

(1966) 08 CAL CK 0003

In the Calcutta High Court

Case No : Appeal from Original Decree No. 672 of 1963

Jaharlal Shaw

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 24-08-1966

Acts Referred:

Calcutta Municipal Act, 1951 — Section 586, 586(4)
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (1966) 2 ILR (Cal) 685

Hon'ble Judges : P.N. Mookerjee, Acting C.J.; Alak Chandra Gupta, J

Bench : Division Bench

Advocate : Mukul Prokash Banerjee, for the Appellant; Jnanendra Nath Bakshi, for the Respondent

Judgement

P.N. Mookerjee, A.C.J.

1. This appeal is by the Plaintiff and it arises out of a suit, which was, in substance, a suit for a permanent injunction, restraining the Respondents and their agents and servants from proceeding with the demolition work of the disputed building.

2. The suit has been dismissed by the learned trial Judge on a preliminary ground and it has not been tried out on merits. The preliminary point, which arose before the learned trial Judge, was that the suit was bad and not maintainable in law, as there was no service of notice u/s 586 of the Calcutta Municipal Act, 1951 and as, further, there was no service of notice u/s 80 of the CPC on Defendant No. 2, the City Architect of Defendant No. 1, Corporation of Calcutta and there was no proper or timely service of such notice on the added Defendant No. 3, the Commissioner to the Corporation of Calcutta.

3. In this appeal, it has been contended by Mr. Banerjee that the learned trial Judge was wrong in his view that a suit of the present description must be preceded by a notice u/s 586 of the Calcutta Municipal Act.

4. In our view, this submission should be accepted. As we have indicated above, the suit before us was, in substance a suit for a permanent injunction u/s 54 of the Specific Relief Act and as such it was excepted or exempted from the operation of the provision of notice u/s 586 of the Calcutta Municipal Act by virtue of Sub-section (4) of that section itself. Indeed, this view has recently been taken by this Court in the recent decision, reported in *Sree Sankar Oil Industries v. Harish Chandra Mukherjee* (1966) 70 C.W.N. 969 . The learned trial Judge was, therefore, wrong in holding that the instant suit was not maintainable by reason of non-service of notice under the above statutory provision.

5. With regard to the question of notice u/s 80 of the Code of Civil Procedure, so far as the added Defendant No. 3, the Commissioner, Corporation of Calcutta, is concerned, the position appears to be that there was actually a notice under that statutory provision, served upon the Commissioner two days prior to the institution of the suit but more than two months prior to his addition as a party to the suit. In these circumstances, if other considerations had not arisen, this service also would have been sufficient for purposes of this suit, as the Commissioner would, in law be deemed to be a party to the suit from the date of his addition and the requisite interval under the statute between the service of the notice and the institution of the suit would be amply satisfied in his case upon that footing.

6. A point, however, arises whether the Commissioner was properly added to this suit as this order of addition was made by the Registrar of the Court below and it is, at least, doubtful whether the Registrar had any such power. At any rate, nothing has been shown to us to enable us to hold that such power was vested in the Registrar of that Court and as, at present advised and on the materials placed before us, we are unable to uphold the addition made by him.

7. A further question has arisen whether Defendant No. 2 the City Architect of the Corporation of Calcutta is a public officer. The learned trial Judge has held that he is clearly a public officer, but we do not find any materials before us either to confirm or to negative that finding. Indeed, the matter appears to have been considered on practically no materials before the Court. In the circumstances, that finding cannot stand and the matter would have to be sent to the Court below for further consideration, if that was necessary. In the view, however, which we are taking and having regard to the attitude, taken by the Appellant before this Court, it will not be necessary to consider the matter finally, so far as the last two of the above points are concerned, although we are expressing a final view on the first question to the effect that, for such types of suits, notice u/s 586 of the Calcutta Municipal Act will not be necessary.

8. In the peculiar facts of this case, Mr. Banerjee has prayed for permission to withdraw the instant suit with liberty to institute a fresh suit on the same cause-of-action and in our opinion that permission should be granted subject to the usual exception, namely, that if the suit is not otherwise barred. We, accordingly, permit the Plaintiff to withdraw the instant suit with liberty to institute a fresh

suit on the same cause-of-action, if not otherwise barred, while affirming the view that no notice u/s 586 of the Calcutta Municipal Act is necessary for such suits.

9. The appeal is disposed of accordingly.

10. There will be no order for costs, either in this Court or in the Court below.

11. The injunction, granted in connection with this appeal, will continue for a fortnight more to enable the Appellant to institute his fresh suit, if so advised.

Gupta, J.

12. I agree.