

(1931) 03 CAL CK 0002
In the Calcutta High Court

Corporation Of Calcutta

APPELLANT

Vs

Srimati Sumeria Bewa

RESPONDENT

Date of Decision : 19-03-1931

Acts Referred:

Calcutta Municipal Act, 1923 — Section 175, 179, 386, 387

Citation : 136 Ind. Cas. 638

Hon'ble Judges : Pearson, J; Jack, J

Bench : Division Bench

Judgement

1. The plaintiff in the suit out of which this appeal arises was the owner of certain premises situated within the Municipal limits of Calcutta. She was the owner of certain hackney carriages and horses with which she carried on the business of hire. She desired to use these premises in question as a stable for those horses and carriages and applied to the Corporation for sanction which however was refused. She continued the business nevertheless and was prosecuted before the Municipal Magistrate and fined. It appears that the Chief Executive Officer of the Corporation had refused her a license for which she applied under the terms of Section 386, Calcutta Municipal Act, 1923. From his decision an appeal was preferred to the Corporation which was considered and disposed of by the Health Committee who supported the decision of the Chief Executive Officer in refusing the license. The plaintiff brought the suit against the Corporation asking for a mandatory injunction on the Corporation to grant her license to keep these horses upon the premises in question and secondly for an injunction to restrain the Corporation from prosecuting her under the provisions of Section 488 read with Section 386 and restraining them from interfering with her right to use these premises as a stable. She also claimed a sum of Rs. 50 as damages.

2. Both the courts below have granted a decree against the Corporation, at any rate, in regard to the injunction restraining the Corporation from taking action and as to damages. The learned Judge of the lower Appellate Court states amongst other things that it is not disputed that the plaintiff had her stable on

the land at the time of the prosecution and had no license for it : and ordinarily, ha says, it cannot be denied that an owner who is using premises as a stable without license is liable to prosecution u/s 386 of the Act The learned Judge then says after a discussion of certain provisions of the Act that

having regard to the facts of the case the Corporation can hardly be said to have properly exercised its discretion in these matters.

3. He refers to the fact that as it transpired in evidence a license was granted before in 1922-24 for the use of the whole plot u/s 386 and that there was a cow-shed in the northern portion and the owner was permitted to use it as a cow-shed even in 1924. He then goes on to say:

Plaintiff could rightly complain that the action was taken by the Corporation for the sake of the convenience of the owners of premises No. 18-1.

4. He further says that the evidence adduced in the case is sufficient to warrant the finding that the plaintiff was permitted to use the premises for the purpose of Section 386 inasmuch as there are certain exhibits which show that the plaintiff was granted a license for 1923-24 for exercising the profession of a hackney carriage owner at the premises and also a license under the Act with regard to the collection of scavenging tax in relation to her profession as a hackney carriage owner. The learned Judge goes on to say that,

if the Corporation was unwilling to grant license u/s 386 and if it was found desirable to discontinue the user of the place as a stable, why were the other licenses issued?

5. He thinks therefore that the actions of the Corporation Officers were arbitrary and that the court as a court of equity should interfere against the action of the Corporation in support of the plaintiff to the extent mentioned.

6. The points that have been argued by the respondent before us are these: It is contended first of all that on a true construction of Sections 388 and 387, Calcutta Municipal Act, the Corporation was not empowered to refuse license.

7. Section 386, Sub-section (1) runs thus:

No person shall use or permit to be used any premises for any of the following purposes without or otherwise than in conformity with the terms of a license granted by the Corporation in this behalf, namely (a) any of the purposes specified in Sch. XIX : (b) any purpose which is, in the opinion of the Corporation, dangerous to life, health or property, or likely to create a nuisance : (c) keeping horses, cattle or other fourfooted animals for sale or hire or for sale of the produce thereof, and (d) storing for other than his own domestic use or selling timber, firewood, charcoal, coal, coke, ashes, hay, grass, straw or any other combustible thing.

