

(1903) 03 CAL CK 0003
In the Calcutta High Court
Case No : Reference No. 2 of 1903

Corporation of Calcutta

APPELLANT

Vs

Amrita Lal Mukerjee

RESPONDENT

Date of Decision : 10-03-1903

Acts Referred:

Citation : (1903) 03 CAL CK 0003

Judgement

1. This was a reference made to this Court by the Municipal Magistrate of Calcutta. The material parts of the reference are contained in paragraphs 2 and 3 of the letter of reference, and they run in these terms:-- 2. "In this case a sanction to construct a building was obtained under the old Act. The sanctioned plan showed the building as being attached to the adjoining masonry building on the west. Defendant commenced to build just before the new Act came into force but in constructing the building he has deviated from the sanctioned plan. He has not attached on the west but left only 3 feet space throughout the length of the building."

3. "The building, though commenced under the, old Act, was continued under the new Act. Rule 24 (2) (a) of Sch. XVII of the new Act, III (B. C.) of 1899, requires that unless a domestic building is attached to the adjacent building an intervening space of at least 6 feet should be left."

4. "The question for decision is whether the new Act is applicable to this building, sanctioned and commenced under the old Act, and if it is not applicable, whether a person can be allowed with impunity to deviate from a plan sanctioned under the old Act: if he cannot be allowed to so deviate, what penalty should be enforced.

The question submitted for our consideration is inartistically worded. We are asked "whether the new Act is applicable to this building sanctioned and commenced under the old Act." Paragraph 3 of the case submitted states that this building is not built in accordance with the plan sanctioned under the old Act. If this be so, and this is a question of fact to be determined by the Magistrate,

then the building cannot be properly described as being " sanctioned " under the old Act.

2. In our opinion the proper form in which to answer the question which it appears the Magistrate intended to submit for our consideration, is to say that the new Act is applicable to a building constructed under the circumstances and in the manner set forth in paragraphs 2 and 3 of the case submitted to us, provided the Magistrate as a fact finds there has been such a departure from the sanctioned plan as would render the owner liable to a penalty under the old Act.

3. Sec. 579, cl. (e) of Act III of 1899 renders liable to a fine the owner of a building which is carried on or completed in breach of any provision contained in the Act or in any rules or bye-laws made thereunder, and sec. 449 of the same Act enables the Magistrate to direct the demolition or alteration of building work so carried on or completed. The building as described in paragraph 2 of the case submitted contravenes Sch. XVII, Rule 24, cl. (2).

4. In carrying on therefore and completing the building the owner rendered himself liable to a fine under sec. 579, and he might also be directed to demolish or alter the building under sec. 449 unless he could show that a right to build in contravention of the new Act had been acquired by him under the old Act so as to bring himself within cl. (c) of sec. 8 of Act I (B. C.) of 1899 (the Bengal General Clauses Act).

5. It is argued by the learned pleader on behalf of the owner that the summons taken out against him was for deviating from the sanctioned plan and that a deviation from a plan sanctioned under the repealed Act was no offence under the new Act. But that question is not raised by the case. We have to determine whether on the facts stated in paragraphs 2 and 3 of the case the new Act is applicable. In our opinion that must be answered in the affirmative. It was also argued that if the Act is applicable, the owner is entitled to a notice under sec. 383 requiring him to alter the work so as to bring it into conformity with the plan, and to be entitled to the benefit conferred on him in cl. (4) of that section under which he is entitled to appeal to the General Committee against such order. But there is nothing in the Act making a notice under that section a condition precedent to a proceeding under the first sub-section of sec. 449. But strictly the point though raised in argument does not arise on the case in which the question asked is whether the new Act is applicable to a building begun when the old Act was in force, and not what particular sections of the new Act are applicable to the circumstances of this case. If the building as constructed is a deviation from the plan as sanctioned under the old Act so as to render the owner liable to a penalty under the old Act, then he cannot show that he had acquired under the old Act, before the new Act came into force, a right entitling him to build in contravention of the provisions and rules laid down by the new Act so as to bring himself within cl. (c) of sec. 8 of Act I (B. C.) of 1899, the Bengal General Clauses Act. He will then be liable to prosecution under the new Act. The other questions in the case are contingent on our answering the

question in the negative, so do not require an answer. But we must point out to the Magistrate that the question what penalty should be enforced under secs. 449, 452, 579 of Act III of 1899, etc., is in the discretion of the Magistrate, not a question of law which this Court will answer.