

(1956) 09 PAT CK 0009
In the Patna High Court
Case No : Misc. Judicial Case No. 668 of 1955

Kashi Prasad Kataruka

APPELLANT

Vs

Bibi Allay Fatma and Others

RESPONDENT

Date of Decision : 25-09-1956

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 188, 189, 191, 192, 193
Bihar Restriction of Uses of Land Act, 1948 — Section 6
Evidence Act, 1872 — Section 115
Patna Municipal Corporation Act, 1951 — Section 2, 229, 235, 242, 242(1)

Citation : AIR 1957 Patna 303 : (1957) 5 BLJR 31

Hon'ble Judges : Ramaswami, C.J.; Raj Kishore Prasad, J

Bench : Division Bench

Advocate : A.K. Sen, Nandlal Utwalia and Hari Lal Agarwal, for the Appellant;
Government Advocate, Government Pleader, S. Akbar Hussain, S.S. Asghar
Hussain and S. Sarwar Ali, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, C.J.—In this case the petitioner, Sri Kashi Prasad Kataruka, obtained a rule from the High Court calling upon the respondents to show cause why a writ in the nature of certiorari or mandamus should not be issued to quash the order of the Patna Municipal Corporation dated the 2nd February, 1955, renewing the sanction of the building plan of respondent No. 1 and also the order of the District Magistrate of Patna dated the 6th October, 1954, approving the same building plan u/s 6 of Bihar Act XXIII of 1948.

2. The petitioner is the owner of a building on the southernside of the Gandhi Maidan in the town of Patna, The holding of the petitioner is holding No. 283 of circle No. 6, and respondent No. 1, Eibi Allay Patma alias Bibi Sofia Khatoon, is the owner of the adjacent holding no. 283A/3 of circle No. 6. Respondent No. 1 obtained the sanction of the Patna City Municipality for her building plan on the 6th of January, 1951. A copy of this plan is annexure A of the Engineer's affidavit, dated the 15th of February, 1956. The affidavit is sworn by the

Engineer Mr. Bhattacharjee, who made an inspection of the building of respondent No. 1 on behalf of the petitioner Sri Kashi Prasad Kataruka. It is stated that respondent No. 1 completed the construction of a portion of the building according to the plan by the end of the year 1952.

It is alleged on behalf of the petitioner that the plan of respondent No. 1 contravened bye-laws 21, 22 and 23 framed by the Patna City Municipality u/s 195 of Bihar and Orissa Act VII of 1922 and published on the 26th of September, 1935, -by a notification in the Bihar and Orissa Gazette dated the 2nd of October, 1935. The petitioner contends that the sanction of the Municipality dated 6th of January, 1951, is null and void because certain bye-laws have been violated and that u/s 188 of the Bihar and Orissa Act VII of 1922 the Municipality has no power to dispense with the operation of the bye-laws or to grant sanction to a building plan which contravenes the bye-laws. About the end of 1953 respondent No. 1 started construction of the rear portion of the building, and the Town Planner made a complaint to the District Magistrate on the 8th of April, 1954.

A notice was issued by the District Magistrate against respondent No. 1 who showed cause and on the 6th of October, 1954, the District Magistrate renewed the plan of respondent No. 1 without imposing restrictions u/s 6 of the Bihar Restriction of Uses of Land Act 1948 (Bihar Act XXIII, of 1948). It appears that the Patna Municipal Corporation Act (Bihar Act XIII of 1952) came into operation on the 15th of August, 1952. By this Act the provisions of the Bihar and Orissa Municipal Act, 1922 were withdrawn from the local areas comprised in the Patna City Municipality with effect from the date of commencement of Bihar Act XIII 1952. But Sections 2 and 3 of Bihar Act XIII of 1952 contained saving provisions With regard to the obligations and liabilities which accrued under the previous Act, namely, Bihar and Orissa Act VII of 1922.

The petitioner made an objection to the build-tog plan of respondent No. 1 on the 21st of December, 1954. An enquiry was made by the Corporation authorities with regard to the objection and on the 2nd of February, 1952, the Assistant Administrator of the Corporation rejected the objection of the petitioner and renewed the sanction of the respondent's plan. The case of the petitioner is that the order of the District Magistrate dated the 6th of October, 1954, made u/s 6 of Bihar Act XXIII of 1948 the order of the Patna City Municipality sanctioning the plan on the 6th of January, 1951, and the order of the Corporation dated the 2nd of February, 1955, renewing the sanction to the building plan were illegal and ultra vires and should be quashed by a writ in the nature of mandamus or ceritorari.

