

(1952) 07 CAL CK 0014
In the Calcutta High Court
Case No : Criminal Revn. No. 237 of 1952

Subala Devi	Vs	APPELLANT
Corporation of Calcutta		RESPONDENT

Date of Decision : 11-07-1952

Acts Referred:

Calcutta Municipal Act, 1923 — Section 3(48), 488(1), 488(2), 527, 527(2)
Calcutta Municipal Rules, 1951 — Rule 4(1)
Criminal Procedure Code, 1898 (CrPC) — Section 403
West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 — Section 12

Citation : AIR 1953 Cal 357 : 57 CWN 461 : (1954) 2 ILR (Cal) 131

Hon'ble Judges : P.B. Mukharji, J

Bench : Single Bench

Advocate : Ajit Kumar Dutta, for the Appellant; Sushilkumar Basu, for the Respondent

Judgement

P.B. Mukharji, J.—This is a Rule directed against the order of the, Municipal Magistrate of Calcutta dated 4-3-1952 convicting the petitioner u/s 488(2), Calcutta Municipal Act, 1923, and sentencing her to a daily fine of Annas four from 14-3-1950 being the date of her first conviction u/s 488(1) of that Act amounting to a total fine of Rs. 180-4-0 upto 4-3-1952 which is the date of the order now complained of.

2. The facts of the case may be briefly stated. The petitioner Subalabala Devi is the owner of premises No. 27/2, Jugal Kishore Das Lane. She was required by the Corporation

"to secure and repair the entire building except the portion collapsed and requisitioned to be demolished within seven days."

This was a requisition by the Corporation under Rule 4(1) of Schedule 18, Calcutta Municipal Act. She was convicted on 14-3-1950 u/s 488(1), Calcutta Municipal Act read with Rule 4(1) of Schedule 18 for non-compliance with the requisition. Even after the conviction the petitioner did not secure and repair the

building. Thereafter the Corporation of Calcutta started the present proceedings on 2-5-1950 u/s 488(2), Calcutta Municipal Act for continuing the offence of non-compliance with the requisition. After repeated adjournments which she asked to comply with the requisition and after being granted such adjournments by the Municipal Magistrate she was again convicted on 4-3-1952 u/s 488(2), Calcutta Municipal Act by the order now complained of.

3. The first defence of the petitioner is inability to comply with the requisition for reasons which are beyond her control. Her case is that it was impossible to secure and repair the said premises as the tenant opposite party therein did not vacate the same. She had served the tenant with a notice of ejectment on 8-9-1949 after having herself received notice under Rule 4(1) of Schedule 18, Calcutta Municipal Act requiring her to repair the said building in the terms I have mentioned. The tenant refused to comply with the notice of ejectment whereupon the petitioner instituted proceedings u/s 41, Presidency Small Cause Courts Act for recovery of possession of the said premises on the ground that the petitioner required the said premises for the purpose of building and rebuilding. While the proceeding was pending in the Small Cause Court the petitioner was convicted on 14-3-1950 by the Municipal Magistrate u/s 488(1), Calcutta Municipal Act. Then on 10-3-1951 the petitioner obtained from the Small Cause Court a decree or what is more properly called an order for ejectment directing possession to be delivered to the petitioner on 16-3-1951. But the proceedings did not conclude at that stage.

The tenant preferred an appeal before the Special Bench of the Small Cause Court with the result that on 12-7-1951 the tenant's appeal was allowed & the petitioner's suit dismissed. Against that order of the Special Bench of the Small Cause Court the petitioner moved the High Court on 19-11-1951 in revision and obtained a Rule in Revision Case No. 2874 of 1951. Such Rule is still pending final decision. While that Rule was pending the petitioner was convicted on 4-3-1952 u/s 488(2), Calcutta Municipal Act for continuing the offence of non-compliance with the requisition.

