

(1926) 11 CAL CK 0015
In the Calcutta High Court

Barada Prosad Roy Chowdhury

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 26-11-1926

Acts Referred:

Calcutta Municipal Act, 1923 — Section 346, 359

Citation : AIR 1927 Cal 218

Hon'ble Judges : Gregory, J;Cuming, J

Bench : Full Bench

Judgement

Cuming, J.—The facts of this case appear to be these : The petitioner is the owner of a certain bustee at 32, Ballygunge Circular Road. On the 13th August 1925 a notice was issued on him u/s 346 of the Calcutta Municipal Act requiring him to carry out certain improvements in the bustee. The petitioner failed to comply with this notice and was fined Rs. 50 on the 10th December 1925 for failing to do so. On the 16th of December 1925 the petitioner served a written notice on the Corporation u/s 359 stating that he intended to remove all the huts standing on the land. The Corporation, as far as can be ascertained, refused to accept this notice. Meanwhile the petitioner had served notices on the tenants of this bustee to remove their huts. I may here note that it was by a letter dated the 13th January 1926 which was received by the petitioner on the 15th January by which the Bustee Surveyor informed the petitioner that the Standing Committee had refused to accept the notice u/s 359 of the Calcutta Municipal Act. About the middle of March the Bustee Surveyor suggested to the petitioner that he should take action u/s 527 of the Calcutta Municipal Act and obtain an order from the Small Cause Court to affect the improvements. The petitioner made an application u/s 527 before the Small Cause Court Judge of Saaldah and obtained an order regarding the tenants to give him facilities for complying with the requisition of the Corporation. The tenants, however, when he went to get compliance with the requisition, refused to allow him to carry out the works. One of these tenants was prosecuted but was discharged on the 8th July 1926.

2. Meanwhile on the 18th March 1926 proceedings were once more taken against the petitioner for not having carried out the improvements required by the notice of the 13th August 1925 for the non-compliance with which the petitioner had once been convicted and fined on the 10th December 1925. These proceedings terminated on the 9th of August 1926 when the Municipal Magistrate convicted the petitioner and fined him Rs. 150 being at the rate of Rs. 3 a day for 50 days. The petitioner then moved this Court and has obtained this Rule on two grounds : first that the petitioner having applied for time u/s 359 of the Calcutta Municipal Act, and having taken, bona fide action for removing all the huts on the land the prosecution and conviction are bad in law; secondly that the tenants having refused facilities to effect the improvements and the petitioner having obtained an order u/s 527 the prosecution and conviction are illegal. I will now deal with the first point. Section 359 of the Calcutta Municipal Act provides that

the owner of any land included in a Bustee and bearing a separate number in the assessment book may, at any time, whether a standard plan for the Bustee has been prepared under this chapter or not, send a written notice to the corporation that he intends to remove all the huts standing on such land;

and Clause 3 of this section runs as follows:

Such owner shall, within six months after the date of such notice, or within such further time as the Corporation may from time to time allow,, remove all huts standing on such land; and if he does not do so, this notice shall be deemed to be cancelled.

3. Mr. Talukdar contends on behalf of the petitioner that the Corporation is bound to accept this notice u/s 359 and that once a notice has been given to the Corporation under this section the Corporation must wait for the statutory period of six months before taking any further proceedings against the bustee owner. Mr. Talukdar contends that the Corporation has no option but to accept the notice. Mr. Chatterjee, on behalf of the Corporation would seem to argue that once there had been a prosecution and the Bustee owner had been fined for non-compliance with the requisition requiring certain improvements to be made in the Bustee it was not open to the bustee owner to make an application u/s 359. He further argued that although the proceedings against the petitioner were instituted on the 18th March 1926 no action was taken until the 15th July 1926 which date is more than six months from the 16th December the date on which the petitioner gave notice to the Corporation of his intention to remove all the huts standing on the land.

4. The case would seem to turn upon whether the Corporation are obliged to accept notice given to them u/s 359, and secondly whether, as Mr. Chatterjee contends, once a Bustee owner had been fined for neglect to carry out an order u/s 346, he could or could not serve such a notice on the Corporation. As we read Section 359 it is obligatory on the Corporation to accept such notice and it is not open to them under the section to refuse to accept such a notice and the

owner of the Bustee giving the notice is "entitled to six months" time allowed by the section within which he is to effect the removal of all the huts standing on the land. As far as can be seen it is immaterial whether the Bustee owner had already been prosecuted and fined for neglect to carry out a requisition u/s 346; he is entitled to serve a notice u/s 359 on the Corporation and to get six months time allowed under that section for the removal of all the huts on the land. No doubt it would be open to it he Corporation if, on the expiry of the 15 months from the date of the notice, the huts had not been removed to revive once more the former proceedings u/s 346. The Corporation, therefore, were clearly not entitled to prosecute the petitioner within six months from the 16th December 1925. Mr. Chatterjee contends that nothing had really been done in the matter of this prosecution till the 15th July which was more than six months from the 16th December. We have not the order sheet before us and it is impossible for us to say what orders were or were not passed by the Magistrate. It is sufficient for our purpose that the proceedings against the petitioner were started on the 18th March that is, a date within six months from the 16th December. Therefore it seems to us that the Corporation were not entitled to prosecute the petitioner in the circumstances of this case. The conviction and sentence of the petitioner must be set aside, the whole proceedings being illegal. The petitioner is acquitted. The fine, if paid, will be refunded.

Gregory, J.

5. I agree.