

(1923) 04 CAL CK 0035
In the Calcutta High Court

The Corporation of Calcutta

APPELLANT

Vs

Bijoy Kumar and Others

RESPONDENT

Date of Decision : 10-04-1923

Acts Referred:

Calcutta Municipal Act, 1923 — Section 408, 575

Citation : AIR 1924 Cal 334

Judgement

1. The plaintiffs-respondents are the owners of premises No. 12-1, KPuddopookur Lane, and Nos. 34-1 and 37-3, Watgunge Street, which are bustee lands in occupation of their tenants. The lands are situated within the jurisdiction of the Municipal Corporation of Calcutta and are subject to the operation of Chapter XXVI of the Calcutta Municipal Act, 1899 (Act III of 1899 B.C.). The defendant Corporation called upon the plaintiffs to carry out improvements in the bustee, and upon their failure to comply with the requisition, instituted successive criminal prosecutions to compel execution of the works. The result has been that the plaintiffs have been convicted on no less than eight occasions and sentenced to pay fines of various amounts u/s 575 read with Section 408 of the Calcutta Municipal Act. The plaintiffs have thereupon instituted the present suit for an injunction against the Corporation. The plaintiffs pray that the Corporation be restrained by an injunction (a) from taking any action or proceeding for non-compliance with the requisition for carrying out improvements in their premises, and (b) from instituting or continuing any proceeding or putting the law in motion for enforcing the requisition. The claim for an injunction was based on the assertion that the Corporation had not only initiated proceedings without strict compliance with the provisions of the law in that behalf and without proper service of notice upon the parties interested, but had instituted prosecutions against them in perverse exercise of alleged powers not authorised by law. The Corporation repudiated these allegations and maintained that they had acted in strict compliance with statutory provisions. The Subordinate Judge came to the conclusion that the Corporation had not acted without jurisdiction, but granted an injunction, first, because the plaintiffs

were not in a position to carry out all the improvements by reason of the obstructive attitude of some of their tenants on the premises, and secondly because the Corporation had taken action u/s 409 with a view to carry out the improvements themselves. The present appeal has been brought by the Corporation to test the propriety of this order.

2. Section 406 of the Calcutta Municipal Act authorises the General Committee to arrange for inspection, report and preparation of standard plan by a medical officer and an engineer, in cases where the improvement of a bustee is a matter of emergency. Section 407 requires the General Committee to approve such standard plan after hearing objections of the owner and after making such modification as they may deem proper. Section 408 next provides that the General Committee may cause a written notice to be served upon the owners of the land, requiring them to carry out all or any of the improvements or any portion thereof. Section 409 empowers the General Committee to carry out such improvements in default of the owners and to realise the expenses from them. Section 574 makes non-compliance with requisitions u/s 408 punishable with a fine, and Section 575 makes the continuing offence punishable with a daily fine after a first conviction.

3. In the present case, it was contended that the notices contemplated by Sections 407 and 408 had not been duly served, and that the proceedings were consequently without jurisdiction, as indicated in *Kanailal v. Corporation of Calcutta* 11 C.W.N. 508. The Subordinate Judge has held on the evidence that the requirements of Sections 406, 407 and 408 were fulfilled and the requisite notices were served in the manner prescribed by Section 593. He has further pointed out that receipt of the notices under Sections 407 and 408 is admitted by one of the plaintiffs. The conclusions of the Subordinate Judge are amply supported by the evidence on the record. In these circumstances, the view cannot be maintained that the General Committee acted illegally and without jurisdiction, when they called upon the plaintiffs to make the improvements u/s 408.

4. The plaintiffs have contended, however, that they should not be held responsible for failure to comply with the requisition made by the Corporation, inasmuch as the improvements could not be carried out while the land was still occupied by tenants who could not be removed. Section 622 authorises the owner of any land, who is prevented by the occupier thereof from complying with any requisition made in respect of the land, to apply to the Chief Judge of the Court of Small Causes of Calcutta. The Chief Judge, on receipt of such application, may make a written order requiring the occupier to afford all reasonable facilities to the owner for complying with the requisition. The occupier shall, after eight days, afford all such reasonable facilities as may be prescribed in the order and, in the event of his continued refusal so to do, the owner shall be discharged during the continuance of such refusal from any liability which he would otherwise incur by reason of his failure to comply with the requisition. In

the case before us, the plaintiffs invoked the aid of Section 622 and yet three tenants, Salemah Bibi, Jabanulla Serang and Solaman Molla refused to comply with the order. The Subordinate Judge has, however, found that although these three tenants refused to afford facilities to the plaintiffs, and thus rendered it impracticable for them to carry out completely all the improvements required by the General Committee, the plaintiffs could have carried out some at least of the improvements. But the plaintiffs have not done anything at all to comply with the requisition. In such circumstances, Section 622, Sub-section (3), is of no assistance to the plaintiffs. It would be unreasonable to construe that provision in the sense that an owner, who has not complied with a requisition at all is discharged from liability, merely because the occupier of a portion of the land has rendered compliance impracticable only in part. Upon a fair interpretation of Section 622 we must hold that the owner is discharged from liability only to the extent that compliance is rendered impossible by the conduct of the occupier.

