

**(1948) 01 CAL CK 0001**  
**In the Calcutta High Court**

The Municipal Commissioners

APPELLANT

Vs

Provakar Prosad Singh

RESPONDENT

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**Date of Decision :** 30-01-1948

**Acts Referred:**

Bengal Municipal Act, 1932 — Section 370(1)(ix)

**Citation :** (1948) 01 CAL CK 0001

**Hon'ble Judges :** Lodge, J;G.N. Das, J

**Bench :** Full Bench

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**Judgement**

G.N. Das, J.—This is an appeal by the defendant, Municipal Commissioners of North Barrackpur Municipality against an order of remand passed by Mr. K.C. Das Gupta learned District Judge Alipur, District 24 Parganas.

2. The plaintiff's case is that he was a lessee of certain lands for a term of nine years from 12-2-1939, that on 27-2-1939 he applied for the grant of a licence u/s 370 (1)(ix), Bengal Municipal Act, 1932, for establishing a brick field on the said land. The defendant wrongfully, unjustly, maliciously and illegally refused the prayer and by a letter dated 25-3-1939 informed him of the fact of refusal. On 24-11-1939 the plaintiff filed a second application which was similarly, refused and the plaintiff was informed of the fact of refusal by a letter dated 14-12 1939. On 19 2-1941 the plaintiff filed another application which was refused on 15-2-1942 at a meeting of the Commissioners. The resolution was passed by the Chairman and his party maliciously giving certain reasons, but the real reason was that the plaintiff and his uncle had a brick-field at Carulia, the Chairman wanted 2 lacs of bricks from the plaintiff and his uncle at pre-war rate, though the price of bricks had gone up abnormally, the plaintiff agreed and supplied the bricks but when the plaintiff's men went to collect the bill for the price of the bricks supplied, the Chairman did not pay but laid a false charge that the plaintiff had promised to pay a bribe of Rs. 1000 to another person for securing the licence applied for. The Chairman also set up the school boys to put forward a claim to the said land as a playground and was instrumental in the

filing of criminal cases against the plaintiff. The plaintiff was convicted in the trial Court but was acquitted on appeal. The plaintiff prayed for the following reliefs: (a) For a declaration that the resolution passed on 15-2-1942 is arbitrary, illegal, unjust and ultra vires and is liable to be set aside, (b) For a mandatory injunction directing the defendant to forthwith grant a licence under. Section 370 (1)(ix), Bengal Municipal Act 1932. (c) For damages for Rs. 1000 for wrongfully and arbitrarily preventing the plaintiff from burning and baking bricks, tiles etc., for the last four brick manufacturing seasons.

3. The defendant filed a written statement denying the allegations as to malice and disputing the claim both on the merits and on the ground of limitation and pleading absence of jurisdiction of the civil Court to try the suit. On the pleadings, nine issues were raised. The parties by a joint petition filed on 12-5-1943 prayed for a decision of some preliminary issues viz., issues 1, 3 and 5 i.e. maintainability of the suit, jurisdiction of the Court and limitation. The prayer was allowed and the parties were heard on these issues only.

4. As a result of such hearing the trial Court held that the civil Court had no jurisdiction to try the suit, that the plaintiff might get damages for an insignificant amount but in the facts of the case the Court in its discretion would not make the declaration. The Court held that the suit was not barred by limitation. In the result the suit was dismissed with costs.

5. The plaintiff preferred an appeal to the Court of the District Judge. The learned District Judge held that the civil Court had jurisdiction to try the suit, that the suit was maintainable except as regards the prayer for mandatory injunction, that the suit was in time; the appeal was accordingly allowed and the case remanded to the trial Court for a decision of the other issues.

6. The defendant has appealed to this Court. Mr. Banerji who appears in support of the appeal has urged (1) that the civil Court had no jurisdiction to try the suit; (2) that the claim for damages was not maintainable.

7. We shall deal with these points seriatim. In order to deal with the first point, a few facts have to be stated. The last application for a licence was made by the plaintiff on 19-2-1941. At a meeting of the Commissioners of the Municipality held on 16-11-1941 a motion was sponsored by Mr. Chatterjee for the grant of a licence to the plaintiff u/s 370 (1)(ix), Bengal Municipal Act, for establishing a brick field on the disputed land. The motion was seconded by Mr. Dutt. Objections of various officers to the grant of a licence at the proposed site were read. It was resolved that the local conditions should be ascertained, a committee was appointed for the purpose with a request to the committee to submit a report by 10-1-1942.

8. The committee submitted a report which set out the fact that the committee had considered all view points of the local people, the proposals of the applicant, the opinions expressed by the Sub-divisional Magistrate, the Inspector of Police, the Superintendent of Post Office and the Director of Public Health and opined

that the licence should not be granted for amongst others the following reasons: (1) The proposed brickfield would aggravate the existing nuisance; (2) the site was not large enough for locating the kiln at a safe distance; (3) the land being low, the smoke from the chimneys would affect the existing dwelling houses; (4) the land can be utilised by the plaintiff for other purposes; (5) protest by the inhabitants of the locality; (6) similar application was refused previously and the Chairman assured the Director of Public Health that no sanction would be granted in future.

