
(1926) 06 CAL CK 0007
In the Calcutta High Court

Satish Chandra Bose

APPELLANT

Vs

The Corporation of Calcutta

RESPONDENT

Date of Decision : 03-06-1926

Acts Referred:

Calcutta Municipal Act, 1923 — Section 3, 363

Citation : AIR 1926 Cal 1138 : 97 Ind. Cas. 666

Hon'ble Judges : George Claus Rankin, J; Duval, J

Bench : Division Bench

Judgement

George Claus Rankin, J.—In this case, application is made to this Court in connection with an order made by the Municipal Magistrate of Calcutta authorising the Corporation to demolish two unauthorised corrugated iron sheds at No. 54 Corporation Street at the expense of the owner,—namely, the present petitioner—under Section 363 of the Calcutta Municipal Act of 1923. It is contended on behalf of the applicant in revision that that order should be set aside. The facts out of which the case arises are admitted. The two corrugated iron sheds in question are said by the petitioner to have been completed in 1922 and it is said on behalf of the opposite party that for the present purpose it will be sufficient to say that they were completed before the new Act came into force on the 1st of April, 1924. It appears that before this new Act came into operation, a notice was served on the petitioner to appear before the Roads and Buildings Sub-Committee of the General Committee of the Corporation to show cause u/s 449 of the old Municipal Act, that is to say, Act III (B.C.) of 1899. After the new Act came into force, the petitioner was summoned on several occasions to appear before the Committee of the new Corporation dealing with such matters to show cause why steps should not be taken against him u/s 363 of the new Act. The petitioner does not appear to have made any appearance before the Committee and ultimately that Committee resolved on the 10th July, 1924 to apply to the Magistrate for an order u/s 363 of the new Act and that resolution was afterwards confirmed by the Corporation itself. Accordingly, the Magistrate having enquired into the matter has made the order complained of against the

petitioner. The question now arises whether the Magistrate had any jurisdiction to do so and whether the proceedings were competent proceedings. It is quite clear that whereas originally in March, 1924 proceedings were started under the old Act which was then in force, those proceedings on the coming into force of the new Act were dropped and proceeding were started and continued u/s 363 of the new Act. Now, the contention on behalf of the petitioner is this that in the 46th sub clause of Section 3 of the Calcutta Municipal Act of 1923 there is a definition of the phrase "New Building" and this definition says it "means and includes any building erected from the ground upwards after the commencement of this Act," in other words, it is said, the test Whether a building is new or not within the meaning of the Act has reference to the date of the commencement of the Act. Section 363 says "If the Corporation are satisfied that the erection of any new building has been commenced without obtaining the written permission of the Corporation, or is being carried on or has been completed otherwise than in accordance with the particulars on which such permission was based, then the Corporation may, after giving such notice to the owner of it apply to a Magistrate for an order that the building be demolished by the owner or by the Corporation at the expense of the owner." Now, what is said is that the building in the present case which was completed prior to the commencement of this new Act is not within the scope of Section 363 at all because it is not a new building within the meaning of the definition; and, as to that, the learned Advocate-General has not attempted to contend the contrary. He has not con tended that this building is a new/building within the definition given in Section 3. He says, however, that notwithstanding that fact, Section 8 of the Bengal General Clauses Act (I.B.C. of 1899) shows that the liability as regards the demolition is preserved, notwithstanding the new Act because under the previous Act, namely, Act III of 1899, the liability was established by Section 449. That liability continued according to the argument of the opposite party but the procedure for enforcing the liability has to be distinguished from the liability itself. The contention is that what has happened in this case is that the Magistrate has made an order enforcing the liability which existed u/s 449 of the old Act but in doing that he has applied the procedure of the new Act, being the procedure laid down in Section 363. The question is whether that contention is sustainable or not. In my opinion, it is not sustainable. Section 419 of the Calcutta Municipal Act of (sic) says that "if the General Committee are satisfied that the erection...of any building has been commenced without obtaining the permission of the Chairman, or in contravention of any order passed by the General Committee, the General Committee may apply to a Magistrate, such Magistrate may make an order of demolition," In the present case, the General Committee had come to an end and did not exist at any material time. The General Committee never applied its mind, in fact, to the question of this building and it did never make any application to the Magistrate: What happened was that the Corporation acting in the first instance by a Sab-Committee of seven of the new Corporation took steps and made the application to the Magistrate, and, in my opinion, it is quite impossible to say that, in a case such as this, Section 419 of the old Act, goes on

with the procedure u/s 363 of the new Act made applicable to it. In my judgment, the consequences which may follow as regards the case of a building erected prior to the new Act have nothing to do with the duty of this Court in construing the Statute. I can appreciate the inconvenience that would result from the construction of the Statute as I have stated; but that does not authorise this Court to permit orders being made by Magistrates when there is no jurisdiction to do so. The matter must be set right by the Legislature. In my judgment, it is quite impossible to carry out the provisions of Section 449 of the old Act by means of the procedure set forth in 363 of the new Act. For these reasons, it appears to me that this Rule should be made absolute.

2. I would just add that the case to which we have been referred, namely, the case of Ram Gopal Goenka Vs. Corporation of Calcutta, does not appear to have raised the exact question that calls for determination in this case, though there is some discussion therein with reference to Section 449 of the old Act.

Duval, J.

3. I agree