4. On these facts it is contended by the petitioner that throughout the relevant time she has tried her best to get possession of the premises but has not succeeded yet and unless she does obtain such possession from the tenant it is not possible for her to secure and repair the building as required by the requisition of the Corporation. In aid of this contention reliance has been placed on the fact that she herself proved that the house was in a dangerous condition and required rebuilding and that her whole case in the Small Cause Court was that she required the premises for the purpose of building and rebuilding. While I cannot but have every sympathy for the petitioner in a situation such as this yet it will in my view be unjustifiable to permit such sympathy to override clear statutory provision enjoining the civic responsibility to secure buildings in a dangerous condition likely to harm and injure human life in the city. The Municipal Act makes special provision to meet such a situation. That provision is

contained in Section 527, Calcutta Municipal Act, Under that provision the owner of a building may apply to the Small Cause Court when the occupier prevents the owner from complying with any provisions of the Municipal Act or of any Rule or Bye-Law made therein or with any requisition.

The scheme laid down in the three different sub-sections of Section 527, Calcutta Municipal Act is clear. In such a case the owner may apply to the Court of Small Causes and that Court on receipt of such application from the owner may make a written order requiring the occupier of the building to afford all reasonable facilities to the owner for complying with the provisions of the Municipal Act or with the requisition thereunder. The scheme under this section makes it clear that within 8 days from the date of such order the occupier shall afford all such reasonable facilities to the owner for the purpose aforesaid. Sub-section (3) of that Section then proceeds to provide that in the event of the occupier's refusal to afford such reasonable facilities according to the order of Small Cause Court, the owner shall be discharged during the continuance of such refusal from any liability which such owner will otherwise incur by reason of the failure to comply with the provisions of the Municipal Act or any requisition thereunder.

Now in this case when the petitioner was served with the notice under Rule 4(1) of Schedule 18, Calcutta Municipal Act she could have and should have proceeded u/s 527, Calcutta Municipal Act if she felt that her proceedings in the ejectment in the Small Cause Court after service of legal notice of ejectment on the tenants would take a long time, as they were bound to take. At any rate she should have moved u/s 527, Calcutta Municipal Act after her first conviction u/s 488(1) of the Act. But she did not adopt the procedure laid down u/s 527, Calcutta Municipal Act. If she had done so then in that event the tenant's refusal to afford reasonable facilities for repair would have discharged her from all liability for conviction by reason of Section 527(3), Calcutta Municipal Act.

5. In order to meet this argument Mr. Dutt appearing for the petitioner has argued that Section 527, Calcutta Municipal Act does not apply to this case on two grounds. First it is said that the word "occupier" u/s 527, Calcutta Municipal Act does not include a tenant. Secondly the West Bengal Premises Rent Control Act of 1950 is said to override Section 527, Calcutta Municipal Act. Neither of these two grounds should in my opinion be sustained and I am unable to accept the argument that Section 527, Calcutta Municipal Act does not apply to this case. The word "occupier" is defined by Section 3(48), Calcutta Municipal Act to include any person for the time being paying or liable to pay to the owner the rent for the building or damages on account of occupation of such building and also includes a rent free tenant.

I have therefore no hesitation in holding that a tenant is an occupier within the meaning of the Calcutta Municipal Act. Then Mr. Dutt develops a further refinement of his argument by saying that a tenant whose tenancy has been terminated by notice to quit is not a person paying or liable to pay rent within the meaning of the definition of "occupier". But even that refinement cannot

succeed because Section 3(48), Calcutta Municipal Act mentions even a person liable to pay damages on account of the occupation of the building. A tenant whose tenancy has been terminated by a notice to quit will in any event be a person liable to pay damages or mesne profits and would therefore come within the meaning of the word "occupier". The other branch of the argument that the Rent Act of 1950 overrides the Calcutta Municipal Act is developed on the basis of the words "notwithstanding anything to the contrary if any other Act or law" used in Section 12 of the Rent Act of 1950. It is contended that because of these words in Section 12 of the Rent Act, 1950 no order can be made by the Small Cause Court u/s 527(2), Calcutta Municipal Act requiring the occupier tenant to vacate the premises. This argument proceeds on a fundamental fallacy. That fallacy is that Section 12 of the Rent Act of 1950 is only intended to prevent and restrict an order or decree for the recovery of the possession of any premises except on ground specified in the Act. It so prevents and restricts notwithstanding any law to the contrary. But the Small Cause Court acting u/s 527(2) Calcutta Municipal Act does not make an order or decree for the recovery of possession. It only makes an order requiring the occupier of a building "to afford all reasonable facilities" to the owner to comply with the requisition under the Calcutta Municipal Act. It is entirely erroneous in that context to suggest that such an order of the Small Cause Court is of the nature of an order or decree for the recovery of possession contemplated by Section 12 of the Rent Act of 1950. Here again it is unwise to forget that this provision is intended to secure safety for human life by protecting and securing dangerous buildings in the city.

