

(1967) 04 CAL CK 0013

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 542 of 1963

Krisnalal Basak

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 10-04-1967

Acts Referred:

Calcutta Municipal Act, 1951 — Section 376, 387, 388, 396, 397
Calcutta Municipal Rules, 1951 — Rule 52, 53, 54, 55, 56
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 80
Specific Relief Act, 1877 — Section 54
Specific Relief Act, 1963 — Section 38

Citation : (1967) 2 ILR (Cal) 57

Hon'ble Judges : A.K. Dutt, J

Bench : Single Bench

Advocate : Provas Kumar Sen, for the Appellant; Archana Sengupta, for the Respondent

Judgement

A.K. Dutt, J.—An interesting question of law has been raised by the Appellant who was the Plaintiff in a suit for a declaration that certain order or notice issued by the Corporation of Calcutta for demolition of certain alleged unauthorised construction is bad and illegal and for an injunction restraining the Corporation of Calcutta from giving effect to the said order or notice. The Plaintiff could not succeed in the Courts below.

2. The facts of the case are that the Plaintiff-Appellant purchased the suit property in 1950, which according to Plaintiff was a broken and dilapidated two storied building and the Plaintiff effected repairs to the same after his purchase and thereafter, the Corporation of Calcutta issued a notice upon the said Plaintiff to show cause why action would not be taken against him for unauthorised constructions. According to the Plaintiff, he duly showed cause, but the Corporation of Calcutta in spite of that passed an order on August 18, 1953, requiring the Plaintiff to demolish some so-called unauthorised constructions within a certain date. The Plaintiff has challenged this order as arbitrary and

illegal.

3. The defence of the Corporation in substance was that second story in the suit premises has been built by the Plaintiff without sanction and accordingly, the Plaintiff has violated the provisions of the Calcutta Municipal Act and as such, the Corporation has passed an order for demolition. The Corporation of Calcutta further contends that the order passed by the said Corporation was according to law and was made in the discharge of its duties and ought not to be interfered with and the suit should be dismissed.

4. The trial Court disbelieved the Appellant's case with regard to an existing second story in the building at the time of his purchase and/or his case as to repairs and/or reconstructions and it held, that the Plaintiff newly constructed a second story to the building without prior sanction of the Corporation and in that view dismissed the Plaintiff's suit. The Court of appeal below also took the same view, namely, that the structures which the Plaintiff purchased was of a one storied building and when the Plaintiff purchased the property, there were three huts in the lands, two with brick walls and tin roofing and one with mud walls with tiles and tin roofing.

5. Mr. Provas Kumar Sen, learned Advocate appearing on behalf of the Appellant, has contended that even assuming that the Plaintiff has constructed another story or the second story of the building after his purchase, the said construction is mere alteration or addition to a building for which no prior sanction of the Corporation of Calcutta was required in view of Rule 90, Schedule XVI of the Calcutta Municipal Act and as such, the Corporation of Calcutta and/or the Commissioner, Corporation of Calcutta, cannot lawfully pass an order of demolition without any further investigation. He has also contended that, if by such addition or alteration, the character of the building has not changed and unless it is shown or proved that any of the building rules or regulations under Calcutta Municipal Act other than Rules 52-63 and 78 to 87 of Schedule XVI have been violated, the present demolition order cannot be legally enforced.

6. Mrs. Archana Sengupta, learned Advocate appearing on behalf of the Corporation of Calcutta, in support of the judgment of the Court below, has firstly raised a preliminary objection or point as to the maintainability of the suit and/or consequently the appeal itself. It has been contended that in the absence of a notice u/s 586 of the Calcutta Municipal Act, the present suit, which is a suit for declaration and injunction, is not maintainable. In this connection, she has relied upon Sub-section (3) of Section 586 of the Calcutta Municipal Act. It is an admitted case that no notice under the said section was issued or served before the suit was instituted. Before I discuss the points raised on behalf of the Appellant, it is necessary to dispose of the said preliminary objection raised on behalf of the Respondent, Corporation of Calcutta.

