
(1963) 08 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 431 of 1961

Parama Singh

APPELLANT

Vs

Shillong Municipal Board and others

RESPONDENT

Date of Decision : 16-08-1963

Acts Referred:

Assam Municipal Act, 1956 — Section 159, 160, 161

Citation : AIR 1964 Guw 80

Hon'ble Judges : S.K. Dutta, J;C. Sanjeevarao Naidu, J

Bench : Division Bench

Advocate : P.N. Goswami, for the Appellant;

Final Decision : Allowed

Judgement

C.S. Nayudu, J.—The petitioner is the owner of two stalls at Police Bazar, Shillong. He was served with a notice by the Shillong Municipal Board u/s 159 of the Assam Municipal Act asking him to remove the structures within forty-eight hours and the petitioner not having complied with the notice, the Municipal Board applied to the Magistrate having jurisdiction, for having the obstruction or encroachment complained of by them removed. In the instant case the complaint of the-petitioner is that the Magistrate directed him to remove the stalls objected to by the Municipal Board without he having been given a show cause notice and an opportunity to be heard against the proposed order.

2. A reference to Section 163 of the Assam Municipal Act, 1956 (Assam Act XV of 1957) shows that every order made by a Magistrate under Sections 159, 160, 161 and 162 shall be deemed to be an order made by him in the discharge of his judicial duty. Hence the action taken by the Magistrate u/s 159 should conform to the minimum requirements of a judicial disposal of a matter which involves the affording of an opportunity to the person affected, to be heard in support of his case and against the order proposed to be issued against him. Hence there has been a violation of the intendment of Section 163 of the Assam Municipal Act, which necessarily involved the failure to comply with the principles of natural

justice, which should necessarily be followed when judicial officers are performing their judicial duty. As in the instant case no show cause notice or opportunity has been given to the petitioner, the order of the learned Magistrate requiring the petitioner to remove the structures in question is not, in our opinion, in conformity with the provisions of the Assam Municipal Act. This is equally so for the reason that the Municipal Board themselves are interested parties and had issued a notice having come to an ex parte decision behind the back of the petitioner that he has committed encroachment on public ground and that opinion of the Board is not examined judicially by the Magistrate, when he ipso facto on the basis of a request by the Board, issues an order directing the removal of the structures objected to by the Board.

The Magistrate's function in this respect being judicial, it would be necessary for him to investigate into the correctness of the stand taken by the Municipal Board and to determine for himself that there is substance in their objection and this he could only do after he had given notice To the persons affected and heard them in regard to the matter on which he has to reach a judicial decision. As this has not been done in the present case, the Magistrate cannot be said to have fulfilled the duties enjoined by the provisions of the Assam Municipal Act applicable to the instant case. The petition is accordingly allowed and the rule made absolute but as nobody appears on the other side, we make no order as to costs.