
(1934) 01 CAL CK 0015
In the Calcutta High Court

Basanta Kumar Das

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 03-01-1934

Acts Referred:

Calcutta Municipal Act, 1923 — Section 363

Citation : AIR 1934 Cal 389

Judgement

1. This rule is directed against an order of demolition passed by the Municipal Magistrate of Calcutta u/s 363, Calcutta Municipal Act. The Magistrate has ordered that certain structures, said to be unauthorized, in premises No. 62, Baranashi Ghose Street, be demolished by the Corporation at the expense of the owner.

2. The facts shortly stated are the following: The petitioner was the owner of the western portion of the said premises. In February 1926 he asked for sanction to erect certain structures on his part of the premises, submitting with his application a plan showing the entire premises. The District Building Surveyor refused sanction upon certain grounds, and on that the petitioner preferred an appeal which was heard and decided by the Building Committee on 14th June 1926. Their order was that the appeal should be allowed and that formal sanction should issue on the petitioner opening out some proposed spaces as shown in the plan. This condition being fulfilled and a report to that effect being made by the Building Inspector on 6th June 1927, a formal sanction was issued on 8th of that month. On 15th August 1927 a motion was tabled for revocation of the sanction. On 27th February 1928 the Building Committee revoked the sanction. This revocation was confirmed on 6th August 1930. Three days after the usual notice u/s 363 of the Act was given to the petitioner, and thereafter on 24th October 1930 the Corporation resolved to move the Magistrate for demolition of the structures. As the result of the proceedings thus started, the order complained of in this case has been passed by the Magistrate.

3. One of the contentions urged in support of this rule relates to the validity of

the revocation of the sanction. The revocation was in accordance with Rule 65, Schedule 17 and purported to be on the ground that the permission was granted in consequence of a material misrepresentation of fraudulent settlement contained in the petitioner's application for sanction. Under this rule, it may be pointed out

when such permission is cancelled any work done thereunder shall be deemed to have been done without permission.

4. The misrepresentation, as far as may be gathered, was this: that while in August 1925 a partition of the entire premises was effected by an arbitration held at the instance of all the co-owners the plan submitted for sanction in February 1926 did not show any sign of that partition. The Magistrate has stated in his explanation that the revocation proceedings show that this omission and perhaps some other facts also were considered as material misrepresentation, and that if the true state of things were known the decision of the Building Committee in the matter of granting of the sanction would have been otherwise.

5. The Magistrate has held that Rule 65, Schedule 17, makes the Corporation the final authority to decide whether there was any material misrepresentation or not and that he had no opportunity to go into that question. He therefore held that the structures erected under the sanction must be taken as erected without sanction. There was a complaint on behalf of the petitioner that no notice had been given to him of the revocation proceedings. On this point, the Magistrate held that no notice was necessary as the rule did not speak of any; and he found also that the petitioner was present during the consideration of the revocation matter. On these findings and also upon the finding that the structures infringed Rules 3, 23, 29 and 32, Schedule 17—a fact which does not seem to have been disputed—the learned Magistrate has made the order of demolition.

6. The learned Magistrate, in our judgment, was in error in supposing that once he arrived at the findings aforesaid nothing else was necessary for him to consider in order to justify the order that he made. It is true that under Rule 65, Schedule 17 the power of the Corporation to cancel a permission on the ground of material misrepresentation by the applicant is absolute. But it is so only in the sense that no other authority can revise the order of revocation or restore the permission so cancelled. In the Court which has to make the order of demolition there is a discretion which the word "may" used in Section 363 of the Act in reference to this matter plainly indicates. For a proper exercise of that discretion it is absolutely necessary for the Court to go into the question as to what the exact circumstances were under which the revocation was made or the extent to which the misrepresentation or fraudulent statement, if any, could have affected in granting of the permission. Unless a consideration of these matters were open to the Court, its existence can hardly be justified and it would not be possible for it to shape its order in the light of those principles which have to be borne in mind by a Court issuing an injunction for demolition the powers and duties of which are *pari passu* with those of the Municipal Magistrate in a matter of this

description.

7. So far as notice is concerned the rule does not speak of any. But it can hardly be expected that rules framed under the Act should embody and incorporate into themselves such an elementary and fundamental principle of natural justice which no individual or body corporate can be permitted to forget, namely, that when a party has acquired a valuable right in the shape of a permission to build, that permission could be withdrawn behind his back on a charge that he had been guilty of fraud or misrepresentation and without an opportunity being allowed to him to say what he may have to say in his defence. In the present case, however, this omission has not resulted in prejudice to the petitioner for the finding is that he was present at the deliberations relating to the revocation.

8. To determine whether the discretion which the law vests in the Court should be exercised in favour of the Corporation in this case, one of the matters that must be taken into consideration is the length of time that has elapsed since the completion of the structures, which on account of the revocation must now be deemed to be unauthorized. On this point the evidence stands thus. An officer of the Corporation has said definitely that the erection was completed by March or April 1927. Mr. Basu appearing on behalf of the Corporation has asked us to regard this statement as a mistake, because the petitioner in his petition to this Court has stated that the constructions were made after the formal sanction was obtained, that is to say after 14th June 1927. Speaking of events nearly five years old one is not unlikely to make mistakes; and the petitioner is not less likely to make such a mistake than the Corporation Officer. But the construction must have been completed in any event within a short time of the sanction, that is to say some time about the end of 1927. It is a wonder that though the sanction was revoked on 27th February 1928 the revocation was not confirmed till 6th August 1930, that is to say that the matter was left hanging in the air for two years and a half the matter not being considered of any, sufficient importance for any decisive action being taken. In such circumstances it would, in our opinion, be quite wrong to make an order for demolition. The deviations from the rules, such as they are in the present case, were all condoned by the District Building Committee on the petitioner fulfilling certain requirements. Such representations, if any, as there may have been, had little bearing on the question of safety of the building or its sanitation, though there may have been some inconvenience to the petitioner's co-owner or it may as well be that the rights of the latter have been infringed. With that however we are not concerned in the present case. The rule is made absolute and the order complained of is set aside.