
(1924) 02 CAL CK 0063
In the Calcutta High Court

Nripendra Kumar Dutta

APPELLANT

Vs

Chairman of Habiganj Municipality

RESPONDENT

Date of Decision : 15-02-1924

Acts Referred:

Bengal Municipal Act, 1884 — Section 6(11)

Citation : 85 Ind. Cas. 533

Hon'ble Judges : Suhrawardy, J; Chotzner, J

Bench : Division Bench

Judgement

1. The facts giving rise to the suit out of which this appeal has arisen are that there is a market within the Municipality of Habiganj called Purahbazar. The appellant is the Receiver of an estate called the masulia estate which, owns a small fractional share in the market. This market, as alleged by the plaintiff, is an old one. On the other hand the defendants say that the sale of fish and vegetables has been started in this market lately. For the purposes of this appeal it is not necessary for us to enquire whether the market is old or new. The plaintiff applied to the defendant Municipality for a license u/s 339 of the Bengal Municipal Act III of 1884 to use the market for the sale of fish and vegetables; but license was refused." On the 29th March 1920, the Commissioners of the Municipality resolved that they did not see their way to grant the license to the plaintiff who was a part-proprietor. By this resolution they intended to convey that the plaintiff had no right to apply for a license under Ch. X of the Act because he was a part-proprietor and represented only a fractional share in the market. The plaintiff has thereupon brought this suit for declaration that he is entitled to get license even though he is a part-proprietor. The learned Subordinate Judge before whom the suit was tried held that a part-proprietor was not entitled to apply for a license and dismissed the suit. so far as it related to the use of the market for the sale of vegetable, etc. The claim for license for the sale of fish was granted subject to the plaintiff's carrying out certain improvements suggested by the defendant Municipality. Both parties appealed against portions of the decree, affecting them adversely and both the appeal and

the cross-appeal were dismissed by the Additional District Judge.

2. The plaintiff has appealed to this Court and the defendant has taken a cross-objection with regard to the decree relating to the fish market.

3. The one point that arises in this case is whether the plaintiff as a part-proprietor or a co-sharer in the market is entitled in law to apply for a license under Ch. X of the Bengal Municipal Act. Various other matters have been brought to our notice, but it is not necessary for us to consider them. We propose to confine our decision to the question of law that has been raised in this case, as to whether a part-proprietor of a market is entitled to apply for a license under Ch. X of the Act or must it be the entire body of owners who may apply for such license. It is conceded that there is no provision in Ch. X for submission of an application for license. But, the learned Subordinate Judge was of opinion that in Section 340. "owner" means the entire body of owners, who only can apply for a license u/s 339. This view has been accepted by the Additional District Judge. Now the question as to whether the plaintiff is entitled to apply for a license is one that depends upon the meaning of the word "owner" as used in Section 340. Section 339 does not make mention of any application or of the person by whom it may be made. It simply lays down that, in the case of a new market the Commissioners may grant such license year by year on the certificate in writing under the hand of the Chairman. It no doubt contemplates that the Commissioner must be moved for license by some one. Section 340 says that the Chairman upon the application in writing of "the owner of any land" shall grant such certificate unless the land be unfit for the purposes of the market. It is contended by the respondent that the word "owner" as used in Section 340 must mean the entire body of owners; and it is further contended that when an application is made by the entire body of owners the Chairman shall give the necessary certificate; and such certificate being given an application must be made for the issue of license. We do not find any ground for holding that the word "owner" as used in Section 340 means the entire body of owners. The learned Judge in his judgment says that after perusing the appropriate sections of the Act he is of opinion that the interpretation put upon the word "owner" by the Trial Court is the correct one. He has not referred to the appropriate section so that we are unable to follow his reasonings. The term "owner" has been defined in Section 6(11) of the Act. It includes (a) "every person," I quote so much only as is necessary for the determination of the question raised before us, "who is entitled for the time being to receive any rent in respect of the land with regard to which the word is used; (b) a manager on behalf of any such person; (c) an agent for any such person; (d) a trustee" for any such" person." The interpretation put upon the word "owner" by this clause enlarges its ordinary significance and is not intended to restrict it. On a careful reading of this definition it would appear that it is intended to include, and not exclude, any person who may be termed owner of the land; and indications, as supplied by the wording of this clause, are to be found in the use of such expression as "any rent" which signifies that any person who is entitled to any rent or any portion of

the rent or any kind of rent is an "owner."