3. Cause has been shown by the Government Advocate. Mr. Lal Narain Sinha, on behalf of respondent No. 1 Bibi Allay Fatma alias Bibi Sofia Khatoon. Respondents 3, 4 & 5 have not shown cause.

4. The first question for determination is whether the order of sanction granted by the Patna Municipality on the 6th of January, 1951, is ultra vires and without

jurisdiction The argument presented by Mr. Sen, on behalf of the petitioner, is that there has been a violation of bye-laws 21, 22 and 23 made by the Patna City Municipality u/s 195 of Bihar and Orissa Act VII of 1922. Bye-law No. 21 states as follows:

"21. The depth of a building for residential purposes shall not be greater than double its front-age and shall not exceed 60 feet except where each room is provided with a window or windows opening on to an external air space open to the sky".

Bye-law No. 22 is in the following terms:

""22. The total area covered by all the houses (including verandah erected or re-erected on any Bite used for a dwelling house) shall not exceed threefourths of the total area of the site. But in the case of rebuilding this rule will not apply in case in which the site is less than 500 square feet; provided that this rule does not apply in case in which there is a public road or a square to the rear of the house"".

Bye-law No. 23 states:

"23. There must ordinarily be in the absence of any specific permission of the chairman to the contrary in the rear of every dwelling house an open space extending along the entire width of the house of not less than 10 feet".

Mr. Sen also referred to Section 188(1) of the Bihar and Orissa Municipal Act, 1922, which states:

"188. (1) Subject to the provisions of any bye-law the Commissioners may either refuse to sanction any work of which notice has been given u/s 186 or may sanction it absolutely or subject to (a) any written directions that the Commissioners deem fit to issue in respect of all or any of the matters mentioned in Clause (e) of Section 195, or in respect of the period within which the works shall be complete;

(b) a written direction requiring the setback of the building or part of a building to the regular line of the road prescribed u/s 173, or, in default of any regular line prescribed under that Section, to the line of frontage of any neighbouring building or buildings".

In this connection Mr. Sen referred to the affidavit of MT. Bhattacharjee dated the 15th of February, 1956, and submitted that there has been a violation of bye-laws 21, 22 and 23. There is a counter-affidavit dated 20th of April, 1956, on behalf of respondent No. 1, controverting the statements made in Mr. Bhattacharjee's affidavit. It is not necessary for me in this case to determine whether the statements of Mr. Bhattacharjee are correct or not. I shall, however, assume in favour of the petitioner that there has been a violation of bye-laws 21, 22 and 23. Even on that assumption I am not able to accept the argument of the petitioner that the order of sanction dated the 6th of January, 1951 is ultra vires

and without jurisdiction. It is true that Section 188 does not empower the Municipality to sanction a plan which contravenes the bye-laws. But it does not necessarily follow that the order of sanction is a nullity in the eye of law. The order of sanction is illegal in a limited sense; but it is far-fetched to argue that it is a complete nullity or that it is an order made without jurisdiction. The statute itself provides remedies for the violation of Section 188, Section 193 grants power to the Commissioners to stop erection and to demolish the building erected in violation of any bye-law. Section 193 states as follows:

"193. In any case where the Commissioners consider that the re-erection or alteration of a building or part of a building, or the construction or enlargement of a well, on any land is an offence u/s 192, they may, within fifteen days from the date on which information is received by them of such offence, by written notice direct the owner or occupier of the land to stop such erection, re-erection, alteration, construction or enlargement, and may in like manner and within the same period direct the alteration or demolition, as they deem necessary, or such building, part of a building or well:

* * * * * Section 192 is also important. Section 192 is in the following terms:

"192. Any person who begins, continues or completes the erection or re-erection of, or any material alteration in, a building or part of a building, or the construction or enlargement of a well, without giving the notice referred to in Section 186 and waiting for one month after giving such notice, or in contravention of an order of the Commissioners refusing sanction or any written directions made by the Commissioners or u/s 188 or any bye-law, shall be liable to a fine not exceeding five hundred rupees".