7. u/s 586 of the Calcutta Municipal Act, 1951, no suit shall be instituted against any Municipal Authority or a Municipal Officer in respect of any act done under

the said Act and/or any rule or bye-law, until expiration of one month next after a written notice has been delivered or left to the Municipal Office stating, (a) cause of action, (b) name and residence of the intending Plaintiff and (c) the relief which he claims. By virtue of Sub-section (4) of the said section, the provision as to notice, etc. shall not apply to a suit instituted u/s 54 of the Specific Relief Act, 1887, now Section 38 of the Specific Relief Act of 1963. My attention has been drawn to the pleading of the parties and it appears that the Corporation of Calcutta that is Defendant in the present suit took the objection as to notice in para. 3 of its written statement. Although such a plea or defence was taken on behalf of Corporation of Calcutta, it does not appear that any issue as to maintainability of the suit in the absence of statutory notice was raised and/or framed either in the trial Court or in the Court of appeal below. When under a statute, a notice is required as an essential preliminary step for a suit, normally absence of such notice entails failure of the whole suit and the plaint is liable to be rejected under Order 7, Rule 11 of the Code of Civil Procedure.

8. When the plea of defect in or want of notice is not pressed in the trial Court and when it is not raised in the Court of first appeal, the requirement of notice may be deemed to have been waived. It has been held by this Court and the Privy Council that in proper cases even the Government, upon whom a notice u/s 80 of the CPC is required to be given, may be estopped by conduct from pleading want of notice as a bar to the maintainability of the suit. See: *Bhola Nath Ray v. Secretary of State* (1912) 17 C.W.N. 64, *Purna Chandra Sarkar Vs. Radharani Dassya and Others*, , *Purna v. Radharani* (1907) 34 Cal. 257 and *AL. AR. Vellayan Chettier v. Government of the Province of Madras* (1947) 52 C.W.N. 27 (P.C.). It may be mentioned here that Section 80 of the CPC does not contain any provision like those contained in Sub-section (3) of Section 586 of the Calcutta Municipal Act, whereunder a suit is liable to be dismissed for non-service of notice. In my opinion, the inclusion of the said provision does not make any material difference. If a statutory notice u/s 80 of the CPC could be waived, by parity of reasoning? a notice u/s 586 could also be waived, because all such notice are for the benefit of the authority and it is not for the Court to insist upon such notice and if the authority concerned does not insist upon such notice and chooses to proceed with the suit, the suit cannot be said to be not maintainable.

9. In the present case, although the point was taken in the written statement as pointed out earlier, no issue as to maintainability of the suit was either raised and/or framed or pressed at any stage. If the Defendant Corporation of Calcutta really wanted to plead the bar of maintainability of the suit due to absence of notice, it should have, in my opinion, not only pleaded the said bar, but insisted upon an issue as to maintainability of the suit being raised and decided. As no such issue was raised and/or pressed, it could be presumed and held that the Corporation of Calcutta may be deemed to have waived the bar of notice. Accordingly, I am of the opinion that the preliminary objection raised on behalf of the Corporation of Calcutta as to the maintainability of the suit or the appeal has no real merit.

