
(1954) 01 CAL CK 0008

In the Calcutta High Court

Case No : Criminal Revision Case No. 865 of 1953

Corporation of Calcutta

APPELLANT

Vs

Mulchand Agarwalla

RESPONDENT

Date of Decision : 19-01-1954

Acts Referred:

Calcutta Municipal Act, 1923 — Section 363

Citation : 58 CWN 278

Hon'ble Judges : Chunder, J

Bench : Single Bench

Advocate : Sunil K. Basu, for the Appellant; Guru Pada Karr and Amiya K. Mukherjea, for the Respondent

Judgement

Chunder, J.—This Rule was issued at the instance of the Corporation of Calcutta in connection with a refusal by the Municipal Magistrate to order demolition u/s 363 of the Calcutta Municipal Act of two rooms constructed without permission of the Calcutta Corporation. It is very regrettable that a public body like the Calcutta Corporation has been trying to waste everyone's time by belated applications. It appears that for the construction of these very rooms there was a previous proceeding u/s 488 read with rule 62 of Schedule XVII of the Calcutta Municipal Act. The learned Magistrate in the present case pointed out that in that case an order could also have been asked for demolition. The Corporation was quite satisfied with an imposition of a fine of Rs. 200 which was paid. This was on April 11, 1951. Later the present proceeding was taken for demolition of the structure, namely, the two rooms, u/s 363 of the Act. The learned Magistrate rightly points out that section 363 gives not a right to the Corporation but a discretion to the Magistrate, to be exercised judicially. When for the same thing there had been a previous decision on the subject and no order was either asked for or given by the Magistrate, it is not a fit case for exercising such discretion after two years in 1953. It is unnecessary to go into the question whether the doctrine of double jeopardy will apply. In the present case there can be no doubt that the learned Magistrate exercised his discretion very soundly in refusing the

belated application. He, further pointed out that no one really complained of any inconvenience caused by the construction of the two rooms. It appears that someone was mentioned in the Corporation papers as the complainant and no one can even say what the name of this person was and he seems he never appeared before any authority. The learned Magistrate should be congratulated for being firm enough to put a stop to this kind of harassing application against a citizen of this city. The Rule is accordingly discharged.