It is a responsibility alike of the Corporation as well as its citizens. I am not prepared by a process of any technical interpretation to remove that responsibility either from the Corporation or from the citizens of this great city. As I read these two provisions of Section 527, Calcutta Municipal Act and Section 12 of the Rent Act I see no conflict between them and they are perfectly reconcilable. So I read them in public interest. Where there is express provision in the Calcutta Municipal Act the course is clear. It is laid down in Section 558, Calcutta Municipal Act, 1923 that except as in that Act otherwise expressly provided nothing in that Act shall be deemed to affect the provisions of any other enactment. In my judgment Section 527, Calcutta Municipal Act and Section 12 of the Rent Act of 1950 are not concurrent Statutes invading the same field of operation. They contemplate different orders and different categories.

6. The last argument very ably advanced by Mr. Dutt on behalf of the petitioner is that no offence has been committed by the petitioner u/s 488(2), Calcutta Municipal Act. This argument is developed on a number of points. The requisition under Rule 4(1) of Schedule 18, Calcutta Municipal Act in this case was on the following terms: "To secure and repair the entire building except the portion collapsed and requisitioned to be demolished within 7 days". It is said that on the terms of this requisition the period is specified to be 7 days. Therefore when the petitioner failed to comply with the requisition she was convicted u/s 488(1) Calcutta Municipal Act. The requisition spent its force after 7 days mentioned

there. There was no further requisition. Hence no continuance of any offence for not complying with any other requisition. According to Mr. Dutt a further conviction u/s 488(2), Calcutta Municipal Act can only be maintained on a fresh requisition under Rule 4(1) of Schedule 18 of the Act. As that was not done and as there was no further requisition after the first conviction of the petitioner u/s 488(1) of the Act the conviction for continuing the offence u/s 488(2) of the Act is contended to be bad in law.

7. This argument though ingenious suffers from many basic infirmities. In the first instance as I read the terms of the requisition quoted above it does not mean that securing and repairing the entire building was to be done within 7 days. That would be creating a physical impossibility having regard to the nature of the building and the work involved which cannot reasonably be done in 7 days. The true and proper meaning of the requisition is that the period of 7 days mentioned there was only the period within which the portion of the building was to be demolished and which was not obviously therefore to be secured and repaired. What was to be secured and repaired under the requisition was the entire building except the two portions; -- one already collapsed and the other requisitioned to be demolished within 7 days. But there was no time limit fixed in the requisition notice under Rule 4(1) to secure and repair the building. Therefore failure to comply with that requisition continued even after the first conviction. Hence the petitioner did continue to commit offence specified u/s 488(1) and comes within the further offence of continuance u/s 488(2) of the Act.

But there is a possible answer on behalf of the petitioner on this point. It is that u/s 510(a), Calcutta Municipal Act every requisition under that Act must prescribe a reasonable time within which the requisition is to be carried out. But the validity of this answer depends on the question whether failure to prescribe the time limit in the notice or requisition completely vitiates such requisition and makes it void, or whether law will imply such reasonable time in case the requisition itself fails to specify it. Having regard to the view I take, and which I will presently state I need not decide this incidental question. The second infirmity of this argument is that if fresh requisitions are to be given then it would no longer be a case of continuance of offence u/s 488(2), Calcutta Municipal Act in such case of non-compliance with the further requisition. In that event the offence, will again be one u/s 488(1)(c) of the Act. Because then the offence will be failure to comply with such fresh requisition lawfully made under the Rules as stated u/s 488(1)(c) of the Act.