10. The preliminary objection as to maintainability of the present suit without prior notice u/s 586 of the Act may be considered from another aspect. Under Sub-section (4) of Section 586, a suit for mere declaration u/s 38 of the Specific Relief Act, 1963, is maintainable without the formality of the notice being observed. Mr. Sen, on behalf of the Appellant, has contended that the present suit is in substance a suit for a mere injunction and the prayer for declaration was unnecessary and it should be considered as a superfluous one and in that view, the present suit comes within the scope of Sub-section (4) of Section 586. He contends that the main relief is for an injunction upon the Corporation of Calcutta and as the Corporation of Calcutta is threatening Plaintiff's right of enjoyment of property, the Plaintiff could have successfully maintained a suit only for perpetual injunction. Mr. Sen in this connection has referred to a unreported decision of this Court, being judgment of Bijayesh Mukherji, J., in Biswanath Chakraborty v. The Corporation of Calcutta S.A. 243 of 1958 dated 16.8.62. His Lordship, in that judgment, after referring to a large number of cases, has considered the substance of that case with reference to the averment made in the plaint and ultimately came to the conclusion that the suit was really a suit for permanent injunction and the prayer for declaration made in that said suit, does not materially affect the nature of the suit and if the Plaintiff succeeds in getting an injunction, necessarily a declaration will be followed as a matter of course. In that case, the Plaintiff also challenged a certain order of the Corporation of Calcutta to demolish certain masonry structures said to be unauthorised. I respectfully follow the reasonings adopted by his Lordship in that case for looking into the substance of the present matter and for determining whether the present suit was really a suit for declaration or for an injunction. In the instant case, as has been pointed out, the main grievance of the Appellant is the order of demolition made by the Corporation of Calcutta and if the Plaintiff Appellant succeeds in getting an order of injunction relating to that order of demolition, the Plaintiff gets virtually the entire relief for which he has come to Court. Although for the purpose of an order of injunction restraining the Corporation of Calcutta, a declaration has to be prayed for, namely, a declaration that the demolition order is arbitrary, bad and/or illegal. The prayer for declaration and/or the decree for declaration is not the main relief, as in my opinion, the main relief centres around the enforcement of the order of demolition. In that view, the present suit, in substance, is a suit for injunction for which a notice u/s 586 of the Calcutta Municipal Act, 1951, is not necessary and the Plaintiff can succeed, if he is otherwise entitled to.

11. Having disposed of the preliminary objection raised on behalf of the Corporation of Calcutta in the present appeal, I now take up the question of law argued by Mr. Sen on behalf of the Appellant namely, whether in view of Section 90, Schedule XVI of the Calcutta Municipal Act, due to the mere absence of a sanction, the Corporation of Calcutta could issue a valid demolition order in respect of construction in the second floor of the suit premises when, according to the plain tiff, the same amounted to "additions" and/or "alterations" to the

Appellant's existing building and when there has been no change in the character and purpose of the building due to such addition or alteration. In connection with this point, Mrs. Sengupta appearing on behalf of the Corporation of Calcutta has also raised a preliminary objection, namely, that this point was not specifically pleaded by the Plaintiff in the plaint and as no issue was framed and raised in the Court below, the Appellant should not be permitted now to raise this point for the first time in this second appeal. According to the said learned Advocate, the point raised by the Appellant is not a pure question of law, but a mixed question of law and fact. This aspect of the argument apparently has some substance, but it cannot be accepted for the following reasons.

12. In para. 5 of the plaint the impugned order of the Corporation of Calcutta has been dealt with and in that connection, the Appellant has contended that some alleged notice and/or the alleged order of the Commissioner of the Corporation of Calcutta, dated August 18, 1963, are illegal and ultra vires and/or without jurisdiction. The Plaintiff, in the plaint, however, took the stand that the impugned constructions are more than 12 years old and the said constructions being in the nature of repairs, the Corporation of Calcutta have waived the right to demolish the alleged objectionable portions of the premises and/or now has no legal right to demolish the said portions. No specific contention was raised by the Plaintiff that the construction made by him were in the nature of "additions" or "alterations" to an existing building which come within the scope of Rule 90, Schedule XVI of the Calcutta Municipal Act for which no sanction was required. The trial Court, as noticed earlier, disbelieved the Plaintiff's case as to existence of the second story at the time of his purchase and also about the case of repairs and the Court of appeal below took also the same view. On the other hand, there is a clear finding by the trial Court that the Plaintiff has newly constructed the disputed second story of the house without prior sanction from the Corporation of Calcutta and the Court of appeal below has substantially affirmed that finding.

