
(1924) 06 CAL CK 0035
In the Calcutta High Court

Radha Kissen Chamaria

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 16-06-1924

Acts Referred:

Calcutta Port Act, 1890 — Section 2(5)

Citation : (1924) ILR (Cal) 1030 : 84 Ind. Cas. 941

Hon'ble Judges : Newbould, J;B.B. Ghose, J

Bench : Division Bench

Judgement

Newbould and Ghose, JJ.—This is an appeal against the conviction of the appellant of an offence punishable u/s 84 of the Calcutta Port Act. The appeal has been argued before us solely on a point of law, and we have not been taken through the judgment or told what are the actual facts of the case. It is assumed in the argument that the accused has erected or fixed something in contravention of Section 83 which prohibits the making, erecting or fixing below high water mark within the Port of Calcutta any wharf quay, stage, etc., without the consent of the Local Government. The only point urged on behalf of the appellant is that if this section be read with Clause (5) of Section 2 of the Act, no offence has been committed. This clause provides--nothing herein contained shall deprive any person of any right of property or other private right except as hereinafter expressly provided." This clause seems really to be unnecessary, since no statute can abrogate private rights except by express provision. But we are unable to accept the contention of the learned Advocate-General, who appears for the appellant, that Section 83 does not expressly deprive owners of property of their rights. Taking the words of the section in their ordinary meaning they prohibit the erection of certain structures on private land, which is clearly an interference with the rights of the owners.

2. It is contended that at the time the statute was passed it was generally believed that all land below high water mark was the property of the Crown. It appears, however, that leases have been granted by the Crown of land below

high water mark even prior to the passing of the previous Calcutta Port Act V of 1870. We cannot believe that the Legislature were ignorant that such leases had been granted. Further if it was assumed that all land below high water mark was the property of the Crown to which no other person had any rights, these provisions under the Act would have been superfluous, since it would not be necessary to have provided a special statute for the removal of structures erected by trespassers.

3. The only point on which this appeal has been argued fails. The appeal is accordingly dismissed.