

(1934) 05 CAL CK 0022
In the Calcutta High Court

Shamsuddin Ahmed

APPELLANT

Vs

Charu Chandra Biswas and Others

RESPONDENT

Date of Decision : 22-05-1934

Acts Referred:

Calcutta Municipal Act, 1923 — Section 39

Citation : AIR 1934 Cal 713

Hon'ble Judges : Lort Williams, J; Lord Williams, J; Costello, J

Bench : Full Bench

Judgement

Costello, J.—This matter comes before us by way of appeal from an order of Roy, J., made on. 3rd May 1934 whereby he refused to grant an interim injunction pending the hearing of the suit. The suit is brought by one Shamsuddin Ahmed, who is described as a ratepayer, voter and councillor of the Calcutta Corporation on behalf of himself and other elected Councillors of the Calcutta Corporation against ten defendants who are the persons nominated as members of the Calcutta Corporation by the Local Government under the provisions of Section 39, Calcutta Municipal Act 1923. An order was made that notice should be given by advertisement that the plaintiff was suing on behalf of himself and other persons in order to give an opportunity to the persons, whom the plaintiff purported to represent, to come into the suit if they so chose. We are informed that a certain number of the other elected members of the Calcutta Corporation have applied to be joined as defendants in the suit; The plaintiff is asking in the suit for several declarations and the reliefs which he is claiming are in these terms; (1) for a declaration that the plaintiff and the other persons on whose behalf the suit has been instituted are the only councillors entitled to attend the meeting of 21st April 1934 and subsequent meetings of the Calcutta Corporation; (2) for a declaration that the plaintiff and the other persons on whose behalf the suit has been instituted along with the alderman alone constitute the whole Corporation; (3) for a declaration that the appointment of the defendants is illegal and that they are not entitled to take part in the proceedings of the Calcutta Corporation, and (4) for art injunction restraining the defendants from

attending any meeting of the Calcutta Corporation or from acting any way as Councillors of the said Corporation.

2. The real point at issue in the suit is indicated in the third of these prayers. But shortly the plaintiff's case amounts to this: that the ten original defendants have not been lawfully nominated by the Government as members of the Corporation and therefore they are not entitled to take part in the proceedings of the Corporation. I need not specify in detail the reasons given by the plaintiff in his plaint for the contention that the defendants are not lawful members of the Corporation and were not members at the time when the suit was instituted. These are matters which will have to be determined in the suit when it comes to trial. That the only question before Roy, J., was whether there should be any interlocutory injunction granted to restrain the defendants from functioning as Councillors pending the hearing of the suit. The learned Judge dealt with the matter very fully and carefully and although the proceedings were only interlocutory proceedings the learned Judge thought fit to give quite a full and reasoned judgment explaining why he decided to refuse the application. In course of that judgment he said:

I do not think it would be desirable on the hearing of an interlocutory application to express any opinion on the question as to whether the appointment of the defendants is ultra vires or not, or as to whether the suit is maintainable or not. Nor do I think, in the circumstances of this case is it necessary for me to come to a finding at the present moment on the question as to whether the suit or the present application is mala fide or not, as I am clearly of opinion that this is not a case in which I should grant an injunction pending hearing of the suit.

3. Mr. Banerjee on behalf of the first two defendants took a preliminary objection that no appeal lies from the refusal of a Judge of this Court to grant an interim injunction. I cannot accept that contention. In my opinion, it is right and proper that there should be a right of appeal in a matter of this kind; but what the Court of appeal has to consider is simply whether or not the learned Judge who dealt with the matter properly exercised the discretion which he undoubtedly possessed. It is to be borne in mind at the outset that the object of an interim, injunction is to preserve status quo. Generally it is applied for and granted where there is an apprehension that damage to property of the plaintiff or, at any rate, some definite injury to the plaintiff will or is likely to be caused if a certain order is not made. The learned Judge has expressed his opinion, and quite definitely, that this was not a case where any serious injury would fall upon the plaintiff if he is not protected by an order of the Court. In my opinion, the learned Judge has applied the right criterion which is applicable to a matter of this character. He has asked himself the question whether the plaintiff is likely to suffer any damage or any irreparable damage and he came to the conclusion that the plaintiff would not suffer any serious damage.

4. Mr. Hazra arguing for the plaintiff appellant before us has in effect conceded that the learned Judge looked at the matter from the right point of view, and

sought to argue that the learned Judge's opinion was not correct in the circumstances of the case. But in answer to a number of questions from me, he was totally unable to state or even to suggest in what manner the plaintiff in this particular case is likely to suffer any serious damages or even any damage at all if this interlocutory injunction is not granted. Indeed, it is very difficult on the face of it to see in what manner it can reasonably be said that any right residing in the plaintiff could be infringed by the defendants if they are allowed to function as Councillors of the Calcutta Corporation. Certainly there is no infringement of any right which will cause to the plaintiff permanent and irreparable damage. What is more important, I think, is this that if hereafter it is decided that the plaintiff's contention in the suit is not sustainable, then if an injunction were now granted, the ten defendants would suffer exactly in the similar way as the plaintiff would suffer if the defendants are allowed to continue to function as Councillors of the Corporation. In my opinion, the learned Judge was quite right in coming to the conclusion that no serious damage was being done to the plaintiff and therefore it was not a case in which an interim injunction should be granted. If one applies the test whether or not it is desirable to preserve the status quo, which is the ordinary test applied where there is any question of damage to parties, then obviously the effect of not granting a temporary injunction in a case of this character is to preserve the status quo till the trial of the suit.

5. It has been suggested by Mr. Hazra that it is desirable in the interests of all parties that the hearing of the suit should be expedited and to that course the defendants have no objection to offer. We think this is a case where it is desirable that the points raised in the suit should be determined as early as possible and therefore anything that can be done to expedite the final hearing of the suit should be done. In order to expedite the hearing, the right course is that an application should be made on the Original Side in the ordinary course for directions. This appeal will be dismissed with costs.

Lort Williams, J.

6. I agree.