

(1954) 05 CAL CK 0020

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 522 of 1949

Commissioners, Hooghly-Chinsurah Municipaliy

APPELLANT

Vs

Ekkari Ghose

RESPONDENT

Date of Decision : 21-05-1954

Acts Referred:

Bengal Municipal Act, 1932 — Section 535
General Clauses Act, 1897 — Section 3(2)

Citation : 58 CWN 755 : (1956) 2 ILR (Cal) 164

Hon'ble Judges : P.N. Mookerjee, J

Bench : Single Bench

Advocate : Apurba Charan Mukherjee and Bhutnath Chatterjee, for the Appellant; Narendra Nath Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Mookerjee, J.—This appeal is by the Commissioners of the Hooghly-Chinsurah Municipality and it arises out of a suit for specific performance of a contract of sale of land.

2. In view of the point, urged in this appeal, it is not necessary to recite the facts in any detail.

3. On the merits, all the findings are in favour of the Plaintiff, whose suit has been decreed by both the courts below.

4. The only ground which is pressed in this appeal is that the suit is barred in law, as there was, admittedly, no service of notice u/s 535 of the Bengal Municipal Act.

5. The courts below have held that, in suits like the present, no such notice is necessary. With that view I entirely agree. The suit is for specific performance of a contract of sale. It is not disputed that the contract was duly made under the Bengal Municipal Act, but while the Act gives the Municipality power to make contracts, it does not authorise it to refuse to perform the same, and there is no

provision in the Act or in any rule or bye-law, made thereunder, under which such a refusal can be justified or can purport to have been made. It is the refusal to perform the contract which has given rise to the present suit and has given immediate cause of action to the Plaintiff for the same. That refusal, however, is certainly not "an act purporting to be "done under the Bengal Municipal Act or any rule or bye-law "made thereunder" so as to attract Section 535 of the Act.

6. No doubt, the contract in suit being valid in law, the Appellant Municipality is under a legal obligation to perform it and its failure or refusal to perform the same would possibly be an "illegal omission" so as to fall within the definition of "act" u/s 3(2) of the General Clauses Act. The obligation, however, to perform the contract rests not upon Municipal law but upon the relevant general law of the land, e.g., the Indian Contract Act, the Transfer of Property Act, the Specific Relief Act, etc., and the failure or refusal to perform it would thus be an "illegal omission" or "act" under the said general law and not an "act" under or purporting to be done under the Municipal law. There is also nothing to suggest that the Appellants' refusal to perform the disputed contract purported to have been made under the Bengal Municipal Act or any rule or bye-law made thereunder. There is thus no scope here for the application of Section 535 of the said Act.

7. I hold, therefore, that Section 535 of the Bengal Municipal Act has no manner of application to the present case and no notice under that section was necessary for maintaining the present suit. The suit, therefore, cannot fail for non-service of such notice. The point, urged in support of this appeal, is, therefore, rejected.

8. In the result, this appeal fails and it is dismissed with costs.