

(1933) 12 CAL CK 0006
In the Calcutta High Court

Corporation of Calcutta

APPELLANT

Vs

Rashmoni Debi

RESPONDENT

Date of Decision : 18-12-1933

Acts Referred:

Calcutta Municipal Act, 1923 — Section 303(2)
Provincial Small Cause Courts Act, 1887 — Section 27

Citation : AIR 1934 Cal 506

Hon'ble Judges : Costello, J

Bench : Division Bench

Judgement

Costello, J.—This Rule was issued under the provisions of Section 27, Provincial Small Causes Courts Act (11 of 1887), and is directed against a decision of a Judge of the Small Cause Court, Sealdah, dated 11th March 1933. One of the points that arise out of that judgment raises a question of considerable public importance. The suit in which the judgment was given was brought by a lady named Sm. Rashmoni Debi against the Corporation of Calcutta and was for recovery of compensation under the provisions of Section 303(2), Calcutta Municipal Act, 1923, which is Bengal Act 3 of 1923. The plaintiff is the owner of certain premises known as No. 27 Halderpara Road, and on the front portion of those premises there is a small two storeyed house and the back portion of the premises consists of low lying land which was formerly occupied by a tank. In the month of January 1929 the plaintiff submitted to the Corporation of Calcutta a plan of a proposed new building which, according to the case for the defendants was to be entirely detached and situated at some distance behind the existing building and to the west of it. A reference to the site plan of the proposed building shows that the land belonging to the plaintiff was of irregular shape and the back portion of the premises lies in a line to the west of the front portion. On 20th February 1929 the Corporation refused to sanction the proposed building on various grounds, amongst others, on the ground that there were various violations of the building rules and also on the ground that the proposed building would fall within the alignment of a projected street. Some two years later, that

is to say, on 20th July 1931, the same plan was resubmitted to the Corporation and on 17th August 1931 the plan was returned to the plaintiff and the Corporation informed her that sanction was refused as the site of the proposed building fell entirely within the projected road alignment, and the Corporation did not think it necessary to repeat all the other grounds for their refusal of sanction to the plan. On 16th November 1931 an agent of the plaintiff, Bam Chandra Mukherji, wrote a letter to the surveyor to the Corporation requesting him to place the matter before the Estates and General Purposes Committee for consideration; but it seems that on 16th February 1932 the plaintiff without waiting for the decision of that Committee served a notice on the Corporation u/s 538, Calcutta Municipal Act, giving the Corporation notice that the plaintiff proposed to take legal proceedings. On 29th March 1932 the surveyor to the Corporation wrote to the plaintiff to the effect that the matter would be decided by the Estates and General Purposes Committee and in fact that committee in a meeting of 31st March 1932 resolved:

That consideration of the matter be postponed for a report from the Building Department as to whether, apart from the objection that the building was affected by the alignment, there were other objections under the Building Regulations and whether there was any independent access to the proposed building from Halderpara Road.

2. Before any decision of the Estates and General Purposes Committee of the Corporation was arrived at however the plaintiff in the month of April 1932, instituted the suit out of which this matter arises, claiming damages, as I have indicated, u/s 303(2), Calcutta Municipal Act, and putting such damages at the figure of Rs. 175. The matter, in fact, did come up before the Estates and General Purposes Committee of the Corporation on 10th November 1932 for consideration but, in view of the fact that a spit had then been instituted the committee resolved "that the item was withdrawn as it was reported to be sub-judice." It appears that it was contended that on behalf of the defendant Corporation before the Court of Small Causes, amongst other points, that Section 303(2), Calcutta Municipal Act, had no application; but the learned Judge overruled that contention and allowed the plaintiff's claim assessing the damages at Rs. 70. This was on 11th March 1933 when the judgment I have already mentioned delivered. It seems that at the trial the case was mainly contested on two grounds. The learned Judge in his judgment says:

It is in evidence that in the letter written by the defendant refusing sanction of the plaintiff's plan, the ground of its being included within the street alignment was only set forth; it is not denied again that the defendant did not acquire the site within the meaning of Section 303, Clause 2, Municipal Act; as such, the provisions of this section seem to be applicable in this case; the defendant's plea that the site was such that the plan could not be sanctioned on other grounds as well has not been made out by any independent evidence.

3. The learned Judge therefore came to the conclusion that the plaintiff was

entitled to compensation Under Sub-section (2) of Section 303. I am of opinion however that the learned Judge has entirely misconceived the purpose and the effect of Section 303; indeed it is now admitted by the learned Advocate who has appeared before me in the present proceeding that no one in the course of the case seems to have appreciated that Sub-section (2) of Section 303, only provides for compensation in very limited circumstances. The purpose of Section 303 is to place restrictions on the erection of or additions to a building or boundary wall within a street alignment or building line. The object of the section clearly is to prevent erection of structures which will seriously add to an obstruction already existing on land which falls within a projected street alignment. The operative part of this section is contained in Sub-section (1) which says:

No portion of any building or boundary wall shall be erected or added to within a street alignment prescribed u/s 302.

4. So that we start with a clear and finite declaration that anything which may put further difficulties in the way of clearing or preparing ground which has been allocated for the purpose of a public street must not be sanctioned. Sub-section (1) however contains a proviso which says that:

The Corporation may, in their discretion, permit additions to a building to be made within a street alignment if such additions merely add to the height of, and rest upon, an existing building or wall, upon the owner of the building executing if required to do so by the Corporation, an agreement binding himself and his successors in interest (a) "not to claim compensation in the event of the Corporation at any time thereafter calling upon him or such successors, by written notice to remove any addition made to any building in pursuance of such permission, or any portion thereof" and (b) "to pay the expenses of such removal."

5. That proviso enables the Corporation at their discretion to permit additions to a building which are upwards and not side ways, if I may so express it; in other words, the Corporation may, if they choose, permit such additions as from their nature do not in fact cause any further obstruction on the actual site of a projected street. Beading therefore Sub-section (1) in its entirety it comes to this: that lateral or detached additions are prohibited whereas vertical additions may be permitted under the conditions specified in the proviso. Now it seems to me that it is abundantly clear that Sub-section (2) has reference solely to the latter class of additions, namely the kind of additions which the Corporation can sanction if they choose. The section provides that if the Corporation refuse to grant permission to add to any building then in certain circumstances, namely if the land destined for a street is not in fact acquired by the Corporation within six months from the date of their refusal of the sanction then they will be liable to pay reasonable compensation to the owner of the site. Now it seems to be beyond any question, indeed, it is shown on the plan to which I have referred and is moreover now admitted by Dr. Mukerji who appears for the plaintiff the

respondent in the present proceeding that the projected building could in no sense be described as an addition to any existing building either vertical or even lateral. It was in fact an entirely separate building that the plaintiff desired to erect. Dr. Mukerji has also very frankly conceded that in those circumstances he is in a position of having to admit that Sub-section (2) affords the plaintiff no relief. Having regard to the interpretation and construction of Section 303 and in particular of Sub-section (2) which I have enunciated, it follows that the decision of the learned Judge of the Small Cause Court of Sealdah, was erroneous in law or to use the words of Section 25, is not according to law. Therefore, the decree which he has made must be set aside and the plaintiff's suit dismissed. The Rule is made absolute on those terms; but having regard to the fact that the precise point on which I decide the matter was never raised by the defendants in the Court below, there will be no order as to costs.