
(1918) 06 CAL CK 0044
In the Calcutta High Court

Rakhal Chandra De

APPELLANT

Vs

Chairman of the Suri Municipality

RESPONDENT

Date of Decision : 21-06-1918

Acts Referred:

Bengal Municipal Act, 1932 — Section 202, 204

Citation : 47 Ind. Cas. 306

Hon'ble Judges : Panton, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal by the plaintiff against the decision of the learned District Judge of Birbhum, dated the 5th January 1917, affirming the decision of the Munsif of Sari. The case is this. The defendant Municipality served notices on the plaintiff under Sections 202 and 204 of the Bengal Municipal, Act requiring him to remove an obstruction or encroachment on the street and to remove a projection that had been placed against or in front of his house. The plaintiff thereupon brought the present suit for an injunction to restrain the defendant Municipality from acting on the statutory notices. Assuming that such a suit lies, I think the facts found in this case are conclusive. What is found is this: The encroachment has been removed; u/s 202 and it no longer exists and, therefore, it no longer existing, there can be no ground at present on which the Municipality can proceed further in the notice u/s 202 and no question as to whether the plaintiff is entitled to claim an injunction can arise. With regard to the projection that has been required to be removed u/s 204, the facts found are these: This thing was erected 10 or 11 years ago. That there has been a projection, there cannot be any doubt. The case set up by the plaintiff is this. That as he has encroached on the surface of the street, therefore, he has a right to run up the projection to any height he likes, provided that he does not make any further encroachment in breadth on the street. That is clearly wrong. The reason why these projections are prohibited by the Act is obvious. If the projection encroaches on the street, for the safety and convenience of the passers by or for other conveniences, the law authorises the Municipality to serve

notices to remove it. I see no reason to interfere with the judgment of the learned District Judge. The present appeal, therefore, fails and must be dismissed with costs.

Panton, J.

2. I agree.