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**(1907) 05 CAL CK 0029**  
**In the Calcutta High Court**

Corporation of Calcutta

APPELLANT

Vs

Imadul Huq

RESPONDENT

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**Date of Decision :** 17-05-1907

**Acts Referred:**

Calcutta Municipal Act, 1899 — Section 341, 841

**Citation :** (1907) ILR (Cal) 844

**Hon'ble Judges :** Francis W. Maclean, C.J.;Holmwood, J

**Bench :** Division Bench

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**Judgement**

Francis W. Maclean, C.J.—This is a suit to restrain the Municipal Corporation of Calcutta from exercising the statutory powers which they enjoy u/s 841 of the Calcutta Municipal Act, (Act III of 1899, B.C.).

2. It is a little difficult, in the somewhat invoked judgment of the lower Appellate Court, to ascertain with precision what the facts are. But as far as I understand them, they are as follows:--The structure or the projection which the Corporation seek remote u/s 341 of the Act is situated on one side of Gopalnagar Road, in the environs of Calcutta. It appears that the plaintiff or his predecessors in title have built a verandah adjoining their house, and the pillars of the verandah, which support the verandah, are sunk down into the soil between the street and a drain which runs between the street and the front of the plaintiff's house. The drain is covered up; there is a platform upon it, and, the verandah projecting from the home and attached to the house is supported in the manner I have stated. The verandah is undoubtedly a fixture within the meaning of Section 341. In these circumstances, the question is, whether the case falls within Section 341 of the Act.

3. That section runs as follows, "when any fixture has, whether before or after the commencement of this Act, been attached to a building, so as to form part of the building, and the same causes a projection, encroachment or obstruction over or on any public street or any land vested in the Corporation, the General Committee may, by written notice, require the owner or occupier of the building

to remove or alter such fixture." The Corporation did in fact give the plaintiff a notice to remove the fixture, and, in consequence of his refusal to do so, the matter went before a Magistrate who ordered the fixture to be removed. Hence the present suit. It seems to me that the only question We have to decide is whether this fixture is, "a promotion, encroachment or obstruction over or on any public street. "I should have thought that prima facie it was; and a reference to certain sections of the Act makes that reasonably clear. u/s 3, Sub-Section 37, ""public street" means any street, road, square, court, alley, passage or riding path, whether a thoroughfare or not, over which the public have a right of way, and includes the drains attached to any such street. The drain therefore prima facie must be taken to be a part of the public street, Then, if we look at Section 286, we find that "all public drains, and, all drains in alongside or under any public street...shall vest in the Corporation." And, u/s 336, "all public streets...shall vest in and belong to the Corporation." In these circumstances, and upon the facts which I have stated, it is difficult to see why Section 341 does not apply to the present case It is not part of the plaintiff's case that the sub-soil in which the pillars of the verandah are sunk belongs to him. If there were no drains, the land up to the outer wall of the plaintiff's house would be included in the street (Section 3, Sub-section, 37), The land upon which the pillars are sunk is vested in the Corporation. The fixture in question is an encroachment on the public street, which, including the drain, is vested in the Corporation. The case of *Gunamani Dasi v. The Municipal Corporation of Calcutta* (1), which was decided by a Division Bench of this Court on the 4th of December last, is precisely the same case and there it was held that the section applied.

4. If the bare facts are considered I do not think the case presents any real difficulty in point of law. The plaintiff in my opinion, has made out no case for restraining the, Corporation from acting u/s 341. He may, under Sub-Section 3 of Section 341, be entitled to compensation, but I say nothing about that at present. The suit is misconceived. The appeal must be allowed and the suit dismissed with costs in all Courts.

Holmwood, J.

5. I agree.