9. The matter was considered by the Commissioners at a meeting held on 15-2-1942. The motion for accepting the report and for refusing the licence and an amendment thereto were duly proposed and seconded. The motion was accepted and the amendment was lost by 9 votes to 4.

10. Section 370 of the Act reads as follows:

(1) No person shall use or permit to be used any place... without a licence from the Commissioners (which shall be renewable annually) for any of the following purposes, namely.

\* \* \* (ix) for burning or baking bricks, tiles, pottery, or lime whether for trade or private purpose....

(2) A license for any of the purposes mentioned in Sub-section (1) shall not be withheld unless the Commissioners at a meeting have reason to believe that the business which it is intended to establish or maintain would be the cause of annoyance, offence or danger to persons residing in or frequenting the immediate neighbourhood or that the area should be for general reasons kept clear of the establishment of such business.

11. The resolution in the present case was considered at a meeting of the Commissioners of the Municipality. The Commissioners accepted the report of the committee. The report substantially conforms to the requirements of the section, the proposal being regarded as a nuisance to the locality. The question is whether the action of the Commissioners is justiciable by the civil Court.

12. Section 531 of the Act runs as follows: "Any person aggrieved by an order refusing a license under this Act, may notwithstanding anything contained elsewhere in this Act, within thirty days appeal to the Local Government whose decision shall be final and shall not be questioned in any Court."

13. Mr. Banerji for the appellant Municipality contends that the remedy provided for in the Act is exclusive and a suit in a civil Court is barred. Dr. Sen Gupta for the respondent urges that an appeal to the local Government was not filed and as his client challenges the action of the Municipality as arbitrary and malicious, a suit in the civil Court lies. Dr. Sen Gupta has relied on the case in *Queen v. Vestry of St. Pancras* (1890) 24 Q.B.D. 371. In this case the prosecutor (Mr. Westbrook) was a Collector of rates for the parish of St. Pancras and applied to the vestry to be allowed to retire on superannuation allowance. The vestry upon

an erroneous opinion that the Metropolis Management Act did not give any discretion to the vestry to reduce the allowance, decided to permit Mr. Westbrook to retire but without any allowance. A writ of mandamus was issued calling upon the vestry to consider the application of Mr. Westbrook to receive the allowance fixed by the Act, the Court (Lord Coleridge and Mathews J.) directed that the mandamus should go. The vestry appealed. The appeal was heard by Lord Esher and Fry L.J. Their Lordships of the Court of appeal modified the rule, on the concession of the counsel for the vestry. Dr. Sen Gupta relies on the following passage in the judgment of Lord Esher at p. 375:

I have no doubt about that the vestry should take his application into their fair consideration and do what they think fair to the man under the circumstances, and if they do this, I have equally no doubt that the Legislature has entrusted the sole discretion to them; and that no mandamus should go to them to alter their decision. But they must fairly consider the application and exercise their discretion on it fairly and not take into account any reason for their decision which is not a legal one. If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law, they have not exercised their discretion.

13a. In this case the vestry acted upon an erroneous view of their powers under the Act, they erroneously thought that the Act merely entitled them either to grant or to reject the application and did not confer on them the power to fix any allowance short of that mentioned in the Act. The case was therefore one where the vestry acted under a misconception of their jurisdiction and did not exercise their discretion in a proper manner.

14. Dr. Sen Gupta also relies upon the following observations of Cozens-Hardy M.R. in *King v. Board of Education* (1910) 2 K.R. 165 at p. 175:

On any other view it seems to me the decision was so perverse as really to amount to a non-exercise of the jurisdiction entrusted to the Board.

In this case the local education authority of Swansea paid salaries to teachers in non-provided school at a lower rate than that paid to teachers in provided schools who were equally qualified and were teaching the same subject. On a complaint by the manager of a non-provided school, the Board of Education decided that there had been no such failure by the local education authority on the ground that there was no statutory right to receive a particular salary. A rule for a writ of certiorari and mandamus was made absolute by the Divisional Court on the ground that the local education authority had no power to discriminate between provided and non-provided schools as such in the matter of salary paid to the teachers. The Board of Education appealed. The appeal was dismissed by the Court of appeal (Cozens-Hardy M.R., Farwell L.J. and Buckley L.J.).

15. Both the above cases related to application for a mandamus. The principles applicable for the issue of a mandamus are in our opinion not a safe guide for

determining the question whether on the terms of a particular statute the jurisdiction of a civil Court is barred or not. Moreover in the present case the Municipality considered the application for a licence and gave reasons for its refusal which satisfied the requirement of the statute.

