

(1934) 07 CAL CK 0009
In the Calcutta High Court

Purna Chandra Bagchi, Nabadwip Municipality

APPELLANT

Vs

Satish Chandra Modak and Others

RESPONDENT

Date of Decision : 13-07-1934

Acts Referred:

Bengal Municipal Act, 1932 — Section 240(3)

Citation : AIR 1935 Cal 116

Judgement

1. This Rule is directed against an order passed by a Deputy Magistrate at Krishnagar, on 21st November 1933, u/s 240(3) and Section 241(3), Bengal Municipal Act. It appears that the petitioner the Chairman of the Nabadwip Municipality complained to the District Magistrate of Nadia, of an encroachment or obstruction upon a municipal road by the opposite party which the opposite party failed to remove on requisition by the Municipality. The Chairman of the Municipality prayed for an order authorizing him to remove the encroachment or obstruction; notice was thereupon issued on the opposite party by the Deputy Magistrate to whom the case was made over to show cause why they should not remove the encroachment: on an inquiry held by the Deputy Magistrate the application of the Chairman to the District Magistrate was dismissed, and the proceedings were dropped by the Deputy Magistrate, on the ground that neither Section 240(1)(b) nor Section 241, Bengal Municipal Act, was applicable to this case, and that the notice issued by the Chairman of the Municipality on the opposite party for removal of obstruction was irregular, and that the proceedings started before the Magistrate at the instance of the Chairman were ab initio void.

2. On the materials before us, we have no hesitation in holding that the Magistrate is right in his decision that Section 240, Bengal Municipal Act, had no application to the case before him. The Magistrate's decision however on the question of applicability of Section 241 to the facts of this case is in our judgment not sustainable. On the finding arrived at by the Magistrate as the result of an inquiry held by him that "practically the entire shop of the Satis Chandra Modak and not a part of it" was an encroachment on Municipal road, the encroachment or obstruction complained of, in the case before us, by the

Municipality, was undoubtedly one to which the provisions contained in Section 24-1, Bengal Municipal Act, were applicable. The contention urged in support of this Rule that the Magistrate is wrong in holding that the same did not come within the purview of Section 241, Bengal Municipal Act has therefore to be given effect to; and we hold that it was within the competency of the Magistrate to make an order in favour of the Municipality, so far as the encroachment or obstruction complained of by the Chairman of the Municipality was concerned. The learned Sessions Judge of Nadia, it appears, was moved against the order passed by the Deputy Magistrate on 21st November 1933, which is according to our decision erroneous and unsustainable. The Judge rejected the application of motion before him, on 16th February 1934, affirming the view taken by the Deputy Magistrate so far as the application of Section 240, Bengal Municipal Act, was concerned. No opinion was expressed by the Judge on the applicability or otherwise of Section 241.

3. The result of the decision we have arrived at is that the order of the Deputy Magistrate passed on 21st November 1933, is set aside. The Magistrate will now deal with the application of the Chairman of the Municipality, the petitioner in this Court, to the District Magistrate of Nadia, on the footing that Section 241, Bengal Municipal Act, is applicable to the case, and pass appropriate orders in consonance with that provision of the law.