But the statute expressly states that the remedies provided by Sections 192 and 193 are not available in a case where a sanction has been given u/s 188. Section 191 is important in this context. Section 191 expressly states:

"191. A sanction given or deemed to have been given u/s 188 shall exempt the person to whom the sanction is given or deemed to have been given from any penalty or consequence to which he would otherwise be liable u/s 174, 192 or 193, but shall not operate to relieve any person from the obligation imposed by Section 179 to obtain separate sanction for any structure referred to therein". It is manifest that the word "sanction" in Section 191 must be construed as a de facto sanction and not necessarily a lawful sanction in the context of the language of that section. The effect of Section 191 is that the Municipality has no power to prosecute the owner of the building illegally erected or to demolish such a building or to stop the erection of such a building once the construction of the building has commenced. It is, therefore, manifest that the illegality of the sanction does not make it void or nullity; such a sanction is revocable by the Municipality before the owner starts construction of the house on the basis of the illegal sanction. But once the owner acts upon the plan and starts construction, the sanction becomes irrevocable, the stage for a revocation is gone and a ban is

imposed upon the Municipality from taking recourse to any remedies provided under Sections 192 and 193. The reason is that a benefit has accrued to respondent No. 1 and an equitable right arisen in her favour and the Municipality cannot revoke the sanction or forfeit that equitable right. It was argued on behalf of the petitioner that the saving clauses of the Patna Municipal Corporation Act, namely, Bihar Act XIII of 1952 do not apply to the case of an illegal sanction. Section 2 of Bihar Act XIII of 1952 is to the following effect:

"2. Save as hereinafter provided, on the commencement of this Act,--

(a) the provision of the Bihar and Orissa Municipal Act 1922, shall be deemed to have been withdrawn from the local areas comprised, within the Patna City Municipality; and

(b) the Patna Administration Act, 1915, shall stand repealed, but nothing in the said withdrawal or repeal shall revive any office, authority or thing abolished by the Bihar and Orissa Municipal Act, 1922, or, the Patna Administration Act, 1915, as the case may be, or affect the validity of anything done or suffered or any right, title, obligation or liability accrued thereunder, before the commencement of this Act"

Section 3 (2) of the same Act states:

"3. (2) Every appointment, rule, bye-law, form, notification, notice, tax, fee, scheme, order, licence or permission made, issued, imposed, sanctioned or given under the Bihar and Orissa Municipal Act, 1923, or the Patna Administration Act, 1915, shall, so far as it relates to the areas administered by the Patna City Municipality or the Patna Administration Committee and so far as it is in force at the commencement, and is not inconsistent with, this Act, be deemed to have been made, issued, imposed, sanctioned or given under the provisions of this Act, and shall, unless previously altered, modified, cancelled, suspended, surrendered, or withdrawn, as the case may be, under this Act, remain in force for" the period, if any, for which it was so made, issued, imposed, sanctioned or given".

I do not accept the argument addressed by Mr. Sen on behalf of the petitioner. I have already expressed my reasons for holding that the sanction of the Municipality, given on the 6th of January, 1951, is not ultra vires or without jurisdiction and that the rights which accrued to respondent No. 1 on account of that sanction are preserved by the saving Sections 2 and 3 of the new Act, namely, Bihar Act XIII of 1952.

5. It was also contended on behalf of the petitioner that the sanction of the 6th of January 1951, has lapsed as the building was not completed within the period of one year as required u/s 189 of Bihar and Orissa Act VII of 1922. I do not think that the argument is right. Section 189 is to the following effect:

"189. (1) A sanction given or deemed to have been given by the Commissioners under the last preceding section shall be available for one year.

(2) After the expiry of the said period the proposed work may not be commenced except in pursuance of a fresh sanction applied for and granted under the forgoing sections".

Properly construed the section only means that the work of construction should commence within one year from the date of sanction and not that the work of construction should be completed within the period of one year. The position is made clear by Section 235 of the new Act, namely, Bihar Act XIII of 1952. Section 235 states:

"235. Every sanction given or deemed to have been given for the erection or re-erection of any building shall remain in force for one year only from the date of such sanction, or for such longer period as the Chief Executive Officer may have allowed when conveying sanction u/s 229. If the erection or re-erection of the Building is not commenced within one year and completed within two years or such longer period as may have been allowed by the Chief Executive Officer, the sanction shall be deemed to have lapsed: but such lapse shall not bar any subsequent application for fresh sanction under the foregoing provisions of this Act".