13. Faced with this difficulty, Mr. Sen for the Appellant contends that the points of law which he is seeking to argue in this second appeal, though were not pleaded and/or raised in the Courts below in the form in which they are intended to be argued now, the said questions are pure questions of law and the Appellant may be permitted to raise these points even in this second appeal. For this purpose, Mr. Sen says that he accepts the finding of the Courts below that a second story has been constructed by his client without obtaining prior sanction of the Corporation of Calcutta and he contends that, even on the basis of this finding, questions of law could arise as to whether the said construction of the second story is a mere "addition" and/or "alteration" to an existing building and if there is no change in the character and purpose of the building whether in view of Rule 90 of Schedule XVI of the Calcutta Municipal Act any sanction was required for such "addition" or "alteration". Since the Appellant accepts the finding of the Court below, there is no necessity for determining or deciding the questions raised on behalf of the Appellant with reference to facts. It is now well-settled that a pure question of law can be raised at any stage and also in the Court of

last resort. Vide M.K. Ranganathan and Another Vs. Government of Madras and Others, , State of Madras and Another Vs. K.M. Rajagopalan, and Mahadeb Ram Kahar Vs. Tinkori Roy, . The points of law which Mr. Sen now intends to argue, have been taken in the memorandum of appeal before this Court and the Respondent Corporation of Calcutta is not taken by surprise and accordingly, I overrule the objection raised on behalf of the Respondent and I allow the learned Advocate for the Appellant to argue the aforesaid questions of law on the admitted facts of the case.

14. As the question of law mainly centres round interpretation of the words "addition" and/or "alteration" and "character" and "purpose" of a building appearing in Rule 90(1)(a) of Schedule XVI of the Calcutta Municipal Act, it is necessary to refer to the said rule in detail and also refer to the other provisions of the Act and/or rules relating to construction of building and/or erection of new building. Rule 90 is quoted hereunder:

(1) Rules 50 to 63 and rules 17 to 87 shall not apply in the case of any alteration or addition to a building:

Provided that

(a) the alteration or addition does not change the character of the building or the purpose for which it was erected;

and

(b) the alteration or addition does not contravene any rules in this Schedule other than rules 50 to 63 and rules 78 to 87:

Provided further that where any alteration or addition involves the execution of any one or more of the works referred to in sub-rules (2), a licensed building surveyor shall be employed for supervision and a notice shall be given to the Corporation by such surveyor before carrying out the alteration or the addition.

(2) The works referred to in the second proviso to Sub-rule (1) are:

(a) the construction or reconstruction of a roof or an external or party wall,

(b) any repairs to the building which involve the reconstruction of

(i) a masonry wall,

(ii) the floor of a room (excluding the ground-floor),

(iii) a life-shaft, or

(iv) a chimney, after the same has been entirely, or in great part demolished,

(c) the closing of any door or window in an external wall,

(d) the construction of an internal wall or partition,

(e) any other alteration of the internal arrangements of a building which affects

an alteration of its courtyard or courtyards or its drainage, ventilation, or sanitary arrangements, or which affects its security,

(f) the addition of any building, room, out-house or other structure,

(g) the roofing of any space between one or more walls and buildings,

(h) the conversion into more than one place for human habitation of a building originally constructed as one such place,

(i) the conversion of two or more places of human habitation into a greater number of such places, or

(j) the alteration of a building for the purpose of effecting a partition amongst joint owners.

15. Schedule XVI of the Calcutta Municipal Act enumerates or provides the rules as to the use of building sites and erection of building work. The said rules appear to have been framed with reference to certain other provisions of the Act, namely, Sections 376, 387, 388, 414(1) and (5), 415(1)(g), 537, 543 and 544. u/s 376 of the Calcutta Municipal Act, no new building can be erected except in accordance with the provisions of chap. XXII of the said Act and/or the Schedule XVI and/or any orders or rules or bye-rules made under the Act. New building has been defined u/s 5(49) of the Act and amongst others it includes:

(a) Any building constructed or in the process of construction after the commencement of this Act. (c) Any hut which is converted into a masonry building after the commencement of the Act....

