

(2002) 06 CAL CK 0018
In the Calcutta High Court
Case No : Writ Petition No. 978 of 2002

Nepal Chandra Kar and Others

APPELLANT

Vs

Calcutta Municipal Corporation and Others

RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 432, 573
Constitution of India, 1950 — Article 19, 226

Citation : (2002) 3 CALLT 78

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—Petitioners, the allottees of a stall at Hogg Market, were served with a notice asking them to pay the arrears of stallage payable from the year 1990 as detailed in annexure "P-10" to the present writ application. It was further threatened by the Deputy Manager, Hogg Market in the said demand notice that in default of payment of the amount mentioned therein, appropriate step against the petitioners including disconnection of electric supply in the stall will be taken.

2. Being dissatisfied, the petitioners have come up with the present writ application.

3. Mr. Basu, the learned counsel appearing on behalf of the petitioners could not dispute the fact that the petitioners have not paid the amount; he however laboriously contended that in view of the provisions contained in Section 573 of the Calcutta Municipal Corporation Act, 1980 ("Act") the respondents can at the most realize arrears of stallage for the last three years. Mr. Basu contends that arrears beyond the period of three years are not recoverable and as such no action can be taken for non-payment of the amount, the recovery of which is now barred by limitation.

4. Mr. Ghosh, the learned counsel appearing on behalf of the Corporation however disputes the aforesaid contention of Mr. Basu and asserts that Section 573 of the Act cannot have any application to a case of recovery of arrears of stallage in view of specific provision contained in Section 432 of the Act.

5. Therefore, the only question that falls for determination in this application is whether the Corporation can take step for eviction of the petitioners for non-payment of the arrears of stallage for a period beyond three years.

6. For the purpose of appreciating the question involved herein it will be profitable to refer to the provisions contained in Sections 432 and 573 of the Act which are quoted below :-

"Section 432. Power to expel person contravening regulations.-

(1) The Municipal Commissioner may, after giving the parties concerned an opportunity of being heard and in accordance with such regulations as may be made by the Corporation,-

(a) expel from any Municipal Market, Municipal slaughter-house or Municipal stockyard, for such period as he may think fit, any person who or whose servant has been found contravening any regulations made under this Act and in force in such market, slaughter-house or stockyard,

(b) prevent such person, by himself or by his servant, from further carrying on any trade or business in such market, slaughterhouse or stockyard or occupying any stall, shop, standing, shed, pen or other place thereon.

(c) close the stall or shop of the person found to be in default in payment of the stallages or rents or any other dues to the Corporation till payment is made or recovered under the provisions of this Act, and

(d) determine any lease or tenure which such person may have in any such stall, shop, standing, shed, pen or place.

(2) If the tenant or the agent of the tenant of the owner or the lessee of any private market or slaughter-house has been convicted for contravening any regulation made under this Act, the Municipal Commissioner may require such tenant or agent to remove himself from such market or slaughter-house within such time as may be mentioned in the requisition, and if such tenant or agent fails to comply with such requisition, he may, in addition to any penalty which may be imposed on him under this Act, be summarily removed from such premises by the owner or the lessee thereof or by the servant of such owner or lessee.

(3) If it appears to the Municipal Commissioner that in any such case the owner of the lessee is acting in collusion with a tenant or an agent, convicted as aforesaid, who fails to comply with any requisition under Sub-section (2), the Municipal Commissioner may, if he thinks fit, cancel the licence of such owner or lessee in respect of such premises.

Section 573. Recovery of certain dues of Corporation. Save as otherwise provided in this Act or the rules or the regulations made thereunder, any sum due to the Corporation on account of any charge, cost, expense, fee, rate or rent or on any other account under this Act or the rules or the regulations made thereunder shall be recoverable from the person from whom such sum is due as if it were a consolidated rate :

Provided that no proceeding for the recovery of any such sum under this section shall be commenced after the lapse of three years from the date on which such sum becomes due."

7. After hearing the learned counsel for the parties and after going through the provisions contained in Section 573 of the Act, I am of the view that the aforesaid section applies only to the cases of recovery of amount of any charge, cost, expenses, fee, rate, rent or on any other account for which no mode of recovery is provided for in the Act and in such cases such amount should be recoverable as if it were a consolidated rate, provided of course, that no proceeding for recovery of any such sum by taking aid of Section 573 should be commenced after the lapse of three years from the date on which such sum became due.

8. In the case before us, the amount is payable as the arrears of stallage. As pointed out above, Section 432 of the Act vests the Municipal Commissioner with the authority to take any of the steps mentioned therein in case of default in payment of the stallage as provided in Sub-section 1 (c) thereof. Therefore, this is not a case where there is no provision in the Act or the Rules or the Regulation for taking step against a defaulter and as such the proviso to Section 573 cannot stand in the way of invoking the provisions contained in Section 432 of the Act. Thus, the Corporation is not only entitled to disconnect the electric supply of the petitioner but also to close the shop or determine the tenure of the petitioners in the stall for non-payment of the entire arrears.

9. Mr. Basu in this connection placed strong reliance upon an unreported decision of Kabir, J. dated February 16, 1995 in the case of Golam Samdani and Ors. v. Calcutta Municipal Corporation in the matter No. 3025 of 1992. Mr. Basu particularly relied upon the following observations made by His Lordship :-

"This brings us to the next question regarding the applicability of the provisions of Section 573 of the 1980 Act in respect of the demands contained in the impugned order of the Member, Mayor-in-Council (Markets)."

10. The provisions of Section 573 of the 1980 Act make it quite clear that no proceedings for recovery of any sum on account of any charge, cost, expenses, fee, rate or rent or on any other account under the Act or the rules and regulations made thereunder, may be commenced after the lapse of three years from the date on which such sum becomes due.

11. The major portion of the demand contained in the impugned order on

account of stallage and penalty appear to be barred by limitation on the above score. Moreover, the manner in which the matter has been dealt with by the Corporation leaves much to be desired, and the consequences thereof cannot, in my view, be foisted on the petitioners.

12. In view of the fact that the Corporation was itself responsible for the delay in dealing with the petitioners' application for separation and mutation, it cannot, in my view, impose penalty, as has been done in the instant case.

13. The Corporation can at best demand from the petitioners the stallage at the enhanced rate uniformly payable by all stall holders in S.S. Hogg Market, for a period of three years prior to the date of which the impugned order was made, namely, 19th March, 1992, and the remaining portion of the demand will have to be dealt with u/s 229 of the 1980 Act.

14. In the second paragraph, quoted above, His Lordship proceeded as if by virtue of Section 573 no proceedings for recovery of any sum on account of any charge, cost, expenses, fee, rate or rent or on any other account under the Act or the Rules or the Regulations made thereunder may be commenced after the lapse of three years from the date on which such sum becomes due. It appears that while interpreting Section 573 in that way, His Lordship totally ignored the opening phrase of the section viz. "Save as otherwise provided in this Act or the rules or the regulations made thereunder". There being specific provision in the Act itself providing consequence for non-payment of arrears and also authorizing the Municipal Commissioner to close the shop till payment is made. I am unable to persuade myself to subscribe to the view taken by His Lordship nor I am prepared to accept the said decision as a precedent of the proposition of law that the Corporation cannot close the shop of a defaulter even if the entire arrears of stallage including those for the period beyond three years are not paid.

I thus find no force in the contention of Mr. Basu. The Municipal authority is entitled to invoke the powers contained in Section 432 if the petitioners do not pay the entire arrears including the ones for the period beyond three years.

The writ petition is thus devoid of any merit and is dismissed. Interim order granted earlier stands vacated.

No costs.