It was pointed out by the learned Government Advocate on behalf of respondent No. 1 that there is no limitation of time imposed u/s 189 Bihar and Orissa Act VII of 1922 with regard to completion of the building. It was pointed out that a limitation of two years has been imposed by Section 235 of the new Act and it was submitted that the rights acquired by respondent No. 1 under the old Act cannot be affected by the provision of Section 235 of the new Act. It was contended by the learned Government Advocate that the right acquired by respondent No. 1 u/s 189 of the old Act was preserved by Sections 2 and 3 of Bihar Act XIII of 1952.

It was argued that there was no inconsistency between the provisions of Bihar Act XIII of 1952 and Bihar and Orissa Act VII of 1922 on this point, because Section 2 of Bihar Act XIII of 1952 expressly preserves the obligations and rights acquired before the commencement of that Act. In my opinion the argument addressed on behalf of respondent No. 1 on this point is well founded. I think that sanction of the 6th of January, 1951, is still operative and the right of respondent No. 1 to make the construction is governed by Section 189 of the old Act and not by the time-limit prescribed by Section 235 of Bihar Act XIII of 1952. It that is the correct view, the sanction of the 6th of January, 1951, has not lapsed but is still operative and the sanction of the Patna Municipal Corporation given on the, 2nd of February, 1955, is superfluous.

6. There is an alternative aspect of the case, Assuming that the sanction of the 6th of January, 1951, has lapsed, the order of renewal of the Patna Municipal Corporation of the 2nd of February, 1955, could be taken to be a sanction given u/s 229 of Bihar Act XIII of 1952. It was argued by Mr. Sen on behalf of the Petitioner that in such a case the sanction would contravene the provisions of Sections 230 and 232 of Bihar Act XIII of 1952 and there could be violation or

the same bye-laws, the effect of which have been continued under the new Act. But Section 242 (4) would give protection to respondent No. 1; and for reasons which I have already stated with reference to Section 191 of the old Act, the sanction of the 2nd of February, 1955, would also be irrevocable. Section 242(4) is in the following terms:

"242. (4) If the plans are approved by the Chief Executive Officer and the approval is communicated to the person intending to build the house or if the plans are rejected by the Chief Executive Officer but no notice of their rejection is given to person intending to build the house within the prescribed period, it shall not be open to the Chief Executive Officer to give a notice under Sub-sections (1) and (2) on the ground that the building is erected or re-erected in contravention of any scheme or bye-laws or any other requirements under this Chapter".

It is also necessary to quote Section 242(1), (2) and (3) in this connection;

"242. (1) If any person begins, continues or completes the erection or re-erection of or any material alteration in, a building, or the construction or enlargement of a well, without giving the notice referred to in Section 230 or waiting for a period of one month after giving such notice, or in contravention of an order passed by the Chief Executive Officer refusing sanction or any written directions of the Chief Executive Officer u/s 233, he shall be liable to a fine not exceeding five hundred rupees.

(2) In any case where the Chief Executive Officer considers that erection, re-erection or alteration of a building or part of a building, or construction or enlargement of a well, on any land is an offence under Sub-section (1) he may, within one month from the date on which information is received by him of such offence, by written notice direct the owner or occupier of the land to stop such erection, re-erection, alteration, construction or enlargement, and may in like manner and within the same period direct the alteration or demolition, as he may deem necessary, of such building or part of a building or well:

Provided that no action shall be taken under that sub-section more than one month after such erection, re-erection, alteration, construction or enlargement has been completed.

(3) If a person to whom a notice has been given under the foregoing provisions of this section fails to comply with the notice before the expiry of twenty eight days or such longer period as the District Judge may, on his application, allow, the Chief Executive Officer may pull down or remove in question, or effect such alteration therein as he deems necessary, and may recover from him the expenses reasonably incurred by the Chief Executive Officer if so doing." It is obvious that Section 242 (4) would impose a ban on the Chief Executive Officer from taking action against respondent No. 1 u/s 242 (1) or Section 242 (2) on the ground that the building was erected in contravention of any bye-laws or any other requirements of Chapter XIII. It is manifest that Section 242 (4) of the new Act corresponds to the provisions of Section 191 of Bihar and Orissa Act VII

of 1922, This section embodies a principle somewhat similar, though not identical to the equitable principle laid down in *Plimmer v. Wellington Corporation* (1884) 9 AC 699 at page 714 (A).