Under Section 387 of the Calcutta Municipal Act, the provisions as to building rules set out in chap. XXII, Schedule XVI and any order, rules and/or bye-laws made under the Act relating to erection of new building are to apply to every alteration or addition to any building subject to rules made in pt. 10 of Schedule XVI. By virtue of explanation to the said section no work of re-erection or reconstruction which would constitute any building into a new building under the Sub-clause (b), (e) or (d) of Clause 49 of Section 5, for the purpose of the said Section 387, shall be deemed to be an alteration of or addition to such building and in the case of such re-erection and/or reconstruction the provisions relating to the erection of new building shall apply to the whole of the said new building.

16. The Commissioner's power to order demolition, alteration or stopping an unlawful work has been provided in Section 414 of the Act. Relevant portion for the purpose of the present case is set out herein below:

(1) If the Commissioner is satisfied

(i) that the erection of any building

(a) has been commenced without obtaining any permission required to be obtained by or under this Act, or

* * *

(c) is being carried on or has been completed in breach of any provision contained in this Act or in any rules or by-laws made thereunder, or of any direction or requisition lawfully given or made under this Act or under such rules or by-laws, or,

(ii) that any alteration of, or addition to, any building or any other work made or done for any purpose in, to or upon any building, has been commenced or is being carried on or has been completed in breach of, or otherwise than in accordance with, any sanction granted u/s 387 in contravention of the provisions of Section 396 or 397 or

* * *

17. In the context of these general provisions of the Calcutta Municipal Act, it has to be decided whether, so long as the character and purpose of the building remains unchanged, any "addition" or "alteration" to the said existing building, even by way of an addition of a new story, would be merely "additions" or "alterations" to the said building for which no sanction is required in view of the provisions of Rule 90(a) of the Schedule XVI of the Calcutta Municipal Act or the addition of the second story would amount to construction of a new building or would be subject to Section 387 of the Act. Schedule XVI of the Calcutta Municipal Act is divided into various parts. Parts VII of the said schedule deals with application for permission to erect new building other than huts. Elaborate procedure for new building have been prescribed in that part as per Rules 50-63. Rule 50 of Schedule XVI prescribe for application to the Commissioner for permission to erect a new masonry building and in such application certain particulars are to be furnished in accordance with Rule 51. Rule 50 starts with the word erection of a new building and this "new building" ought to be a "new building" within the meaning of Sub-clause 49 of Section 5 of the Act. The said Rule 50 does not prescribe for submission of an application for permission to construct a building and/or for permission to make addition or alteration to an existing building. Part IX deals with application for permission to erect new buildings which are "hut" and the relevant rules are 78-87. After these rules come rules in pt. X, which is under the heading "application of rules in the schedule to alteration or an addition to building". From the scheme of the various provisions set out in the different parts of the Schedule XVI of the Calcutta Municipal Act, it appears that the framers of the Act and the rules had in their mind broadly two classes of construction, namely, (i) construction of new building and (ii) alterations or additions to building.

18. Like new building, "building" has also been defined in Sub-clause (6) of Section 5 of the Act and it means amongst others a house, out house, shed, hut, etc. and "any other such structure, whether masonry, bricks, wood, mud, metal or any other material whatsoever, but it does not include a hogla or other similar kind of temporary shed erected on ceremonial or festive occasions". The

definition of the word, "building" has an important bearing so far Rule 90(1)(a) and (b) of the rules in Schedule XVI of the Act is concerned, because the said rules speak of building and not of new building and because a building, in its broad sense, includes all kinds of structures whether masonry or otherwise. The provisions of Section 387 do not become immediately applicable to every alteration or addition to any building because the applicability of the said section has been made subject to rules enumerated in pt. X of the Schedule XVI of the Calcutta Municipal Act. Accordingly, from the provisions and scheme of the Act and the statutory rules and their arrangement it appears to me, that the rules contained in pt. X of the Schedule XVI of the Act have got their independent force and effect and they would govern the cases of "additions" and "alterations" in some cases in spite of other provisions contained in the Act, rules or bye-laws of the Calcutta Municipal Act, relating to construction or erection of new buildings or buildings. In pt. X of the said schedule, there is no provision for any prior permission or sanction in the case of certain "additions" or "alterations" to a building. The "additions" or "alterations", if they are in terms of the said r 90, they could be done without any prior sanction and mere absence of sanction would not make the construction due to such an addition or alteration illegal or unauthorised. Accordingly, the Courts below were not right in dismissing the suit merely on the ground, that no sanction was obtained by the Plaintiff for his said addition to the building.

