
(1913) 04 CAL CK 0021
In the Calcutta High Court

Prosad Chunder De

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 08-04-1913

Acts Referred:

Calcutta Municipal Act, 1923 — Section 370, 375
Specific Relief Act, 1877 — Section 45

Citation : (1913) ILR (Cal) 836

Hon'ble Judges : Fletcher, J

Bench : Single Bench

Judgement

Fletcher, J.—Your proper remedy was by an application u/s 45 of the Specific Relief Act, for a mandamus, or you could have gone on building, and if the Corporation called upon you to demolish, you would have had a good defence.

2. An action of mandamus lies: The Queen v. Lambourn Valley Railway Company (1888) L. R. 22 Q. B. D. 463. Acting against the provisions of a statute, is acting mala fide.

Fletcher, J.

3. Not when there is a wrongful exercise of discretion. Besides you elected to proceed u/s 375. u/s 375, Sub-clause (2), the decision of the General Committee is final.

4. But that clause does not oust the jurisdiction of the Court; a suit is maintainable: Chairman of Giridhi Municipality v. Suresh Chandra Mazumdar (1908) 12 C. W. N. 709. The General Committee have been made defendants in the suit for greater safety, in view of the decision in Bholaram Choudhury v. Corporation of Calcutta ILR(1909) Calc. 671, though the decision in a later case, Baroda Prosad Boy Choudhry v. Corporation of Calcutta (1911) 13 C. L. J. 611, does not support the earlier authority. In any event, since the General Committee are not appearing, it does not lie with the other defendants to take the plea. Section 617 has no application to the present matter, and the High

Court is the proper forum for this suit.

5. Mr. Sircar, for the defendants, the Corporation-and the Chairman. The plaint does not disclose any, cause of action, and the suit is not maintainable. *Smith v. Chorley Rural Council* [1897] 1 Q. B. 678, and *Davis v. Bromley Corporation* [1908] 1 K. B. 170, are conclusive on the point that no action will lie for a mandamus, where a municipal body has rejected plans. No specific act of bad faith is charged in the plaint against either the Chairman or the Corporation. The allegation against the General Committee is that the appeal was illegally dismissed: but the plaintiffs had submitted to the jurisdiction by their appeal. The General Committee have been wrongly added as defendants in the name of the "General Committee". From Section 5, it is clear the General Committee have no corporate existence.

6. Mr. Ghose, in reply. A suit will lie against a municipal body where the exercise of authority has been capricious, wanton and oppressive: *Nagar Valab Narsi v. The Municipality of Dhanduka* ILR (1887) 12 Bom. 490.

Fletcher J.

7. This is a suit brought by Prosad Chunder De, and his brother against the Corporation of Calcutta, the first defendant, and against the Chairman of the Corporation, and also the General Committee of the Corporation. The first relief asked for is as follows: for a declaration that the plaintiffs were and are entitled to have their application of the 7th December, 1910, for approval of site and permission to build a house, sanctioned. The next relief asked for is a declaration that the plaintiffs are entitled to build on No. 1, Linton Street according to the plan submitted. The next relief is for Rs. 1,200 as damages alleged to be suffered by the plaintiffs by reason of the sanction being refused. It seems to me quite obvious that a suit of this nature does not lie. The case is covered by the decision in *Davis v. Bromley Corporation* [1908] 1 K. B. 170. In the course of the argument in that case counsel for the plaintiff argued that the decision in *London and North Western Railway v. Westminster Corporation* [1904] 1 Ch. 759, was an authority that an action lies against a sanitary authority for breach of duty when it has acted from improper motives, and Bigham J made the remark, "there is no case of such an action as the present; and it would obviously be dangerous to allow it, for it would then be open to every one whose plans had, been rejected to bring an action". That seems to me to go to the root of the plaintiffs' suit. What is the claim against the Corporation? They allege in their plaint that they are the owners of a piece of land, and on the 7th November, 1910, they lodged with the Chairman of the Corporation certain plans for approval of their proposed masonry building intended to be erected on the property. The approval of the plans was refused by the Chairman, and the plaintiffs then filed an appeal against the decision of the Chairman to the General Committee. That appeal was rejected, it is said, on the ground that the appeal was barred by limitation, but the plaintiffs allege that the decision of the General Committee was illegal, harsh, arbitrary and mala fide. It is not stated on what

ground, but in paragraph 14 of the plaint they make that general allegation. It seems to me in that case if the decision" of the General Committee was illegal, harsh, arbitrary and mala fide the plaintiffs have no remedy against the defendants by regular suit. The whole of the statutory provisions governing the Corporation of Calcutta are opposed to any such remedy as the plaintiffs seek. From Section 370 onwards the Calcutta Municipal Act contains provisions as to the approval of plans for intended buildings by the Chairman of the Corporation, and u/s 375 not only is the Chairman made a sort of Court of first instance, but the statute set up a Court of Appeal, that is the General Committee, and these are the local tribunals who have to decide whether the plans did or did not comply with the provisions of the Calcutta Municipal Act. It is obvious to my mind that so long as the Chair-man and the General Committee acted honestly, their decision, provided it was not in excess of their authority under the Act, is not capable of being reviewed by any Court. The whole course of authority is against the decision of such a local tribunal being reviewed by the Civil Courts. The two authorities cited by Mr. Sircar, *Davis v. Bromley Corporation* [1908] 1 K. B. 170, and *Smith v. Chorley Rural Council* [1897] 1 Q. B. 678, seem to establish clearly, first of al that no suit lies against the Calcutta Corporation for wrongly refusing to approve of the building plans. That is the decision in *Davis v. Bromley Corporation* [1908] 1 K. B. 170, and the decision in *Smith v. Chorley Bural Council* [1897] 1 Q. B. 678, is an authority for the proposition that a writ of mandamus does not lie against a local authority who in good faith refuses to pass building plans. If it had been done in bad faith, then the person whose plans had been rejected would have a remedy by way of a writ of mandamus to the local authority to proceed in the manner provided by law. In no case has the person a right of suit to have the plans approved, or for damages. These two decisions apply in principle as much to the Calcutta Municipality as to local authorities under the Public Health Act. Therefore, in my opinion, a suit does not lie in this Court, by a person whose plans have been rejected , by the Chairman and the General Committee, for a declaration that the plans comply with the terms ;of " the Act and should therefore be approved. His only remedy if the plans have been rejected mala fide ,is an application u/s 45 of the Specific Relief Act for an order to compel, the Chairman and the General Committee to hear the matter in the manner provided-by the law. In the face of these two authorities the plaint discloses no cause of action either against the Chairman of the Corporation or against the General Committee. Any right the plaintiff may have with reference to the illegal, harsh, arbitrary and mala-fide action, if he can establish the same, will be by coming to the Court u/s 45 of the Specific Relief Act. It seems to me that the plaintiffs have sought the wrong remedy. I understand that since the institution of the suit the Corporation have granted leave to build. It is said that the projected new street has been abandoned. However that may be, that does not give the plaintiffs a right of action. It my opinion the plaint discloses no cause of action and the (sic) must be dismissed with costs.