As I have already said the sanction of the 6th of January, 1951, and the renewal of the sanction on the 2nd of February, 1955, may be illegal in certain respects; but the Patna City Municipality or the Patna Municipal Corporation has no power to revoke these orders "after the erection of the building had commenced. The reason is that equitable rights have sprung up in favour of respondent No. 1 and statutory protection has been granted to her against any action on the part of the Patna Corporation or the Patna City Municipality. The petitioner has not, therefore, made out a case for the issue of a writ for the cancellation of the orders of sanction dated the 6th of January, 1951 and the 2nd of February, 1955.

7. Another point was also discussed in the course of the argument. It was pointed out by the learned Government Advocate on behalf of respondent No. 1 that the petitioner has an alternative remedy u/s 242 (5) of Bihar Act XIII of 1952, which states:

"242, (5) Nothing in this section shall affect the right of the Corporation or any other person to apply to the District Judge for an injunction for the removal or alteration of any building on the ground that it contravenes any provision of this Act or of the bye-laws made thereunder, but if the building is one in respect of which plans have been deposited and the plans have been passed by the Chief Executive Officer, or notice that they have been rejected has not been given within the prescribed period after the deposit thereof, and if the work has been executed in accordance with the plans, the Court in granting an injunction shall have power to order the Corporation to pay to the owner of the work such compensation as the Court thinks just, but before making any such order, the court shall cause the Chief Executive Officer, if not a party, to be joined as a party to the proceeding."

It was argued that an application for a writ under Article 226 of the Constitution was not the Proper remedy, but the proper remedy for the petitioner was to go before the District Judge with an application under Section. 242 (5) of Bihar Act XIII of 1952. It was argued that the liability of demolition u/s 242 (5) was conditional on the payment of compensation and the rights of the parties may be more satisfactorily worked out and equities may be better adjusted by an application before the District judge.

I think there is great force in the argument of learned Counsel; but I do not wish to express any concluded opinion on the question whether the rights of respondent No. 1 are governed by the new Act and whether the protection given to respondent No. 1 u/s 191 of the old Act may be restricted by the provisions of Section 242 (5) of the new Act.

8. I shall now deal with the authorities cited by Mr. Sen on behalf of the petitioner. In the course of his argument Mr. Sen relied upon four decisions of the

Calcutta High Court, namely. In Re: Sm. Lakshmimoni Dassi, (B); Arayilagath Chandroth Mohamed and Another Vs. Corporation of Calcutta and Others , Hirendra Nath Datta Vs. Corporation of Calcutta and Others, ; and Kanhyalal Ruia v. Corporation of Calcutta 88 CLJ 78 (E).

But these cases have no direct bearing on the question presented for determination in this case. Section 319 of the Calcutta Municipal Act (Bengal Act III of 1923) prohibited erection of a building otherwise than in accordance with the provisions of Chapter 21 of the Act and of Schedule 17 thereof and any order, rules or bye-laws made under the Act. But there was no provision in the Calcutta Municipal Act (Act in of 1923) corresponding to Section 191 of Bihar and Orissa Act VII of 1922 or Section 242 (4) of Bihar Act XIII of 1952.

I do not think therefore, that the principle laid down in the Calcutta decisions has any application to the present case. Mr. Sen also placed much reliance upon two English decisions, Attorney-General v. Ashborne Recreation Ground Co. (1903) 1 Ch 101 (F) and Yabbicom v. King (1899) 1 QB 444 (G). In (1903) 1 Ch 101 (F) the question at issue, was whether the High Court has jurisdiction to enforce the bye-laws by injunction in an action brought by the Attorney-General at the relation of the local authority. The question was dealt with by Buckley, J., as a matter of construction and it was held by the learned Judge that the Attorney-General has a right to invoke the protection of the Court because he was suing in respect of the invasion of public rights.

It was argued on behalf of the defendant in that case that the statute, namely, the Public Health Act, 1875, had prescribed a penalty to be recovered by summary proceedings, and, therefore, the local authorities cannot enforce the bye-laws by injunction and the remedies provided by the statute were exclusive. The argument was rejected by Buckley, J. He took the view that even though the statutory remedies must be generally followed, there was at least one exception to the general rule, namely, that there may coexist a remedy by injunction to protect a right.

As I have already said, that was an action brought by the Attorney-General at the relation of the local authority for injunction against the defendants. The question at issue was one relating to the construction of the Public Health Act of 1875, which, did not contain provisions similar to Section 191 of Bihar and Orissa Act VII of 1922 or Section 242 (4) of Bihar Act XIII of 1952. I do not, therefore, consider that the principle of (1903) 1 Ch 101; (P), has any bearing on the present case.