8. It is argued that the provisions of Section 387 would be unnecessary if the powers of the Corporation u/s 386 amounted to an absolute power to refuse to

grant license u/s 386, Section 387 is the section which enables the Corporation to exclude a whole area for using premises for any of the purposes mentioned in e. 386, and specific procedure is laid down in Section 387 by which that exclusion may be attained and given effect to. Once the area has been excluded then of course no business of the character in question can be carried on at all within that area and it is useless to apply for license to that effect. The argument amounts to this: that the Corporation has got no power to refuse license u/s 386 unless the area is excluded u/s 387. We are of opinion on the matter of construction that such a meaning ought not to be attributed to the plain language of Section 386. Even if an area has not been dealt with u/s 387 there is no reason why Section 386 should be utilized as applicable to particular instances. There is nothing to suggest that a license under that section can be claimed as a matter of right : nor is there any such provision as is contained in Section 169 of the Act which makes it obligatory on the Corporation to grant a license of the character dealt with in that section the moment the tax is paid. This is only to be expected when it is considered that Section 386 of this Act comes under Part V of the Act which deals with "the public health, safety and convenience." This would make it all the more necessary that the authorities should have a discretion in granting or refusing license in matters where those subjects are specially concerned.

9. The second point argued by the learned Advocate for the respondent was that assuming that the true construction of Section 386 of the Act was that the Corporation had a discretion in the matter of granting license, the procedure adopted by the authorities was such that from its arbitrary character and the way in which the respondent had been dealt with, the principles of natural justice had been contravened and therefore the court should interfere in favour of the plaintiff. Upon this point the learned Judge states as follows:

The resolution of the Corporation (Health Committee) related to the appeal preferred by the plaintiff whom she was refused license u/s 386 and by it the appeal was disallowed as the site was thought to be unsuitable by the Chief Executive Officer, Health Officer and the members of the Health Committee : but it does not appear that the Executive Officer and Health Officer formed their opinion after inspection of the locality. The members of the Health Committee are said to have gone to the locality but they did not go on the date fixed and the plaintiff had no opportunity to be heard if they went in her absence, She also complained that her Pleader was also not given any opportunity to be heard at the time of the appeal and if it was so, such action cannot but be called arbitrary and must be discouraged.

10. Now there is no finding in the judgment of the lower Appellate Court that the plaintiff's pleader was not in fact given a hearing during the appeal. As a matter of fact from the proceedings themselves to the minutes of which we have been referred, it is clear that the plaintiff's pleader was in fact present and was allowed to make his statement and representations on the case. It can hardly be said

therefore that there is any case here of the plaintiff's having been refused a proper hearing : nor is thereto be found anywhere in the judgment of the lower Appellate Court anything to suggest that the proceedings at any such meeting of the Corporation were tainted in any way by fraud or corruption or any other thing which, if proved, might have given rise to other considerations

11. Then again the last contention of the respondent before us is that some kind of estoppel is raised against the Corporation arising out of the fact that the Corporation had in fact granted her licenses under other chapters and sections of the Act, relating also to her business on these premises as the owner of the hackney carriage business. This matter is relied on by the learned Judge when he says that she was being granted license under Sections 175, 176, 179 and 180 of the Act, and also, it appears, under the sections of the former Act corresponding to ss. 165 and 169 of the new Act. The effect of her having been granted license under any or all of those sections, it is contended, is to preclude the Corporation from refusing to give her the further license which is necessary u/s 386. The answer to this contention rests upon the fact that those other licenses were granted to her under sections in an earlier part of the Act, namely, Part IV, which has to do with the subject of taxation, e, g., Section 175 deals with licenses to be taken out annually for fiscal purposes in respect of professions, trades and callings and taxes to be paid thereon: see the case of *Bepin Behari Ghose v. Corporation of Calcutta* 34 C. 913.

12. There is no reason why the mere fact that she is called upon to take out such a license as is contemplated by Section 175 should excuse her from the necessity of taking out a license u/s 386 or should entitle her to a license under that section for those particular premises. The license u/s 175 is to be taken out by a person who exercises or carries on any of the professions, trades or callings mentioned, that is to say, the tax is payable by a person who de facto carries on such a profession, trade or calling as is liable to tax under the Act, There is no implication in the fact of such a license being granted that the licensee is in fact for all purposes legally entitled to carry on the particular profession, trade or calling. Further there is a proviso to Section 175 that the grant of a license under that section shall not be deemed to affect the liability of the licensee to take out a license under any other section of the Act. Similarly as regards the levying of scavenging tax u/s 179, that stands on precisely the same footing, as being a tax levied upon a person who is de facto carrying on and who thereby becomes liable in consequence of carrying on a particular profession, trade or calling. It cannot be called in to show that the Corporation is in any way precluded from exercising a discretion which is vested in it as guardian of the public health under an entirely different part of the Act in issuing or refusing other licenses based upon totally different considerations.

13. The result is that we think the judgment of the lower Appellate Court is erroneous and must be reversed for the reasons given above, and the plaintiff's suit will be dismissed. The appellant will get his costs in all the Courts.