

(1949) 11 CAL CK 0032
In the Calcutta High Court
Case No : Criminal Revn. No. 889 of 1949

Budhu Mohan and Another	Vs	APPELLANT
Corporation of Calcutta and Another		RESPONDENT

Date of Decision : 28-11-1949

Acts Referred:

Calcutta Municipal Act, 1923 — Section 488, 511
Calcutta Municipal Rules, 1951 — Rule 4, 4(2)

Citation : AIR 1950 Cal 188

Hon'ble Judges : Sen, J

Bench : Single Bench

Advocate : Debi Prosad De, for the Appellant; Debabrata Mukherjee, for Bireswar Chatterjee and Kamal Krishna Palit for Opposite Party Nos. 1 and 2, for the Respondent

Judgement

Sen, J.—This Rule has been obtained by the petitioners who have been convicted by the Municipal Magistrate and fined. The case against them is that they did not comply with a notice to vacate certain premises which were in a dangerous condition and that thereby they had committed an offence which was punishable u/s 488, Calcutta Municipal Act.

2. The facts briefly are these : The petitioners are tenants of certain premises. It came to the notice of the Municipality that the premises were in a dangerous condition and after inspection a notice was served both upon the landlord and the tenants under Rule 4, Sub-rule (2) of Schedule XVIII, Calcutta Municipal Act requiring the inmates of the building to vacate it. The tenants admitted that they received this notice. They applied u/s 511, Calcutta Municipal Act for a withdrawal of the notice. The matter was considered by the Administrative Officer and he was satisfied that the notice was necessary. In spite of this decision the tenants did not vacate the premises and they were prosecuted, and sentenced as stated above.

3. The only contention raised before this Court is that the Magistrate was wrong

in refusing the petitioners an opportunity to adduce evidence to prove that the notice was not necessary inasmuch as the premises were not in a dangerous condition. It was pointed out that the learned Magistrate refused to allow the petitioners to adduce evidence on this point holding that the question was concluded by the decision of the Corporation and that he had no jurisdiction to consider whether or not the building was in a dangerous condition.

4. I am of opinion that the learned Magistrate was right in his view. Apart from the case law on the subject, I think the wording of the sections and general principles of law indicate unmistakably that this question cannot be investigated by a Municipal Magistrate trying a person for disobedience of a notice issued under Rule 4, Sub-rule (2) of Sch. XVIII, Calcutta Municipal Act directing them to vacate the premises on the ground that it was in a ruinous or dangerous condition. The relevant words of Rule 4 which need be quoted are these:

"Rule 4, Sub-rule (1) : If any wall or building, or anything affixed thereto, be deemed by the Corporation to be in a ruinous state, or likely to fall, or to be in any way dangerous, they shall forthwith cause a written notice to be served"

"Rule 4, Sub-rule (2) : The Corporation may also, if it appears to them to be necessary to do so, cause a proper hoarding or fence or other means of protection to be put up ... and may also, after giving them such notice as the Corporation may think necessary require the inmates of the building to vacate it."

It is quite clear from the words of this rule that the Corporation is the authority to decide whether the building is in a dangerous condition and whether it is necessary to require the inmates of the building to vacate it. The statute gives the Corporation alone the power to decide this matter. Further I would point out that Section 511, Calcutta Municipal Act makes it additionally clear, that this question is one which is to be decided exclusively by the Corporation. Section 511 of the aforesaid Act provides that if any person is dissatisfied or objects to the issue of such notice, his remedy lies in making an application to the Corporation within a certain period. The section also provides that the Corporation shall consider and decide the objection. It is thus clear that the statute has provided the tribunal to decide this question, that tribunal being the Corporation itself. In the circumstances I do not see how it can be argued that the question can be re-agitated before the Municipal Magistrate who is trying persons for disobeying a notice. In this connection I would refer to the following cases : Shamul Dhone Dutt v. Corporation of Calcutta 11 CWN 671, F. W. Duke v. Rameswar Malia 3 CWN 508 : 26 Cal 811 and Nagendra Chandra Lahiri and Others Vs. Moulvi Muhammad Abdus Sobhan Saheb and Others, . The first case deals with the Bengal Municipal Act and the second with the Calcutta Municipal Act as it was in 1899. The last case deals with the present Act. Although the sections dealt with are different, I am of opinion that the principal enunciated in these cases entirely supports the view that I have taken.

5. In my opinion, the learned. Magistrate"s order cannot be interfered with and this Rule is discharged.