expenses and harassment to a party in these difficult days. No case pat on the point could be cited by the learned Advocates, appearing on behalf of the parties, u/s 330 of the Bengal Municipal Act, 1932, but there are several decisions on the point u/s 363 of the Calcutta Municipal Act, 1923, which contains provisions similar to those as incorporated in Section 330 of the Bengal Municipal Act, 1932. It will, therefore, be pertinent to consider these cases in this context. I have already referred to the language used in Section 330 of the Bengal Municipal Act, 1932. I shall now deal with the cases on the point. In the case of Abdul Sarriad v. Corporation Calcutta ILR (1905) Cal. 287 : 10 C.W.N. 182 it is laid down that the Magistrate has a discretion in a matter of making an order for demolition. In the case of Chunilal Dutt v. Corporation Calcutta (1906) 11 C.W.N. 30 (33); Mitra and Holm-wood JJ. held:

Again the wrong may be disproportionately small to the loss which the wrong-doer would suffer by an order in the nature of a mandatory injunction. In such a case the Court would not pass a decree for injunction but would saddle the wrong-doer with a decree for damages.... We ought, however, to add that the Municipality has a duty to demolish and ought to get demolished any building which is a danger or obstruction to the public.

6. In the latter case of Chunilal Dutt v. Corporation of Calcutta; Mitra and Holmwood, JJ. laid down the principles upon which the discretion referred to in Abdul Samad's case (Supra) is to be exercised and observed as above. A reference in this context may be made to the case of Fazal Elahi Vs. Corporation of Calcutta, wherein Lahiri, J. delivering the judgment of the Court observed that?

The existence of two alternative readies-implies that the more drastic remedy of demolition should not be resorted to in every case of violation of building rules, and ultimately sent back the case for retrial for a consideration of the question whether the circumstances of the present case are such as would justify an order of demolition upon the principles laid down in the case of Chuni Lal Dutt Vs. Corporation of Calcutta .

The next case on the point is the case of Renubala Dutta Vs. Corporation of Calcutta, ; J P. Mitter and S.K. Sen, JJ. held therein that in a proceeding u/s 363

of the Calcutta Municipal Act, 1923, which is equivalent to Section 330 of the Bengal Municipal Act, 1932, for demolition of an unauthorised construction, the Magistrate has a discretion under the section to order or not to order demolition, and he must exercise the discretion judicially. Sen, J. who delivered the judgment of the Court approved of the principles laid down in the case of *Chunilal Dutt v. Corporation of Calcutta* and observed that?

As regards this proposition there can be no doubt that this still holds good. It is not in every case that the Municipal Magistrate is bound to order demolition, but only when he finds that there has been a serious infringement of the Building Rules or there has been obstruction of light or air of neighboring premises that he will order demolition.

7. The next case relevant on the point is the case of *Corporation of Calcutta v. Surendra Nath Das Gupta* AIR 1955 N.U.C. 2072 wherein it has been held by Mr. Justice Das Gupta and Mr. Justice P. N. Mookerjee that it is true that the jurisdiction u/s 363 of the Calcutta Municipal Act, 1923, is discretionary, but such discretion has to be exercised judicially upon a consideration of all the relevant circumstances. Unquestionably also, cases of mere technical breaches of the building rules would not merit demolition orders. The Supreme Court has also held in the case of *Corporation of Calcutta v. Mulchand Agarwala* (1956) S.C. 96 that the Magistrate has a discretion whether he should pass an order for demolition or not u/s 363 of the Calcutta Municipal Act, 1923. Their Lordships of the Supreme Court approved of the decision in the case of *Abdul Samad v. Corporation of Calcutta* (Supra, p. 102). Venkatarama Ayyar, J. who delivered the judgment of the Court observed that?

Now, the language of Section 363 is that the Magistrate may pass an order for demolition of the building, and though the word "may" might in some contexts be construed as meaning "shall", that is not the sense in which it is used in Section 363. We agree with the Respondent that Section 363 does not require that when a building is shown to have been erected without permission or completed otherwise than in accordance with the terms of the permission or in breach of the building rules, an order for its demolition should be made as a matter of course....

It should accordingly be held that the word "may" in Section 363 does not mean "shall", and that the Magistrate has under that section a discretion whether he should pass an order for demolition or not.

8. I respectfully agree with the said observations and hold that, in the facts and circumstances of the present case, there is scope for this discretion to be exercised and the learned trying Magistrate in the first instance should exercise that discretion and consider whether there is any scope for a partial demolition of the premises in question and of strengthening the wall to the north by conforming to the terms and conditions of the sanctioned plan, so that it may no longer be vulnerable as found.

9. In the result, I dispose of the Rule as follows:

I set aside the order dated January 3, 1969, passed by R. N. Samaddar, Magistrate, First class, Bongaon, in case No. C/456 of 1959 directing u/s 330(I) (i) of the Bengal Municipal Act, 1932, that the entire building constructed by and on behalf of the Petitioner on plot No. 719 of mouza Bongaon, P.S. Bongaon, within the municipal limits of the town of Bongaon, shall be demolished by the said opposite parties at their own costs, and I direct that the case shall go back to the Court below for being disposed of in the light of the observations made above. I further direct: that no other question will be allowed to be agitated and the parties will be entitled to adduce such further evidence only as they may be advised to adduce on the point of partial demolition and on the possibility of strengthening the northern wall in accordance with the terms and conditions of the sanctioned plan as referred to above.

10. The records are to go down as early as possible.