19. The above leads us to an investigation as to what types of "addition" or "alteration" referred to in Rule 90 are exempted from the scope of the rules included in pt. VII and/or pt. IX of the Schedule XVI of the Act as also Sections 376 and 387 of the Act. The words "addition" or "alteration" appearing in both the two provisos in Sub-rule (1) of Rule 90 are subject to certain limitations or qualifications. The qualifications or limitations to "alterations" or "additions" are of two kinds. Firstly, such "addition" or alteration" should not change the character or purpose for which the building was erected and secondly, that the said "addition or "alteration" should not contravene any rule in the said Schedule XVI other than Rules 50-63 and Rules 78 to 87. The classes or nature of addition or alteration covered within the provisos (a) and (b) of Sub-rule (1) of Rule 90 of the Schedule XVI come under some categories and those categories have been enumerated in Sub-rule (2) of the said Rule 90. Under Sub-rule (2) of Rule 90, even constructions or reconstruction of a roof or an external wall vide Sub-rule (a) and addition of any building, room, outhouse or other structure, vide Sub-rule (f), could be by way of addition or alteration. In view of the wide range or varieties of "additions" or "alterations" and in view of absence of any definition of the word "structures" in the Act and in view of the fact, that even construction of roof, addition of a building or room would come within Rule 90, I am of the opinion that addition of rooms on the second floor or construction of other structures over existing structures on the ground floor will not per se due to absence of sanction, become an unauthorised construction liable to be demolished and everything will depend upon the nature of construction. What is

the nature of the impugned construction in the instant case? It may be by addition of rooms and other structures. If construction of a second floor upon an existing ground floor was by way such addition and alteration, they may come within the purview of the said Rule 90(1) of the Schedule XVI of the Calcutta Municipal Act, subject to qualifications or limitations mentioned therein and for such addition or alteration, no previous sanction is required.

20. The first limitation as to "addition" or "alteration" which are not immune from prior sanction is, that the said addition or alteration must not change the character and purpose of the building. As to what are the characters and purposes of a building, some indication could be had from the various provisions of the Calcutta Municipal Act itself, whereunder different classes of building have been dealt with. Reference in this connection may be made to Sub-clauses (6), (8), (23), (24), (25), (88), (42) and (59) of Section 5 of the Act. Mr. Sen in this connection has also referred to the aforesaid decision of Bijayesh Mukherji, J. and has contended that the character and purpose of building has to be ascertained with reference to its use. Bijayesh Mukherji, J, in the said case, relied upon the definition of the word "character given in Oxford English Dictionary and according to that definition, "character" means "the aggregate of distinctive feature of anything; essential peculiarity, nature, style, sort, kind, description" and from the said definition, his Lordship held, in that particular case, that even certain additions of rooms, baths, privy, do not affect the character of the building which was used for residential purposes and even by addition of these structures, the existing residential character is not altered. I accept the line of reasonings given by Bijayesh Mukherji, J. in the case cited above and I hold that the word character and purpose refer to nature and description of building and its use.

21. Mr. Sen contends that the building which was purchased by his client was for residential purposes and even now it is being used for the said purpose and there has been no change in that purpose or character of the building. Whether in fact there was any change in the character or purpose of the building due to the addition or alteration or construction of a second story by the Appellant, these aspects were not raised and as such, were not discussed in the Courts below and in the absence of any such finding, it is not possible for me to come to any conclusion as to whether the character and purpose have been changed or not so as to uphold the validity of the demolition order passed by the Corporation of Calcutta.

