
(1950) 08 CAL CK 0018
In the Calcutta High Court
Case No : Criminal Revn. No. 546 of 1950

Central Hardware Mart	Vs	APPELLANT
Corporation of Calcutta and Others		RESPONDENT

Date of Decision : 09-08-1950

Acts Referred:

Calcutta Municipal Act, 1923 — Section 363, 534

Citation : AIR 1952 Cal 39

Hon'ble Judges : Harries, C.J.;Bose, J

Bench : Division Bench

Advocate : Bejoy Bhose, for the Appellant; Pasupati Ghose, Probhas Chandra Basu and Ganganarayan Chandra, (Nos. 1 and 2 respectively), for the Respondent

Final Decision : Allowed

Judgement

Harries, C.J.—This is a petition for revision of an order made by Shri A.N. Mukherjee, Municipal Magistrate of Calcutta dated April 19, 1950 directing that a corrugated iron shed in the occupation of the petitioner be demolished.

2. The petitioner claimed to be a tenant of the lessee of certain premises known as Nos. 137 and 137A Canning Street in this city. The lessee of the premises was a man called Tapuria. It seems that on June 14, 1949 an application was made to the learned Municipal Magistrate u/s 363 of the Calcutta Municipal Act and upon that application a summons was issued. The corporation's case was that certain unauthorised structures had been made on these premises namely, the addition of a fifth storey and a staircase and the erection of a corrugated iron shed. The order-sheet shows that on November 1, 1949, a general notice was served. On April 19, 1950 there was a consent order made, the lessee Tapuria consenting. The petitioner who was, as I have said, a subtenant was not present and was not represented and therefore no question of his consenting to the order can arise. The consent order was to the effect that the corrugated iron shed was to be demolished by the Corporation, whereas the other structures were allowed to remain. It is that order which the present petitioner seeks to revise.

3. The petitioner's case is that as an occupier of the premises and of the corrugated iron shed in particular he was entitled to a notice of these proceedings and further that no order of demolition could be made without the Court being satisfied that he had an opportunity of presenting his case and being heard. The petitioner's case is that he knew nothing of these proceedings and never had an opportunity of showing cause why an order for demolition should not be made.

4. A Bench of this Court in a comparatively recent case has held that the occupier of premises is entitled to a notice u/s 363 of the Calcutta Municipal Act. In "Gobinda Charan v. Corporation of Calcutta" 53 Cal W N 813, it was held that according to the proviso to Section 363 of the Calcutta Municipal Act both the owners and occupiers must have notice that the Corporation proposed to apply to a Magistrate for a demolition order and the Court before passing such an order must be satisfied that they had such notice and did not desire to adduce any evidence or put forward any defence. To pass any order behind their backs is a contravention of the said proviso. The Bench further went on to hold that a tenant and even a subtenant is an occupier within the meaning of Section 3 of the Calcutta Municipal Act. Prima facie the term "occupier" means the person in occupation.

5. It is therefore clear from this decision that the petitioner who occupied and was a subtenant of this corrugated iron shed was entitled to notice of the proceedings and was entitled to an opportunity to be heard. His case is that he had no notice whatsoever of the proceedings.

6. No evidence of service of a notice of these proceedings on the petitioner was given and all that the order-sheet discloses is that a general notice was served, but the record does not disclose that anyone was called to prove the service of the general notice. A peon's return appears on the record which would show that a notice was affixed on the premises. The peon was not called and the peon's return is no evidence if the peon is available. There was therefore no proof that any general notice had been served, but in my view notice should be served on persons interested, of an application u/s 363 of the Calcutta Municipal Act in much the same way as a summons is served. I do not think that affixing a notice on the premises would be sufficient notice where the occupier could be served personally. Of course if personal service was impossible by reason of the conduct of the occupier, then I think notice by affixation of the document on the premises would be sufficient. However, I have very grave doubts whether the Corporation is entitled to serve notice in a way in which no other person or body is entitled so to do. There is nothing in the Municipal Act authorising this form of service, and I do not think that it is a good form of service except in cases where personal service is impossible. In any event there is no proof that a general notice was affixed to these premises by anybody. That being so there is nothing on the record to show that the petitioner had any notice whatsoever of these proceedings; and therefore the order made demolishing the corrugated iron shed

in his occupation must be set aside.

7. The petitioner also points out that this corrugated iron shed was the subject-matter of earlier proceedings which resulted in a dismissal of the application by the Corporation for demolition on the ground that the corrugated iron shed had been in existence for more than five years and therefore no order of demolition could be made.

8. There can be no doubt that there were earlier proceedings in respect of a corrugated iron shed on these premises. An application was actually made for demolition on May 28, 1946. These proceedings dragged on, as only such proceedings can drag on, until April 2, 1949, when the Municipal Magistrate made an order rejecting the application for demolition on the ground that the corrugated iron shed was more than five years" old.

9. It seems that the Administrative Officer of the Corporation had authorised another application for demolition of this shed before the judgment of the learned Magistrate in the earlier case. I am not surprised to find that the Corporation authorities had entirely forgotten about the earlier case, having regard to the leisurely way in which it had proceeded. However before summons was issued on the second application the first application to demolish this corrugated iron shed had been dismissed.

10. These facts are clearly stated in the petition and the actual number of the previous proceedings is given. It is now suggested by learned Advocate for the Corporation that the earlier proceedings referred to some different corrugated iron shed. But if that was the Corporation's case they should have filed a counter-affidavit. They have done nothing of the kind and have in fact admitted the facts as set out in the verified petition. I have no doubt whatsoever that the corrugated iron shed now sought to be demolished is the same corrugated iron shed which was the subject-matter of the earlier proceedings. That being so, it appears to me that even if the petitioner was a party to the later proceedings, the order would nevertheless have to be set aside.

11. The petitioner also claimed that these proceedings were barred by limitation and he relied on Section 534 of the Calcutta Municipal Act which requires proceedings to be brought within three months of the date on which commission or existence of the offence was brought to the notice of the Corporation or the Executive Officer. The Administrator or the Chief Administrative Officer of the Corporation in whom now all powers of the Corporation have vested directed these proceedings to be commenced on March 1, 1949. Nothing was done until an application was made in Court on June 14, 1949. Learned Advocate for the petitioner points out that the application u/s 363 of the Municipal Act was made more than three months from the date on which the Administrative Officer came to know of the offence. Obviously the Administrative Officer knew all the facts on March 1, 1949, because on that date he directed that proceedings should be taken. As they were not taken for more than three months, it is contended that

the proceedings are barred by the period of limitation prescribed in Section 534 of the Calcutta Municipal Act.

12. However, I am not satisfied that these proceedings are proceedings such as are contemplated in Section 534. Section 534 deals with offences in respect of which persons may be liable. An order u/s 363 is not an order punishing a person and directing him to pay a fine and I have very grave doubts whether institution of proceedings u/s 363 is governed by the period of limitation prescribed by Section 534 of the Calcutta Municipal Act. However, it is unnecessary to give a final decision on this question because I am satisfied that the order made without notice to the petitioner must be set aside, and that being so I allow his petition, set aside the order of the Municipal Magistrate and make the Rule absolute.

13. The order which is set aside is only an order for demolition of the corrugated iron shed. No order was passed for demolition of any of the other structures so that those structures are wholly unaffected by any of the proceedings.

14. Opposite party No. 2 who was the lessee and had consented to the order deposited certain moneys in the Court of the Municipal Magistrate. As the order has now been set aside the moneys must be repaid to opposite party No. 2.

Bose, J.

15. I agree.