
(1929) 08 CAL CK 0035
In the Calcutta High Court

Ram Gopal Goenka

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 08-08-1929

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 200

Citation : AIR 1930 Cal 222

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

Bench : Full Bench

Judgement

Rankin, C.J.—In my opinion, this Rule 793, should be discharged. The order complained of is an order directing demolition of certain structures mentioned in the order under the headings (a), (b), (c) and (d). The contention before us is, first, that so far as (d) is concerned the rule is not pressed. So far as (c) is concerned, it is conceded that there is some evidence before the Magistrate to show that the structures were raised within five years from the date of the present proceedings. So far as (a) and (b) are concerned, the contention of the learned Counsel on behalf of the applicant is that there is no specific evidence on the part of the Corporation to show that these structures were erected within five years of the present proceedings and that the Magistrate should have been satisfied with certain evidence called by the owner to the effect that the structures were erected more than five years from the date of the proceedings. Another ground is taken to the effect that the whole proceedings before the Magistrate were bad because they were instituted upon a complaint made by Mr. C.K. Chatterji and that u/s 200, Criminal P.C., it was necessary that Mr. Chatterji should be examined, and on this point reference has been made to a decision of this Court in the case of Ambica Prosad v. Corporation of Calcutta AIR 1928 Cal. 493.

2. As regards the question of the age of the structures the provision of the Calcutta Municipal Act is clear. Sub-section (2), Section 363 is as follows:

Notwithstanding anything contained in Sub-section (1), no proceeding shall be

instituted thereunder in respect of any work which has been done more than five years before the institution of such proceedings, provided that the onus of proving that the work was done more than five years previously shall lie on the owner.

3. Under this provision it is claimed that the question before the Magistrate was not whether the Corporation had shown the date of the work being done or that the date was within five years of the institution of the proceedings but whether the owner had established to his satisfaction that the work had been done more than five years previously. The Magistrate had dealt in a most painstaking fashion with this question and he has given very good reason, as it seems to me, for refusing to be satisfied with the evidence of the owner to the effect that the work was done more than five years from the date of the proceeding. In my judgment, there were materials before him which entirely justified him in finding, as he has in fact found, that the structures in question were newly made in 1923-24 and, therefore, are within the period of five years prescribed by the section which I have just referred to.

4. On the question whether the proceedings are bad by reason that the complainant was not examined u/s 200, Criminal P.C., the Magistrate contends in his explanation, first, that the Magistrate in a case of this sort is not acting with a complaint under the Criminal Procedure Code at all. Whether that view be right or wrong I do not require now to consider. What the Magistrate says is that even if this be taken to be a complaint under the amended Criminal Procedure Code there is no need any longer to have the complainant examined when a complaint is filed by a public servant acting in the discharge of his official duties. Under the Calcutta Municipal Act any Municipal officer is a public servant; but, apart altogether from any express provision, it appears to me plain that if the document referred to is to be treated as a complaint it is a complaint by the Building Surveyor of the Corporation acting as a public servant in the discharge of his official duties.

5. For these reasons, it appears to me that this rule must be discharged.

6. This Rule 794 has been obtained at the instance of certain occupiers of the premises referred to in the previous rule and the only additional ground which requires to be considered is this : It appears that these occupiers were made parties to the Magistrate's proceedings on 7th January 1928. The contention is that under the amending Act 5(B.C.) of 1926, Clause (4), Section 557-A, Municipal Act, puts a limit of one year from the date of the commencement of the Act to the time within which proceedings may be taken in such a case as this against a party. When one comes to examine Clause (4), Section 557-A, one finds that its real meaning is as follows : When the Calcutta Municipal Act of 1923 was first passed it contained, as afterwards appeared, insufficient provision for a case in which prior thereto an authorized structure had been erected and certain proceedings taken before the General Committee of the Corporation. The new Act applied very well to cases which arose after it was passed but there was

no provision which enabled cases which had occurred and been in part dealt with prior to the passing of the new Act to be dealt with under the machinery of the new Act. The object of Act 3 (B.C.) of 1926 was to enable the new machinery to be applied to cases which had arisen prior to the passing of the Act of 1923. But between the date in 1923 when the Calcutta Municipal Act was passed and the date in 1926 which this amendment was made there was no valid or effective process for taking action with reference to cases of work done prior to 1923. The law being out of action for a certain period it was provided by Clause (4), Section 557-A as follows:

Notwithstanding anything contained in this Act or in any other law, a suit or legal proceeding under this section may be instituted at any time within one year from the commencement of the Calcutta Municipal (Amendment) Act, 1926.

7. We are dealing with a limit of five years. The present applicants were made parties to the proceedings on 17th January 1928, and unless they show that these structures were erected before 17th January 1923 they do not show that they are protected by any time limit imposed by the Act. The effect of Clause (4) to which I have referred is this that between August 1926 and August 1927, in a case such as this, even although five years had expired, a legal proceeding would have been competent because the clause was intended as an extension of limit in view of the facts that legal proceedings had not been possible effectively for some considerable period prior to the Amending Act. The clause does not say and it does not mean that no legal proceeding u/s 557-A is ever to be taken after the expiry of one year from August 1926. What it says is that if in the Act or any other law a legal proceeding between August 1926 and August 1927 would have been barred, it is not to be barred until August 1927. Such a clause at no time was of any use to anyone except to the Corporation, and that in a case in which it was desired to get an extension of some restrictive period of limitation imposed by some other section of the Act or some other Law. In this view of the meaning of the section, it is unnecessary for me to examine further into the objection taken in this case.

8. The Magistrate has in his explanation contended that:

the Corporation does not proceed against the tenants. It is only the Magistrate who has to hear the tenants under Act 3 (B.C.) of 1925 as well as Act 3 (B.C.) of 1889. The notice on the tenants can be issued at any time before the disposal of the case.

9. He goes on to cite a ruling of this Court to the effect that the law does, not require specifically that a notice should be served on the occupier and that it is for the occupier to move the Magistrate. Whether there is anything, in this contention or not, the ground upon which this rule was granted is not made out. The ground was that the order was barred by limitation u/s 557-A. In my opinion, therefore, this rule must be discharged.

Patterson, J.

10. I agree.