22. Not only the character and purpose should not be changed due to any addition or alteration, but also no addition or alteration should be made in the existing building which would violate any building rules provided in the Act etc. other than Rules 50-63 and 78-87. It appears that no such contention was also raised by the Corporation of Calcutta and there was, accordingly, no material on record and no finding in this aspect. If any of the existing rules other than the said Rules 50-63 and 78 to 87 have been contravened, certainly, the demolition

order issued by the Corporation of Calcutta has to be given effect to.

23. Mr. Sen contends that, before the said demolition order is passed or given effect, there should be an investigation about such violation of any building rules and I hold that in cases of the present nature, there should be such investigation. Although in my view, addition or alteration to a building, even an addition by way of a second story to an existing building may be immune from the requirement of sanction, since there is no total immunity, necessarily there must be some investigation as to whether there has been any violation of any existing rule other than Rules 50-63 and 78-87, also some investigation as to whether there has been any change in the character and purpose of the building due to such addition or alteration. Accordingly, I hold that the Courts below were wrong in dismissing the Plaintiff's suit merely on the ground that the admitted construction of second story in the existing building was not preceded by any sanction of the Corporation of Calcutta and as such, it is liable to be demolished and holding that the Plaintiffs suit must fail on that ground.

24. The question, however, raises that what should be done in the instant case, would the Appellant get the entire relief in this Court because he has succeeded on legal points or would it be proper in the interest of justice to remit the case to the trial Court for a fresh decision in accordance with law? It has been held consistently by this Court, that if the construction was unauthorised and/or bad at the time when it was commenced on account of want of prior sanction, subsequent removal of the procedural defect would not remove the initial illegality and the constructions commenced without sanction are liable to be condemned. See: Subhasini Nandi v. Corporation of Calcutta (1955) 59 C.W.N. 776. Although the said case was decided on the basis of the 1923 Act, the principles laid down there, in my opinion, are still applicable. In another case, N.N. Bose v. Manager Kedar Nath Jute Manufacturing Co. Ltd. (1941) 45 C.W.N. 925, Derbyshire, C.J. (Bartly, J. agreeing with him) observed that the infringement of Municipal Act is not to be treated lightly as Municipal Acts are intended for the well-being and health of the community. In view of the aforesaid principles of law enunciated by this Court and in view of the fact that it may be that the additions or alterations made by the Appellant have infringed some of the provisions of the Calcutta Municipal Act and/or rules relating to building and it may be that from the Corporation's point of view, as the building was not constructed in accordance with usual specifications it is an unsafe and dangerous building, I think it would be proper that the case should be remitted to the trial Court for a finding on these following points:

(a) Whether the construction of a second story in the existing premises was by way of addition or alteration to an existing building as per Rule 90(1)(a) and (b).

(b) Whether there has been any change in the character and/or purpose of the building due to such addition and/or alteration.

(c) Whether apart from Rules 50-63 and 78-87 of Schedule XVI, the addition or

alteration, made by the Appellant by constructing a second storey, have violated any other provisions of the Municipal Act and/or rules, orders and/or bye-laws for which a demolition order could be passed.

25. If the Court finds that there has been no change in the character and purpose of the building due to such addition or alteration and there has been no violation of any rule other than Rules 50-63 and 78-87, the Plaintiff's suit would be decreed otherwise the Plaintiff's suit shall be dismissed. Both parties, the Appellant and the Corporation of Calcutta, would be entitled to adduce additional evidence, if they so choose and the fresh decision would be made on the evidence already on record and on the basis of additional evidence, if they are adduced. The decrees of the Courts below are set aside.

26. There will be no order for costs in this appeal.

27. Mr. Sen on behalf of the Appellant prays that the interim injunction granted by this Court should continue till one month after the receipt of the records by the trial Court. This prayer is not opposed. I allow this prayer made on behalf of the Appellant.

28. Let the records be sent down to the trial Court without delay.

29. If, however, any application for injunction is filed before the trial Court, the said Court will decide the said application on its merits.