

(1929) 11 CAL CK 0006
In the Calcutta High Court

Bishnu Pada Dey

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 27-11-1929

Acts Referred:

Calcutta Municipal Act, 1923 — Section 278(1)(b)

Citation : AIR 1930 Cal 285

Hon'ble Judges : Suhrawardy, J

Bench : Division Bench

Judgement

Suhrawardy, J.—This rule has been issued against the conviction of the petitioner for not complying with the requirements of Section 278(1)(b), Calcutta Municipal Act 1923. The requisition with which we are concerned in this case was to the effect that the petitioner should provide access to the northern connected privy of the first floor through the nearest verandah. The question which I am called upon to determine in this case is first whether the requisition is one which the corporation was entitled to issue under the Act; and secondly, whether the corporation has the right to say that access to the privy provided by the petitioner is insufficient. Section 278(1)(b) authorizes the corporation to renew, repair, cover, recover, trap, ventilate, pave and pitch, cleanse, flush or take such other order with the same (including a privy) as the corporation may think fit to direct. It is argued on behalf of the corporation that the requisition is covered by the words "take such other order." In my judgment this contention is not sound. The words "take such other order" must be construed ejus dem generis with the words preceding, whether proper access is available to a privy by people living in a particular portion of a house is a question in which the corporation is not prima-facie interested. It is a tenanted house and the tenants living in the first floor may have just grievance that they have no proper access to the privy. They can leave the premises if they like or they can take such steps for the purpose of securing access as the law provides; but the corporation is only entitled under the Municipal Act to see that the privy is in a sanitary condition. I am clearly of opinion that the requisition made by the corporation in this case is not covered

by Section 278(1)(b). It appears that, there was a partition decree between the joint owners of this house and the first floor was allotted to the petitioner and he was required under the decree to provide access to the privy. The corporation is trying to execute that decree.

2. It further appears that petitioner has provided a wooden ladder from the ground to the privy. The corporation objects to this mode of access on the ground that it will be too inconvenient for the occupants of the first floor to go down to the ground and from that mount, up the privy. This is a question which is beyond the function of the corporation to raise. It is not the case for the corporation that the privy is in an insanitary condition. The only objection is that it is inconvenient for the petitioner's tenants to use the privy. This is a matter which is between the petitioner and his tenants. In this connexion reference may be made to Section 271 which provides as follows:

When any premises intended for human habitation are without privy or urinal accommodation or if the corporation are of opinion that the existing accommodation therefor available for the persons occupying the premises is insufficient, inefficient or for sanitary reasons objectionable, the corporation may, by written notice require the owner to provide such additional privy as they may prescribe or to make such structural or other alterations in the existing privy or urinal accommodation as they may prescribe.

3. The corporation if it thinks that the privy accommodation for the occupants of the first floor is not sufficient it may take such steps as it is authorised under the Act to do. But it cannot insist upon the owner to provide facilities for the tenants.

4. In my judgment the rule must be made absolute and the order of the Municipal Magistrate imposing fine upon the petitioner should be set aside. The fine, if paid, will be refunded.