
(1964) 09 CAL CK 0006
In the Calcutta High Court

Case No : Appeals from Original Decrees No's. 511 to 523 of 1961

Ramdhari Singh

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 28-09-1964

Acts Referred:

Calcutta Municipal Act, 1951 — Section 28, 30, 354(1)

Citation : 69 CWN 278 : (1967) 2 ILR (Cal) 436

Hon'ble Judges : P.N. Mookerjee, J;A.C. Sen, J

Bench : Division Bench

Advocate : Bhabani Sankar Bagchi, for the Appellant;Bratendra Narayan Banerjee, for the Respondent

Final Decision : Allowed

Judgement

P.N. Mookerjee, J.—These appeals arise out of as many suits for a declaration that the notices, issued to the several Plaintiffs u/s 354(1) of the Calcutta Municipal Act, 1951, by the District Engineer II, on behalf of the Corporation of Calcutta, were invalid and for a permanent injunction restraining the Corporation of Calcutta from giving effect to the said notices.

2. The suits were brought by the present Plaintiffs who claimed to be tenants of shop-rooms with certain planks, affixed to the same, at premises No. 12, Upper Circular Road. In the suits, the sole Defendant was the Corporation of Calcutta. A preliminary objection was taken by the Defendant to the maintainability of the suits on the ground that they were bad for defect of parties as, according to its submission, the Commissioner, Corporation of Calcutta, was a necessary party to the suits, but he had not been impleaded therein.

3. Reliance was placed in support of this preliminary objection on certain observations contained in the decision of this Court in Shivadhar Sukla v. Corporation of Calcutta (1959) 64 C.W.N. 60 (65-66), seeming to support that the Commissioner was a necessary party to every suit against the Corporation.

The observations in question appear to have been based upon a reading of Section 28 of the above Act, under which all executive power, so far as municipal administration of this city is concerned, is vested in the Commissioner.

4. The learned trial Judge was not very much inclined to accept the said observations in their apparently wide terms but he felt and rightly so, that he was bound by the authority of the said observations, as they were contained in a decision of this Court.

5. The learned trial Judge, however, sought to supplement the said view by adding that the power u/s 354(1) of the Calcutta Municipal Act, 1951, though it was delegated u/s 30 of the above Act to the Commissioner and the Commissioner was really acting as the delegate or agent of the Corporation in the matter of such power, had a special consequence in the instant case as the Commissioner's decision in exercise of such power was, under the terms of the said delegation, final and that, according to the learned trial Judge, made it necessary for a party, seeking to challenge his (Commissioner's) order in the matter, to implead the Commissioner in the suit.

6. In our view, the true legal position has been misconceived by the learned trial Judge. He was, obviously, right in his view that, in exercising powers u/s 354(1) of the Calcutta Municipal Act, 1951, the Commissioner was acting as the delegate of the Corporation of Calcutta. If that be so, he (the Commissioner) was the agent of the Corporation, the principal in the matter, so to say and if the principal is impleaded, there is certainly no necessity in law to implead the agent too. The fact that, on the principal's authority the agent's decision would be final, does not affect the above position the finality, which attaches to the agent's decision, really turns back to the principal and precludes him from interfering with it, as it derives its authority from the principal, a suit, if brought against the principal, would be enough for the purpose of challenging" such an order, made by the agent, however final it may be on the principal's authority. Under the Calcutta Municipal Act, 1951, the Commissioner appears to have two kinds or classes of powers. He has, in the first place, powers, directly conferred upon him by the statute, which are not given to the Corporation as a rival municipal authority or to any standing committee, but are given exclusively and solely by the statute to him (the Commissioner). So far as such powers are concerned, the Commissioner is its sole repository and authority and any challenge to the same cannot be successfully made in his absence. There are, however, powers also given to the Commissioner for, inter alia, carrying out duties, entrusted to him by the Corporation and for this, express provision is made in Section 30 of the above Act. Section 28, where it says that all executive power is vested in the Commissioner, must be read in the above light or context. In the one case, the Commissioner exercises statutory functions, imposed upon him by the statute and in regard to these he is the sole authority. In the other case, he exercises powers as delegate or agent of the Corporation or of any of the standing committees; with regard to these he has no independent existence but must

depend upon the principal, whose authority only he exercises, as in the case before us, under delegation aforesaid and in the instant case, therefore, the impleading of the Corporation, the principal, would be enough for the purpose of challenging the impugned order. The contrary observations, if any, in *Shwadhar Sukla v. Corporation of Calcutta* (Supra), appear to us, if we may say so with respect to be too wide and overlook this vital and important distinction.

7. In the above view, no other question arises for consideration in the present appeals, which are limited to the consideration of the above preliminary point.

8. The appeals will, accordingly, be allowed, the judgments and decrees of the learned trial Judge will be set aside and the cases will be remitted to him for further consideration in accordance with law.

9. Costs of these appeals will abide the final result of the respective suits.

10. Let the hearing of the suits be expedited as much as possible by the learned trial Judge.

A.C. Sen, J.

11. I agree.