

(1927) 12 CAL CK 0030
In the Calcutta High Court

Ram Gopal Goenka

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 16-12-1927

Acts Referred:

Calcutta Municipal Act, 1923 — Section 363, 364

Citation : AIR 1928 Cal 207

Hon'ble Judges : Rankin, C.J.;Buckland, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this case it would appear that it is alleged by the Corporation of Calcutta that the present applicant at his house No. 7, Bysack Street, had certain additions and alterations made without any necessary sanction being obtained from the Corporation in that behalf. It would seem that these additions and alterations were made at some time prior to 1923 and it would seem that after the new Municipal Act of 1923 came into force proceedings were taken to get a demolition order from a Magistrate in respect of the erections complained of. Those proceedings were apparently brought without taking the necessary preliminary steps prescribed by Sections 363 and 364, Calcutta Municipal Act 1923 and it was pointed out at the time that even if those proceedings were regarded as proceedings under the old Act of 1899 they again were incurably defective by reasons that there had been no preliminary sanction given by the General Committee as required by the old Act. Accordingly those proceedings came to nothing and what has happened after that has been first of all that the legislature has passed Bengal Act 5 of 1926. That having been passed the present proceedings were really founded by a notice dated 22nd July 1927, calling upon the applicant to

show cause why an order should not be made u/s 363 of the Act of 1923 directing that the work of all erections done at premises No. 7, Bysack Street, or so much of the same as has been unlawfully executed be demolished at your expense on the following among other grounds : additions and alterations

without sanction.

2. That is a notice which was headed "Section 363, Act 3 (B.C.), 1923".

3. Now, it appears to me that if this matter has stood upon Section 363 of the Act of 1923 alone, it might very well be said that these erections having been completed before 1923 were not "alterations or additions" within the meaning of that particular Section 363 of the Act of 1923. But it has been drawn to our attention that by Act 5 of 1926 provision has been made whereby proceedings relating to a contravention of the provisions of the Calcutta Municipal Act, 1899 are to be taken in the manner prescribed by the Act of 1923; in other words, the new procedure is to be applied to contravention of the old Act as well as to contravention of the new Act. Accordingly this would be perfectly good order to make u/s 363 of the new Act although the breach of the regulation was committed under the old Act.

4. It has been suggested in argument by Mr. Taluqdar that the third clause of the new 557(a) section, inserted in the Act of 1923 by the amending Act of 1926 does not have this effect. If one looks at the three clauses of that new section one finds therein that the first clause is to say that a proceeding which has been instituted under the old Act or which might have been instituted under the old Act may be continued or instituted by the Corporation as constituted under the new Act. That is the first clause. With reference to those provisions which require certain-sanctions or preliminary procedure before legal proceedings can be validly started there is the second sub-section. The purpose of that is to say that the powers and duties of the General Committee and of the Chairman under the old scheme shall be deemed to have vested in the Corporation and the Chief Executive Officer respectively and that when any action has been taken in accordance with the old Act such action shall be deemed to have been taken by the corresponding authority under the new Act, and the corresponding provisions of the new Act shall be deemed to have been complied with. The third clause begins by saying : "Save as provided in Sub-section (2)." With that exception, namely the exception of the particular provisions already made with regard to those matters, it says that

the procedure prescribed by this Act shall be followed in all proceedings relating to a contravention of the provisions of the Calcutta. Municipal Act, 1899.

5. In my judgment the effect of that is this : there is no doubt that necessary sanction had been taken before these proceedings were instituted before a Magistrate. That being clear enough, Sub-section (2) of the new section, having been complied with in that way, for the rest the new procedure is to be applied to a legal proceeding relating to a contravention of the old Act. That being so I am of opinion that the application to the Municipal Magistrate is quite in order.

6. It has been suggested that because the previous proceedings to obtain a demolition order came to nothing by reason that there was no sanction in the proper way no further application can be made by the Corporation to have these

structures demolished. How the matter would have stood had the previous application been dealt with on the merits is another matter. But I am quite satisfied that the mere fact that proceedings have been held to be nugatory because they were not started after proper sanction cannot, prevent new proceedings after sanction from being started to obtain a demolition order.

7. In this view the rule must be discharged.

Buckland, J.

8. I agree.