
(1913) 06 CAL CK 0027
In the Calcutta High Court

Benode Lal Ghose

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 16-06-1913

Acts Referred:

Calcutta Municipal Act, 1923 — Section 408, 575, 622

Citation : AIR 1914 Cal 879(1) : (1914) ILR (Cal) 164

Hon'ble Judges : Imam, J;Chapman, J

Bench : Division Bench

Judgement

Imam and Chapman, JJ.—The petitioner was sentenced, u/s 575 read with Section 408 of the Calcutta Municipal Act, to a fine for repeated failure to comply with a notice served upon him u/s 408 requiring him to make improvements upon certain property which he owns in the city of Calcutta. It appears that the petitioner had, before the service of the notice, leased the property upon a long lease. His reply to the case against him was that he had not been able to execute the improvements owing to the property being in possession of the lessee and of certain tenants under the lessee. The petitioner had instituted a proceeding against the lessee u/s 622 of the Act and had obtained an order from the Chief Judge of the Calcutta Small Cause Court requiring the lessee to give him reasonable facilities to carry out the improvements required of him. Thereafter the petitioner's contractor had made an attempt to carry out the improvements but had been obstructed by the tenants of the lessee. The petitioner's defence was that, under the provisions of Sub-section (3) of Section 622, he was discharged from his obligation during the continuance of the refusal of the lessee to give him reasonable facilities to carry out the improvements.

2. We are of opinion that the petitioner's contention must prevail. It has been argued on behalf of the Municipality that the petitioner should have brought his case u/s 622, not against the lessee, but against the tenants actually residing on the land. The contention is that the word "occupier" in Section 622 means only the person in actual occupation. The interpretation contended for cannot be

accepted. The lessee, in his relations with the petitioner who is the owner of the property, is an occupier within the definition of the word "occupier" in Sub-section (30) of Section 3 of the Act. This is made clearer still by reference to Section 645 which speaks of gradation of occupiers. We are of opinion, therefore, that the case u/s 622 was rightly brought" against the lessee and that so long as the lessee refuses to provide reasonable facilities, the petitioner is discharged.

3. The lessee can himself proceed against the tenants u/s 622, in the event of their proving refractory. In the event of the lessee failing to perform his part in the matter he can be proceeded against under Sections 574 and 575. The Rule is made absolute. The conviction and sentence are set aside.