
(1925) 05 CAL CK 0028
In the Calcutta High Court

Ram Gopal Goenka

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 20-05-1925

Acts Referred:

Calcutta Municipal Act, 1923 — Section 364

Citation : AIR 1925 Cal 1251 : (1925) ILR (Cal) 962 : 90 Ind. Cas. 317

Hon'ble Judges : Sanderson, C.J.;Panton, J

Bench : Full Bench

Judgement

Sanderson, C.J.—This was a Rule issued by my learned Brothers Mr. Justice Newbould and Mr. Justice Bepin Behary Ghose calling upon the Municipal Magistrate and on the Chief Executive Officer of the Corporation of Calcutta to show cause, why the order complained of should not be set aside or such other order made as to this Court might seem fit and proper.

2. The order complained of was an order made by the Municipal Magistrate of Calcutta, dated the 28th of February 1925, by which the Magistrate directed the demolition of certain unauthorized structures by the Corporation of Calcutta at the expense of the owner.

3. The proceedings in this case present some peculiarities. The alleged unauthorized structures were made before the 1st of April 1924. The notice which was served upon the petitioner was headed " Section 364 Act III (B. C.) of 1923 (i. e.. the Calcutta Municipal Act of 1923, which came into force on the 1st of April 1924) The notice was to the effect that the petitioner was directed to appear to show cause before the Municipal Magistrate of Calcutta, why an order should not be made u/s 364 of Act III (B. C.) of 1923, directing that so much of the building as had been unlawfully executed be demolished or altered by the Chairman at the owner's expense.

4. Although the notice as I have already said, purported to be u/s 364, the decision of the Magistrate was headed " u/s 363 of the Calcutta Municipal Act of

1923," and when the Magistrate gave his decision, he proceeded u/s 449 of the Calcutta Municipal Act of 1899 which, he. said, corresponded to Section 363 of the Calcutta Municipal Act of 1923. The Act of 1899 was repealed by the Act of 1923.

5. In my judgment it must be taken that these proceedings were in fact, instituted under the Calcutta Municipal Act of 1923. If that be so, then whether the proceedings were taken u/s 363 or Section 364 the proceedings would have to be initiated by the Corporation, which came into being in consequence of the passing of the Calcutta Municipal Act of 1923. The proceedings were, in fact headed " Corporation of Calcutta v. Ram Goyal Goenka." Section 363 provides: " If the Corporation are satisfied that the erection of any new building has been commenced without obtaining the written permission of the Corporation they may, after giving the owner of such building an opportunity of being heard, apply to a Magistrate, and such Magistrate may make an order directing that such erection, alteration, addition or other work shall be demolished by the owner thereof or by the Corporation at the expense of the said owner. "

6. Section 364 provides: " In any of the following cases (the various matters are set out; "the Corporation may apply to a Magistrate; and such Magistrate may make an order directing that the building fixtures additions, etc., be demolished, provided that, before making such application, the Corporation shall give the owner an opportunity of being heard." It is, therefore, clear that, whether the proceedings were u/s 363 or Section 364 the Corporation instituted the proceedings, and before making an application to the Magistrate, the Corporation was bound to give the person, who was to be proceeded against an opportunity of being heard. It may be said that the petitioner was given an opportunity of being heard by the authorities which existed under the Act of 1899; but there is no doubt that the Corporation constituted by the Act of 1923, did not give the petitioner an opportunity of being heard before the application by or on behalf of the Corporation was made before the Magistrate. Consequently, in my judgment, there was a material irregularity in the proceedings in respect of this matter.

7. But the learned Advocate-General, who appeared for the Corporation, argued that the liability of the petitioner in respect of the unauthorized structures existed after the repeal of the Calcutta Municipal Act of 1899 by reason of Section 8 of the Bengal General Clauses Act. The section provides: " Where this Act, or any Bengal Act made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed,"

8. It might be that the liability of the petitioner in respect of the alleged unauthorized structures still remained after the repeal of the Calcutta Municipal Act of 1899, but a difficulty arises in this way that even if the present proceedings could be regarded as having been instituted under the repealed Act of 1899 (which I think is not the case), then such proceedings would have to be

initiated by the General Committees because Section 449 provides that " if the General Committee are satisfied" as to certain matters therein stated " the General Committee may apply to a Magistrate." The learned Advocate-General Informed the Court that the General Committee under the Calcutta Municipal Act of 1899 no longer exists and, therefore, there is no body competent to take proceedings u/s 449 of the 1899 Act.

9. Therefore, whichever way this matter is looked at, in my judgment, there was a material irregularity in the proceedings, and the order, which was made by the Municipal Magistrate, cannot be allowed to stand.

10. Before leaving this case, it is necessary for me to say one or two words about the preliminary point, which was raised by the learned Advocate-General. He argued that this Rule was issued u/s 435, Criminal P.C., and this Court had no jurisdiction to issue a Rule u/s 435 or to make it absolute u/s 439 of the Criminal P.C., on the ground that the Municipal Magistrate, when dealing with the matter, was not acting under the Criminal P.C., and that consequently the provisions of the Criminal P.C., could not be applied by this Court for the purpose of revising the proceedings before the Magistrate. I am not prepared to accept that argument. Section 531 of the Calcutta Municipal Act of 1923 provides: "The Local Governments may appoint one or more Magistrates, for the trial of offences against this Act, and the rules or bylaws made thereunder."

11. Prima facie, therefore, a Magistrate appointed under that power for the trial of offences against the Calcutta Municipal Act would be a criminal Court within the meaning of Section 6, Cr. P.C.

12. As a matter of fact, we were informed that the Municipal Magistrate, who acted in this case was a Presidency Magistrate, and I have no doubt that he would be a criminal Court within the meaning of Section 6, which provides as follows; " Besides the High Court and the Courts constituted under any law other than this Code for the time being in force there shall be five classes of criminal Courts to British India (I) Courts of Sessions, (II) Presidency Magistrates, etc." I think it may be said that the Municipal Magistrate appointed to deal with offences against the Calcutta Municipal Act is a Court constituted under a law other than the Code for the time being in force and comes within Section 6. Consequently, I am not prepared to hold that Section 435 and Section 439, Criminal P.C., do not apply to these proceedings.

13. This point, however, is not of any real importance, for in my judgment the order of the Municipal Magistrate was a judicial order and it was made by him either in the exercise of criminal jurisdiction or in the exercise of civil jurisdiction, and this Court would have jurisdiction to interfere by way of revision under one Code or the other. See *Besast v. Advocate-General of Madras* A I R 1919 P C 31In that case Lord Phillimore, after referring to the fact that the High Courts of Calcutta, Madras and Bombay possessed the power of issuing a writ of certiorari, is reported at p. 160 to have said: " If the order of the Magistrate were a judicial

order, it would have been made in the exercise of his civil or of his criminal jurisdiction, and procedure by way of revision would have been open." That is exactly the point, which was put by the Court to the learned Advocate-General in the course of the argument.

14. In my judgment, this Court has jurisdiction to revise the order of the Municipal Magistrate, and for the reasons already stated I am of opinion that the Rule should be made absolute and the order of the Municipal Magistrate should be set aside.

Panton, J.

15. I agree.