5. The plaintiffs have next urged that the notice u/s 408 was waived by the Corporation, when it was decided to take action u/s 409 and to have the improvements carried out by the General Committee at the cost of the owner. We are of opinion that there is no solid foundation for this contention. Non-compliance with requisition u/s 408 imposes a liability on the owner. If the requisite improvements are carried out by the General Committee u/s 409, the default on the part of the owner vanishes; but till the work has been completed, the default remains, entire or partial, and the liability of the owner to be prosecuted still continues in operation. This view is not opposed to the decision in *Emperor v. Nadir Shah* (1905) 29 Bom. 35. There it was ruled that if after service of notice, negotiations ensue, which are tantamount to a request by the defaulter and a consent by the Commissioner to reconsider the matter, such negotiations operate as a waiver of the notice. This does not justify the inference that if the General Committee decides to take recourse to Section 409 the owner is forthwith absolved from the liability he has already incurred by reason of his failure to comply with the requisition u/s 408. In the case before us, a drain was constructed departmentally as a temporary measure during the period of continued default on the part of the plaintiffs. No doubt half of the costs of construction was realised from them, but this did not extinguish their liability on account of failure to carry out such of the improvements as could have been effected notwithstanding the obstructive attitude of three of their tenants. We are of opinion that Section 409 is of as little avail to the plaintiffs as Section 622.

6. There has been much discussion at the Bar as to whether a Court of Equity has jurisdiction to restrain criminal proceedings for the recovery of a penalty imposed by a statute for breach of its enactments. An authority for an affirmative answer has been traced to the decision of Lord Hardwick, in *Mayor of York v. Pilkington* (1742) 2 Atk. 302 though a contrary view had been indicated by Holt, C.J., in *Holderstaffe v. Saunders* (1694) 6 Modn 12 : see also the decision of Lord Hardwieke in *Montague v. Dudman* (1751) 2 Ves. (Sen.) 396. But the tendency of modern decisions is that even if the Court has such jurisdiction it will not

interfere as a general rule *Saull v. Browne* (1874) L.R. 10 Ch. 64, *Kerr v. Corporation of Preston* (1876) 6 Ch. D. 463, *Headley v. Bates* (1880) 13 Ch. D. 463, *Standard v. Vestry of Saint Giles* (1882) 20 Ch. 190, *In re Briton Medical and General Life Assurance Association* (1886) 32 Ch. D. 463, *Grand Junction Water Works Co. v. Hampton Urban Council No. 1* (1898) 2 Ch. 331, *Devonport Corporation v. Tozer* (1902) 2 Ch. 195, *Merrick v. Liverpool Corporation* (1910) 2 Ch. 449. The principle deducible from these decisions is that though the extreme position cannot be maintained that there : is absolutely no jurisdiction in the Court to restrain proceedings before a Magistrate, the Court will not interfere, unless in very special circumstances by way of injunction or declaration of right, where the ; Legislature has pointed out a mode of; procedure before a Magistrate: see also; *Emperor of Austria v. Day* (1861) 3 De. G.F. and J. 217. A similar view has been adopted in the Courts of the United States, and relief has been frequently denied on the ground that the proceedings were for the enforcement of a criminal or quasi-criminal nature, and that equity declines to interfere with the administration of the criminal laws. It has been maintained, however, that a Court of equity may in a proper case interfere by injunction to restrain an act or proceeding criminal or quasi-criminal in form, which tends to the impairment of property rights and proceedings for the enforcement of municipal ordinances such as the one before us, have been treated as quasi-criminal (*Pomeroy on Equity Jurisprudence*, Section 1777). We need not pursue this point further, but it should not be overlooked that the judicial decisions on the subject in other jurisdictions were largely rendered necessary by the system of classification of Courts prevalent there. Apart from this we have the well settled rule that it is not the practice of the Court to interfere with corporate bodies, unless they are manifestly abusing their powers, *Duke of Bedford v. Dawson* (1875) L.R. Eq. 353, *Ahmedabad Municipality v. Manilal* (1895) 19 Bom. 212. It is consequently unnecessary to consider the terms of Section 56(e) of the Specific Relief Act, which provides that an injunction cannot be granted to stay proceedings in any criminal matter, and, which, it has been suggested, should be construed to imply that there is no bar to enjoining contemplated prosecutions where proceedings are only threatened and are not yet pending. Nor need we adopt the extreme view that an injunction should not be granted to prevent the institution of criminal proceedings for non-compliance with requisitions of municipal authorities, merely because the person concerned when prosecuted for an alleged default, may be acquitted on proof that the action of the Corporation was ultra vires. On the facts established in the case before us, we are clearly of opinion that an injunction should not be granted.

7. The result is that this appeal must be allowed and the suit dismissed with costs in both Courts. The hearing fee in this Court is assessed at five gold mohurs.