Thirdly even if the requisition is construed in the way Mr. Dutt contends namely that the entire requisition is intended to be complied with within 7 days his argument cannot be sustained. The provision in Section 488(2) of the Act makes it clear that whoever after having been convicted of any offence referred to in Clauses (a), (b) or (c) of Sub-section (1) continues to commit such offence shall be punished for each day after the first during which he continues so to offend, with the fine which may extend to the amount mentioned in the table to that

section. The proper interpretation of this section to my mind is that the words "continues to commit such, offence" used in this Sub-section (2) of Section 488 is that (sic) the particular offence for which the person has been previously convicted u/s 488(1) is allowed to continue. That previous offence was failure to comply with the requisition within 7 days. That period of 7 days was allowed to pass without complying with that requisition. What was therefore a primary offence u/s 488(1)(c) of the Act becomes the repetitive offence of continuance under this Sub-section (2). It is true that the requisition formed the cause of the first offence u/s 488(1)(c). But it did not spend its force in the sense that it still continues to provide the basis of the fresh offence of continuance contemplated u/s 488(2) of the Act. Such an interpretation does not mean that the accused is being convicted twice for the same offence which certainly cannot be. The theory of prohibition of double jeopardy in criminal jurisprudence is a misleading siren in this context where the gist of municipal offence is by Statute an offence of continuance and whose whole purpose is to make a citizen discharge his civic responsibility in securing his own building from being dangerous to human life and thus ensure safety in the city. Here the Statute does not make it the same offence but provides that continuance of the offence will itself be another species of offence under this Sub-section (2) for which a different penalty is imposed so that not only the act of prime failure is an offence, but also its continued failure another offence.

8. To take any other view would make Sub-section (2) of Section 488 completely nugatory in the case of offence of continuance mentioned in Clause (c) of Sub-section (1) of Section 488 of the Act. It is necessary perhaps to illustrate this point, Normally it is provided by Section 510 of the Municipal Act that a requisition shall prescribe a reasonable period within which such requisition is to be carried into effect. In that event in every case under Clause (c) of Section 488 (1) of the Act a conviction once made will mean that there can never be a further offence of continuance u/s 488 (2) of the Act. In that view the provision in Sub-section (2) of Section 488 of the Act, that whoever after having been convicted of an offence referred to in Clause (c) of Sub-section (1) continues to commit such offence shall be punished, becomes a dead letter because no one can commit such offence. It is said then a conviction u/s 488 (2) of the Act is possible even in that case, if a fresh requisition under Rule 4 (1) of Schedule 18 of the Act is given. But then, non-compliance with such fresh requisition will always be an offence u/s 488 (1) (c) of the Act and not u/s 488 (2) thereof.

9. This disposes of all the arguments made on this Rule.

10. On behalf of the Corporation a reference was made to the case of -- Phani Bhusan and Another Vs. Corporation of Calcutta, . In that decision Roxburgh J. observes that where the accused has been punished u/s 488 of the Act it is no part of the Magistrate's business either to purport to impose daily fine for offences not yet committed or to make threats about what may happen in future. In that case the Municipal Magistrate committed the error of adding to his order

of fine in respect of a conviction under Sections 271/488, Calcutta Municipal Act an order of threat that the accused would be penalised daily on the prayer of the Corporation. In that case Roxburgh J. holds that

"If the order is not complied with it is for the Corporation to apply for a separate summons in a separate case and the Magistrate may then if satisfied that the offence has been committed for any number of days impose a further fine appropriate to that number of days and so on "ad infinitum" or until the party does comply with the order."

This view is in accord with the view that I have taken. Here also there was a separate summons in a separate case u/s 488 (2) of the Act and the conviction properly made upon such summons. In the order of the Municipal Magistrate in this case he has properly sentenced petitioner to pay a fine of Rs. 180-4-0 for the, period from 14-3-1950 which was the date of the first conviction until the date of 4-3-1952 being the date of this order of the Magistrate which is now complained of at a rate of As. 4 per day. That is a justifiable punishment under column 4 to Sub-section (2) of Section 488 of the Act and is well and very reasonably within the limits imposed by the statutory table.

11. For the reasons stated above I discharge the Rule and vacate the "ad interim" order of stay.