

(1910) 08 CAL CK 0007
In the Calcutta High Court
Case No : Rev. No. 938 of 1910

Kumar Narendra Nath Mitter

APPELLANT

Vs

Chairman, Corporation of Calcutta

RESPONDENT

Date of Decision : 25-08-1910

Acts Referred:

Citation : (1910) 08 CAL CK 0007

Judgement

1. This is a Rule calling upon the Municipal Magistrate of Calcutta to show cause why the orders referred to in the petition should not be set aside for the reasons stated in the petition. It appears that the present Petitioner is the owner of a large bustee abutting on the Circular Road and on Gas Street as also upon a street known as Dinendra Narayan Roy's Street. The bustee has been the subject of improvement under the Act and certain streets and passages have been laid out in accordance with the provisions of the Act. The Municipality now claims to take wheel traffic through every one of these streets and to practically make them into thoroughfares for wheel traffic. The owner having found that during the time of the repairs of the said roads abutting on his property, the public were in the habit of using his private streets as thoroughfares, put up certain posts which had the effect of preventing the wheel traffic passing through the bustee from East to West and from North to South, leaving the opening on to the Upper Circular Road open and free at all times for any carts which had business in the bustee and which entered the bustee, and if so desired could go all over the bustee and all round it and out again by the same passage by which it came in. The Municipality charges the proprietor upon this with creating a nuisance. The nuisance being that the private street is not at all times kept open to the use of the Municipal authorities for scavenging purposes.

2. The learned Magistrate in the Court below has found that it is a nuisance within the meaning of sec. 3, cl. 29 of the Municipal Act, and has directed the Chairman to remove the aforesaid posts placed in and across the streets in the bustee of Kumar Narendra Nath Mitter and to so alter the portion of the kerb and channel stones at the southern extremity of the Municipal road as to enable

conservancy carts to pass through and to recover the expenses of so doing from the said Kumar Narendra Nath Mitter.

3. We have heard the learned Vakil for the Municipality at some length and we are unable to accede to his contention that there is a nuisance under the Act. "Nuisance includes any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing or which is or may be dangerous to life or injurious to health or property." The learned Magistrate has found that the nuisance "consists in the annoyance to the conservancy overseers and other Municipal employers when they found that the carts could not get in and out of this bustee by the shortest route but that they had to go back by the way they came in." We cannot see that this constitutes an act which is likely to cause injury or danger to any one or annoyance or offence to the sense of sight, smell or hearing or which is or may be dangerous to life or injurious to health or property.

4. The question is whether the Municipality are in a position to effectively cleanse this bustee so that no such danger or annoyance may arise; and it appears to us perfectly clear that although it may be inconvenient to the Municipal servants and although it may add to the expense of cleansing the bustee it cannot in any way interfere with the effective cleansing of the bustee which it is necessary to establish when we are asked to hold that it is a nuisance. On the other hand the proposal of the Municipality that the owner should put up gates and have them opened for the use of the Municipal carts when required would give rise to a very great balance of inconvenience and expense on the part of the owner. We can see no justification for transferring the inconvenience and expense which necessarily arises in dealing with private properties from the Corporation to the owner. The owner has done all which he is bound to do under the law. Every one of these private streets is open and the Municipal carts can go up and down every one of them for scavenging purposes and the only difficulty is that they in some cases have to go back by the way they came. If the inhabitants of the bustee did not find this a nuisance it is difficult to see how the Chairman can find it a nuisance. For all these reasons we make the rule absolute and set aside the order of the Municipal Magistrate.