4. Then again in the Sub-clause (b), (c) and (d) the expression used is "any such person." If the word "owner" was intended to connote the entire body of owners, the use of the expression "any such person" will be incompatible with this sense. The meaning "of the term "owner" in connection with Section 103 of the Act came up for consideration in the case of Narendra Nath Sinha v. Nagendra Nath Biswas 10 Ind. Cas. 43 : 38 C. 591 : 13 C.L.J. 471 : 15 C.W.N. 586." The point that was raised in that case is whether a person who is not actually in receipt of any rent is a person who may be called an "owner." The point now before us. was not exactly considered in. that case, but the observations at page 509 Page of 38 C.--[Ed.] of the report are of the greatest help in interpreting the word "owner" in the way suggested by the appellant. There the learned Judges say as follows : "The term "owner" is defined in Clause (II) of Section 6 to include every person who is entitled for the time being to receive any rent in respect of the land with regard to which the word is used...the term "owner" also includes a manager or agent or trustee for any such person. This clearly is not an exhaustive definition of the term "owner" because...the word "include" is generally used in interpretation clauses to enlarge the meaning of words so as to make them comprehend not only such things as they signify according to their natural import but also the things they are declared to include.... This definition, it must be remembered, however, was framed not so much with a view to confer rights as to impose liabilities." We think that this is the correct view, of the interpretation of the word "owner" as used in the Act. It is, however, contended by the respondent that that might be the meaning of the Section 103 where the word "owner" is used. But the words used in Section 340 are "the owner", and the article prefixed to the word "owner" signifies that the expression is intended to mean the entire body of owners. "We are unable to follow this readying and we are of opinion that the article is used more for the sake of language than for restricting its meaning.

5. Reference has been made to Section 344 by the learned Vakil for the appellant where the word "owner" is again used and it is argued that if the contention of the respondent is correct, the word "owner" in. that section must also mean the entire body of owners. It is not necessary to consider that point, because as is submitted by the respondent, the liability for criminal prosecution may be individual. But it is significant that though the Municipality refused to grant license to the appellant on the ground that he was a part-proprietor, he was served with notice u/s 344 to show cause why he "should not be prosecuted for running a market without a license. If the law authorises the Municipality to prosecute any person who has failed to take out a license, be he a part-proprietor or a full owner, it is clear that such person must be entitled to obey the order for the disobedience of which he is prosecuted. If "the restricted interpretation that is sought to be put on the word, as accepted by the Courts below is correct, the result will be that a man may be prosecuted for not taking out a license because he happens to be a co-sharer--owner though the

Municipality has refused his application for license because he is a part-proprietor. It is not to be supposed that the Legislature intended to bring about such an anomalous position. Another impracticable result may accrue from this restricted interpretation of the word "owner." If there are 100 proprietors owning a market, it is necessary according to this view, that all of them must join in applying for a license. If any of them, owning an infinitesimally small share, refuses to join in the application, or if any one of them dies without leaving any immediate legal representative, no license can be granted and the market must, be closed though it may be of 100 year's standing.

6. We are, therefore, of opinion that the interpretation put upon the word "owner" by the Courts below is wrong. The plaintiff as part-proprietor of the market has the right under the law to apply for a license. At the same time we wish it to be understood that we do not want to fetter the discretion of the Chairman vested in him under Sections 339 and 340 of the Act. We only decide that the plaintiff is a person who is legally entitled to make an application for a license. Whether such application, should be granted or not is a matter for the consideration of the Municipality. In the view that we take this appeal ought to succeed.

7. There is a cross-objection by the respondent with reference to the decree passed by the Subordinate Judge which has been affirmed by the Court of Appeal below, viz., "that the plaintiff be declared entitled to get license from the defendant for the fish market only on payment of reasonable fees and on effecting improvements of the market as the defendant requires to be done for its fitness." It appears that after the plaintiff's application for license was dismissed on the ground that he was a part-proprietor, one Rai Mohan Das (alleged to be the general agent of all the proprietors) applied for necessary license on the 29th May 1920. The Chairman thereupon visited the locality and granted the certificate to the effect that the place was fit for the sale of vegetables and that the place for selling fish required improvements and extension. The Courts below have found that the place where the sale of fish is intended to be held belongs exclusively to the appellant and, therefore, they have given a decree in the term quoted above. It appears from the judgments of both the Courts that the only point raised before them was as to whether the place where the fish market was to be held was within the exclusive "Chandiani" right of the plaintiff. In the cross-objection, however, the ground taken is that the suit is not maintainable in its present form. It is submitted that the market having come into existence in 1918 after the extension of Ch. X of the Act to the Habiganj Municipality, the Municipality had the fullest discretion in the matter of granting or refusing license u/s 339 of the Act. Such being the case suit in the Civil Court to compel, the Municipality to grant a license does not lie. We do not think that there is any substance in this contention. If the Municipality had refused to grant license on any of the grounds mentioned in Section 339, Doubtably the contention of the learned Vakil, for the respondent would have had some force. But the ground upon which the application has been rejected is that

as pant-proprietor the plaintiff had no right to apply. He is entitled to get a declaration from the Civil Court if the view taken by the Commissioner is wrong, that he is a person who is legally entitled to apply.

8. The result is that this appeal is allowed and the cross-objection dismissed. The decree of the lower Courts in so far as it refuses license to the plaintiff for the sale of butter, ghee, fruits and vegetables is set aside and declaration made in favour of the plaintiff that he is entitled to apply for license for the use of the market for the sale of those articles. The decree of the Courts below in so far as it relates to the use of the market for the sale of fish will stand. The plaintiff is entitled to his costs in all the Courts. There will be no order for costs in the cross-objection which is dismissed.