
(1949) 11 CAL CK 0039

In the Calcutta High Court

Case No : Criminal Revision Case No. 809 of 1949

Corporation of Calcutta

APPELLANT

Vs

Surendra Nath Das Gupta

RESPONDENT

Date of Decision : 10-11-1949

Acts Referred:

Citation : (1949) 11 CAL CK 0039

Final Decision : Allowed

Judgement

Harries, C.J.—This is a petition for revision of an order made by a learned Municipal Magistrate, converting proceedings u/s 363 of the Calcutta Municipal Act into proceedings u/s 493 of the Act and convicting the opposite party of an offence under that latter section and fining him Rs. 100.

2. The Calcutta Corporation complained that the opposite party had improperly erected certain buildings and brought proceedings u/s 363 of the Calcutta Municipal Act, praying for an order of demolition. The learned magistrate, who heard the case, eventually acceded to a prayer made by the opposite party that the proceedings should be converted into proceedings u/s 493 of the Calcutta Municipal Act. It is to be observed that the complainant, the Corporation, never asked for conversion of these proceedings.

3. It is abundantly clear from the provisions of Section 493 of the Calcutta Municipal Act that, if proceedings have been commenced u/s 303, no proceedings can be instituted by the Corporation u/s 493. In other words, the Corporation are put to their election. They can proceed in one way or the other. The Corporation elected to proceed u/s 363 and that election is completely defeated by the magistrate allowing the opposite party to choose the proceeding which he would like to be brought against him. That is in short what occurred.

4. In my judgment, if the Corporation had elected to bring proceedings u/s 363, the learned magistrate was bound to decide the application. If he thought no case was made out, he should have dismissed the application. As it was not open

to the Corporation to make an alternative application u/s 493 of the Calcutta Municipal Act the learned magistrate could not in the alternative convict the opposite party under that section.

5. This precise point came before me in the case of Farrukh Sayer v. Corporation of Calcutta (1948) Criminal Revision Case No. 285 of 1948, decided on June 21. In that case I held that a learned magistrate could not convert the proceedings into proceedings u/s 493 and a similar view has been taken by Sen J. in Badridas Goenka v. Corporation of Calcutta (1949) Criminal Revision Case No. 666 of 1949, decided on Sept. 15.

6. It appears to me that the view which I expressed and the view expressed by Sen J. cannot possibly be challenged, and that being so, the order of the learned magistrate must be set aside. He must determine the application u/s 363 of the Calcutta Municipal Act on its merits and either make an order for demolition or dismiss the application. If, of course, he dismisses the application, it would be open to the Corporation, if they think fit, to challenge the decision elsewhere. The learned magistrate cannot avoid deciding the application u/s 363 by convicting u/s 493.

7. In the result, therefore, this petition is allowed, the order of the learned magistrate is set aside and the learned magistrate is directed to proceed with the hearing and determine the application in accordance with law and in accordance with the observations made in this judgment. The Rule is made absolute.

8. It would, I think, be desirable if this application be heard by a magistrate other than the Magistrate who heard it previously.