16. The question how far the jurisdiction of the civil Court has been ousted by statute depends mainly on the terms of the particular statute which created the jurisdiction of the domestical tribunal and cannot be answered in the abstract. We may refer to some of the cases bearing on the point. In *Bhai Shankar Nanabhai v. Municipal Corporation, Bombay* ('07) 31 Bom. 604 where an action was laid on the Original Side of the High Court of Bombay to set aside an election of a Councillor by the Justices on the ground inter alia that the election was held on a day not originally notified, A plea of demurrer was raised to the effect that the jurisdiction of the High Court was barred by Section 33, City of Bombay Municipal Act which vested the Chief Judge of the Small Cause Court as the tribunal for determining the validity of an election and provided that "the said Chief Judge"s order shall be conclusive." In holding that the demurrer was good, Sir Lawrence Jenkins C.J. at p. 609 made the following observations:

But where a special tribunal, out of the ordinary course is appointed by the Act to determine questions as to rights which are the creation of that Act, then except so far as otherwise expressly provided or necessarily implied, that tribunal"s jurisdiction to determine those questions is exclusive.

It is an essential condition of those rights that they should be determined in the manner prescribed by the Act to which they owe their existence. In such a case there is no ouster of the jurisdiction of the ordinary Courts, for they never had any, there is no change of the old order of things; a new order is brought into being.

To the same effect are the observations of Mookerji in *Bhandi Singh v. Ramadhin Roy* ('06) 10 C.W.N. 991 at p. 997:

It is an elementary rule of construction of statutes, as stated by Lopez L.J. in *R. v. County Court Judge of Essex* (1887) 18 Q.B.D. 704 at P. 708 that in case of an Act which creates a new jurisdiction, or a new procedure, new forms, or new remedies, the procedure forms, or remedies there prescribed and no others must be followed.

In both the cases referred to, the alternative forum created by the statute was not availed of; nevertheless it was held that the jurisdiction of the civil Court was ousted.

17. In AIR 1940 105 (Privy Council) where the plaintiff respondent filed a suit in the civil Court for recovery of excess duty realised under the Sea Customs Act after an unsuccessful appeal to the Collector of Customs, their Lordships of the Judicial Committee were of opinion that the jurisdiction of the civil Court was excluded by the order of the Collector of Customs in view of the finality clause in

Section 188 of the Act. Their Lordships did not decide the question whether, prior to taking an appeal u/s 188, resort can be had to a civil Court or whether the remedy given by the statute was exclusive. Their Lordships proceeded to observe that the determination of this question depends on the terms of the particular statute under consideration. In the facts of that case their Lordships held that the case fell within the third class stated by Wills J. in *Wolverhampton New Water Works Corporation v. Howkes Ford* (1859) 6 C.P. 336 at P. 356 and held that the jurisdiction of the civil Court was barred. At p. 716, their Lordships made the following pertinent observations:

It is settled law that the exclusion of the jurisdiction of the civil Courts is not to be readily inferred, but that such exclusion must, either be expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded the civil Courts have jurisdiction to examine into cases, where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

18. In the present case the Municipality refused to grant the licence at a meeting and gave reasons which satisfied the requirements of the statute. They considered the suggestions of the plaintiff, the objections to the grant of licence from official and non-official bodies. There was no failure to comply with the fundamental principles of judicial procedure.

19. It was suggested that the motive which led the Chairman and the majority of the members to cast their vote was improper. It would be a dangerous thing for the Court to embark on an inquiry into such motives. In *Muhammad Israil Vs. Patna City Municipality*, Harries C.J. observed that:

It has long been established that if a person has a right to do an act, it matters not that he was actuated by extraneous motives when he did it.

The question whether in the facts of the present case, the grant of licence would cause annoyance, offence or danger was entirely for the Municipality to decide. The Municipality did decide this and gave reasons in terms of the statute. It is not for the civil Court to sit in judgment over the decision of the Municipality.

20. Moreover, the civil Court cannot, at this date direct the Municipality to grant a licence for the year 1941-1942 or for an earlier year. The licence is granted for one year and has to be renewed annually. Even if a declaration is now made that a licence for the year 1941-1942 should be granted, that would be of no avail to the plaintiff to enable him to secure a licence in a future year when conditions may have changed. In its discretion the Court would refuse to grant a declaration which would be infructuous.

21. It has been argued that such a declaration would entitle the plaintiff to recover damages as prayed for. It can hardly be said that the refusal to grant a licence in February 1942 was the proximate cause for the damages claimed. The allegations in the plaint are vague. In our opinion, the trial Court was right in the

view it took of the rights of the parties and in dismissing the suit.

22. The result, therefore, is that this appeal is allowed, the judgment and decree of the learned District Judge are set aside and those of the learned Mutisif are restored with costs in this Court and the lower appellate Court.

Lodge, J.

23. I agree.