

(1909) 06 CAL CK 0003
In the Calcutta High Court

Gopal Chandra Das Modak

APPELLANT

Vs

The Chairman of Santipur Municipality

RESPONDENT

Date of Decision : 14-06-1909

Acts Referred:

Citation : (1909) 06 CAL CK 0003

Judgement

1. The plaintiff has a house within the limits of the Municipal town of Santipore which abuts on one of the public roads. In front of that house there is a platform which it is said rests on the site of a part of that road, and on that theory the Municipality purporting to act u/s 202 of the Bengal Municipal Act took action for the removal of this platform. Thereupon the plaintiff commenced this suit for a permanent injunction. He succeeded before the Munsif. The Subordinate Judge did not agree with the Munsif, and principally relying on Section 233 of the Act as being the section by which the rights of the parties had to be determined, he varied the Munsif's decree. There was an appeal to this Court which came in the first instance before Mr. Justice Brett, together with a cross-appeal, with the result that, that learned Judge dismissed the suit. Now the plaintiff appeals to us under the Letters Patent.

2. In our opinion the judgment of Mr. Justice Brett cannot be supported. The Municipality purported to proceed u/s 202 of the Act and under that section alone. But it is clear beyond all question that that section cannot apply, for it has been held as a fact that the platform has been in existence for at least fifty years, and that circumstance takes the case outside the scope of Section 202. It is equally clear that as things at present stand it is not shown that Section 233 can have any application for, in the first place it does not appear that the procedure laid down in Section 233, has been observed; and next it is provided by Section 220 that no provision in that part of the Act which contains Section 233, shall apply to any Municipality, unless and until it has been expressly extended thereto by the Local Government in the manner provided by the next succeeding section. There is nothing on the record to show that there has been this extension, and we can only act on what, appears on the record. It is,

therefore, manifest that Section 233 does not come into question in this suit. In these circumstances it necessarily follows that the Municipality have -" not in this suit shown that they have any right to remove the plat form of the plaintiff, and we must, therefore, give the plaintiff the relief to which he is entitled. But we must safeguard this relief in such a way as not to interfere with any possible right the Municipality may otherwise have. As we have already pointed out, we are only concerned with the action of the Municipality u/s 2C2, and, the decree we, therefore, pass is that the Municipality be restrained from removing the platform in front of the plaintiff's house u/s 202 of the Bengal Municipal Act or otherwise taking. action under that section.

3. It only remains now to deal with the question of costs. Each party has at times got more: than or less than was right and we think the justice of the case will be met if we give the plaintiff half his costs throughout.