
(1943) 08 CAL CK 0010
In the Calcutta High Court

Ashutosh Sarkar	Vs	APPELLANT
Corporation of Calcutta		RESPONDENT

Date of Decision : 16-08-1943

Acts Referred:

Calcutta Municipal Act, 1923 — Section 363

Citation : AIR 1944 Cal 159

Hon'ble Judges : Rau, J; Biswas, J

Bench : Full Bench

Judgement

Rau, J.—This is an appeal by the plaintiff in a suit for an injunction to restrain the Calcutta Corporation from demolishing a portion of a house said to have been constructed in violation of the plan sanctioned by the Corporation. The plaint also contained a prayer:

If necessary, for a declaration that the Order of demolition passed by the Magistrate on 16th September 1935, is a nullity.

2. One Tarak Chandra Das is the owner of the house in question being premises No.18, Bihari Doctor Road. The unauthorized structure was made between 1931 and 1933. In June 1934, that is to say, after the structure had been completed, the owner Tarak Chandra Das to the plaintiff Ashutosh Sarkar let out a portion of the house. We may mention that the owner himself occupies another portion of the house. In September the Corporation applied to the Magistrate u/s 363, Calcutta Municipal Act, for a demolition order. On 16th September the Magistrate made an Order directing the Corporation to demolish the structure and he made the Order without giving the occupier Ashutosh Sarkar an opportunity of being heard in defence. The owner Tarak Chandra Das then brought a suit for an injunction against the Corporation. The trial Court dismissed it on 18th May 1936. There was an appeal to the District Judge, which was dismissed on 4th August 1937, and a further appeal to the High Court, which was dismissed on 10th August 1938. A week later, that is to say, on 17th August 1938, apparently upon seeing a newspaper report of the High Court's decision the occupier

Ashutosh Sarkar brought the present suit. It was decreed by the trial Court but dismissed by the District Judge on appeal. Hence this second appeal.

3. The point taken before us is that the Magistrate's Order of 16th September 1935, was without jurisdiction because he did not give the plaintiff, who was an occupier of the building, full opportunity or indeed any opportunity of adducing evidence and of being heard in his defence as required by proviso (a) to Section 363. The proviso states that the Magistrate shall not make any Order under the section

without giving the owner and occupier of the building to be so demolished full opportunity of adducing evidence and of being heard in his defence.

It is common ground that the plaintiff is an occupier, although not entered as such in the Corporation's assessment book kept u/s 143. It is also common ground that no notice or intimation of any kind was given to him before the demolition Order was made. The Corporation however contends that no notice or intimation was necessary in this particular case because Section 144 (3) provides that no owner or occupier whose name is not entered in the assessment book shall be entitled to object that any notice of any kind required by the Act to be served on the owner or occupier of any land or building has not been made out in his own name. We cannot accept this contention in its entirety. Undoubtedly u/s 144 (3) the plaintiff is not entitled to any notice made out in his own name but the Sub-section does not deprive him of the right to be given an opportunity otherwise than by notice in his own name, for example by a general notice to all owners and occupiers affixed on some conspicuous part of the premises in much the same way as provided in Section 504 (c). No such opportunity was given to him. A demolition Order is a serious matter for the occupier no less than for the owner and particularly where, as in the present case, the deviation from the sanctioned plan was slight, full opportunity ought to have been given to both.

4. We notice incidentally that according to D.W.I, an officer of the Corporation, the name of a tenant of a part of a house is never recorded in the assessment book when the owner himself also occupies a portion of it. The Corporation can hardly be permitted to adopt such a practice and then to contend that because the tenant is unrecorded, he is not entitled to any notice or intimation under the Act. The plaintiff in the present case came on the premises after the unauthorised structure had been completed and before the Corporation moved the Magistrate for a demolition order. In these circumstances we allow the appeal to this extent that the Order of the Magistrate made on 16th September 1935 will be declared ultra vires. This will not prevent the Corporation from proceeding afresh in the matter in accordance with the law. The Corporation will pay the appellant costs both in this Court and in the Courts below.

Biswas, J.

5. I agree.