
(1952) 05 CAL CK 0013

In the Calcutta High Court

Case No : Criminal Revision Case No. 168 of 1952

Dwarka Prasad Bajaj

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 27-05-1952

Acts Referred:

Calcutta Municipal Act, 1923 — Section 363, 363(1), 504, 505

Citation : (1954) 1 ILR (Cal) 396

Hon'ble Judges : Chunder, J

Bench : Single Bench

Advocate : Ajit Kumar Datta and Jnanendra Coomar Dutt, for the Appellant; Sunil Kumar Basu, for opposite party No. 1 and Satyabrata Dutt, for opposite party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Chunder, J.—This is a Rule at the instance of a landlord, who was served with a notice by the municipal authorities of Calcutta for demolition of an unauthorised structure raised in his building by a tenant, who is the opposite party No. 2. The opposite party No. 1 in this Rule is the Corporation of Calcutta.

2. It appears from the findings of the learned magistrate as well as from the evidence, that on May 12, 1950, a notice was issued, which was proved by the despatch clerk, for a meeting dated May 16, 1950, both on the Petitioner, the landlord, as well as, on the occupier, the tenant. The meeting was with respect to the demolition of the unauthorised structure put up by the tenant. As this meeting was adjourned, a post card of the adjourned date was also sent as was proved by the same despatch clerk.

3. The learned magistrate has accepted that such an intimation was actually sent not only to the owner but to the occupier tenant, namely, opposite party No. 2, Bechan Singh, but he has got a two-fold objection to the same. His first objection is that this is not "the statutory notice" and his second objection is that the post

card about the intimation of the altered date is not a notice. With great respect to the learned magistrate, I do not pretend even to understand either of his contentions. u/s 363 of the Calcutta Municipal Act, there are notices provided for on two different occasions. A notice, that is, an intimation, has to be given by the Calcutta Corporation under Clause (3) of Sub-section (1) of Section 363. This is an intimation of the meeting of the Calcutta Corporation, which has to be given only to the owner, so that he may have an opportunity of being heard. Wherever any notice in a particular form is to be given, provision is distinctly made for it in the Calcutta Municipal Act. For example, in Sections. 504 and 505 of the Act notice is to be given in a particular form as given in sch. 23. In the case of an intimation given under Clause (3) of Sub-section (1) of Section 363, no such particular form is prescribed. Therefore, any intimation which gives an opportunity to the owner of the building of being heard by the Corporation before they apply to the magistrate is sufficient. In the case of the intimation or notice by the Corporation before the application is made to the magistrate, there is no provision for any intimation or notice being given to the occupier. Therefore, I do not pretend to understand why any notice should have been given to the tenant, Bechan Singh, under Clause (3) of Sub-section (1) of Section 363. The owner himself admits having received such an intimation or notice.

4. There is another notice provided for in prov. (a) to Sub-clause (ii) of Clause (3) of Sub-section (1) of Section 363. That is a notice to be given before an order is made by the magistrate himself and that notice is to be given by the magistrate to the owner and the occupier of the building. Therefore, under the statute the notice of the proceedings before the magistrate must be given to the occupier or tenant as well and not merely to the owner. No such provision, as I have already said, appears in Clause (3) of Section 363 itself, as far as the proceedings prior to the application to the magistrate before the Corporation of Calcutta is concerned.

5. Therefore, the tenant, that is the occupier, is entitled to no notice whatsoever of the proceedings before the Corporation u/s 363, Sub-Section 1(3). It is the owner only who is entitled to such notice. Therefore, the learned magistrate was wrong in considering that the occupier should have had notice of the proceedings before the Corporation.

6. In order to make the law further clear, the law may be briefly stated to be that when the Corporation is considering the question of demolition, the owner must be given an intimation so that he may have an opportunity of being heard by the Corporation. It is after such an opportunity has been given that the Corporation can apply to the magistrate under Clause (3) of Sub-section (1) of Section 363 of the Act. If no such opportunity is given to the owner of the building, then the entire proceedings are bad, as the statute is not complied with. When, after giving such an opportunity to the owner, the Corporation decides to apply to the magistrate and makes such an application, the application cannot be decided finally by the magistrate unless he gives notice to two classes of persons of the

proceedings before him, namely, to the owner and to the occupier. The occupier at that stage has a right to receive a notice. The owner and the occupier both must be notified of the proceedings and they must have opportunity of adducing evidence and being heard in defence. Even in the case of this notice by the magistrate of the proceedings before him there is no provision for notice in any particular form mentioned in Schedule 23. In the present case, there is no dispute that notice was given by the learned magistrate of the proceedings before him to the occupier or the tenant. Therefore, the learned magistrate is entirely wrong in dismissing the demolition proceedings before him on the ground of absence of "statutory "notice" on the occupier by which he obviously also meant notice in a particular form. As the learned magistrate has decided the case on this preliminary question of notice, the matter must go back to him for further decision on the merits.

7. A contention was raised before me that such a notice to the occupier is provided for by a decision of a Division Bench of this Court reported in *Central Hardware Mart v. Corporation of Calcutta* (1952) AIR (Cal.) 39. A perusal of the judgment will show that the notice there referred to as necessary to be served on the occupier is a notice of the proceedings before the magistrate.

8. Another contention, which was raised before us by the learned advocate for Bechan Singh, was that, as he had raised an unauthorised structure in the building, which should be considered as the building. The building referred to in the section is the actual municipal premises not the particular unauthorised structure raised.

9. The Rule is, accordingly, made absolute. The order of the learned municipal magistrate is set aside and the case is remanded to him for further hearing.