In the second case, namely (1899) 1 QB 444 (G), it was held that an "approved" plan mentioned in Section 15 of the Bristol Corporation Act, 1897, was a plan which had been lawfully approved by the local authority and not one which had merely received, its approval in fact. It appears that bye-laws were made by the Urban District Council of St. George u/s 157 of the Public Health Act of 1875 and the plans were approved by the Urban District Council in contravention of the bye

laws. It was held by Day, J. that the Urban District Council was not estopped from taking the proceedings for breach of their bye-law and, therefore, the Corporation of Bristol was in no different position from the Urban District Council for the purpose of exercising any controlling authority they might have over this building.

As I have already said, the English Public Health Act of 1875, did not contain any statutory provision similar to Section 191 of Bihar and Orissa Act VII of 1922 or Section 242 (4) of Bihar Act XIII of 1952. It is true that Section 65 (4) and 65 (5) of the English Public Health Act, 1936, corresponds to the language of Section 242 (4) and 242 (5) of Bihar Act XIII of 1952, but such provisions are absent from the English Public Health Act, 1875. I do not, therefore, consider that the two English decisions, namely (1903) 1 Ch 101 (F) and (1899) 1 QB 444 (G), have any direct bearing on the question at issue in the present case.

9. With regard to the order of the District Magistrate dated the 6th of October, 1954, Mr. Sen made the submission that the District Magistrate had no power to sanction a plan which was in contravention of the Municipal bye-laws. Mr. Sen was, however, unable to point out that the District Magistrate has violated any provision of Bihar Act XXIII of 1948 under which the sanction was granted. Section 6 of Bihar Act XXIII of 1948 is in the following terms:

"6. (1) Every person desiring to obtain the permission referred to in Section 5 shall make an application in writing to the District Magistrate" in such form and containing such information in respect of the building, excavation or means of access to which the application relates, as may be prescribed.

(2) On receipt of such application, the District Magistrate, after making such inquiry as he considers necessary, shall by order in writing either--

(a) grant the permission, subject to such conditions, if any, as may be specified in the order, or

(b) refuse to grant such permission.

(3) The District Magistrate shall not refuse permission to the erection or re-erection of a building which was, in existence on the date on which the declaration under Sub-section (1) of Section 3 was made, nor shall he impose any conditions in respect of such erection or re-erection unless, for reasons to be recorded, in writing he considers that the grant of such permission with or without any conditions, shall be attended with serious inconvenience and injury to the public, or unless it involves the addition of one or more storeys to the building or the "extension of the plinth area of the building by more than one-eighth of the original plinth area, or there is a probability that the building will be used on the date on which the said declaration was made.

(4) If at the expiration of a period of six months after an application under Sub-section (1) has been made to the District Magistrate, no order in writing has been passed by the District Magistrate and no notice of any proceedings taken in

connection with such application has been sent to the applicant, permission shall be deemed to have been given without the imposition of any conditions.

(5) The District Magistrate shall maintain a register with sufficient particulars of all permissions given or refused by him under this section and the register shall be available for inspection free of charge by all persons interested and such persons shall be entitled to take extracts therefrom."

It is also important to refer to Section 5 which states :

"5. No person shall erect or re-erect any building, or make or extend any excavation, or lay out any means of access to a road In a controlled area, except with the previous permission of the District Magistrate in writing."

Learned Counsel on behalf of the petitioner did not suggest that the District Magistrate has failed to comply with any of the requirements Imposed by Bihar Act XXIII of 1948. Mr. Sen has, therefore, failed to make good his submission that the order of the District Magistrate dated the 6th of October, 1954, is illegal or ultra vires. I do not think there is any substance in the argument made on behalf of the petitioner on this point.

10. In view of these considerations I hold that the petitioner has made out no case for grant of a writ in the nature of certiorari or mandamus to quash the orders of the Municipality dated the 6th of January, 1951, and of the Corporation dated the 2nd of Feb. 1955, and the order of sanction made by the District Magistrate on the 6th of October, 1954. Accordingly, this application fails and must be dismissed with costs. Hearing fee Rs. 200/- payable to respondent No. 1, Bibi Allay Fatma alias Bibi Sofia Khatoon.

Raj Kishore Prasad, J.

11. I entirely agree.