
(1938) 07 CAL CK 0007
In the Calcutta High Court

Shaikh Badli Meah

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision : 27-07-1938

Acts Referred:

Calcutta Municipal Act, 1923 — Section 363

Citation : AIR 1939 Cal 289

Hon'ble Judges : Derbyshire, C.J.;Bartley, J

Bench : Full Bench

Judgement

Derbyshire, C.J.—In this case the "petitioner, Sheikh Badli Meah, obtained a rule against the Corporation of Calcutta to show cause why an order u/s 363, Calcutta Municipal Act, directing the demolition of a hut by the Corporation at the expense of the petitioner, should not be set aside. The relevant facts are these : The petitioner became the owner of a hut situate on some land inside the Municipality of Calcutta in 1929 and has been the owner ever since. In May 1933 the Building Inspector of the Calcutta Corporation observed that work was being done to that hut. He saw that work was being done on 2nd May. He gave notice for it to cease. On 7th May it had stopped, but on 4th August 1933, he found that the work had been completed. The nature of the hut in question is not stated and must be gathered from a passage in the Municipal Magistrate's judgment stated hereafter. These proceedings were taken by the Calcutta Corporation on the complaint of the District Surveyor on 4th November 1936 and the petitioner was summoned to show cause why an order should not be made u/s 363, Municipal Act of 1923 directing that the work of all erection or reerection of the building done at premises No. 4 Wellesley 2nd Lane or so much of the same as has been unlawfully executed should be demolished or altered by the Corporation of Calcutta at his expense on the ground that there had been re-construction of a one-storeyed hut without sanction. The Municipal Magistrate states in connexion with the erection of the hut that the evidence shows that new sal posts were fixed, new bamboo rafters were placed on the roof frame and new bamboo walls were provided on all sides. To provide the new roof frame on new sal posts, the

old roof frame must have been removed altogether. This work clearly constitutes an act of reconstruction, and on that basis he has made the order for demolition. u/s 363 he may, in a case of this kind, make such an order if there is erection of any new building or there has been an alteration of or addition to any building contrary to the provisions of the Act. "New building" is denned by Section 3, Sub-section 46 of the Act. It states:

The expression "new building" means and includes:

(a) any building erected from the ground upwards after the commencement of this Act;

(b) any building which, having collapsed or being demolished or burnt down for more than one-half of its cubical extent, is re-ereeted wholly or partially after the commencement of this Act, whether the dimensions of the re-erected building are the same as those of the original building or not ;

(c) any hut which is converted into a masonry building after the commencement of this Act ; and

(d) any building not originally constructed for human habitation which is converted into a place for human habitation after the commencement of this Act;

Explanation. - Sub-clause (b) applies whether more than half the cubical extent has collapsed or been demolished or burnt down at the same time or at different times.

2. The learned Magistrate has not found in this case whether there has been erection of a new building within the meaning of the Act or not. His mind does not appear to have been directed to the evidence which is necessary to establish that fact and it is impossible for us to say on the evidence whether there has been erection of a new building or not. Alterations in a building suggest change of its character or position. The learned Magistrate does not seem to have directed his mind to that question either. Nor does the learned Magistrate seem to have directed his mind to the question whether there was an addition to the building. The evidence does not show that there was. What the learned Magistrate has done is to order demolition of the building on the ground that there has been a reconstruction of it. The word "reconstruction" may mean any one of a number of things. But the fact that there has been a reconstruction does not give the Magistrate a right to order demolition in a case of this kind, unless there has been erection of a new building or alteration of or addition to the existing building. The learned Magistrate has not found, as I have said, any erection of a new building or any alteration of an old building or any addition to a building. Consequently, in my opinion, the order of the learned Magistrate cannot be sustained. It is essential that the provisions of the Municipal Act should be enforced in the interest of public health. At the same time it is necessary that they should be enforced according to law. The result is that the rule is made absolute.

Bartley, J.

3. I agree.