

**(1932) 12 CAL CK 0003****Calcutta High Court****Case No:** None

Kanai Das Mohanta

APPELLANT

Vs

Narayanganj Municipality

RESPONDENT

**Date of Decision:** Dec. 13, 1932**Acts Referred:**

- Bengal Municipal Act, 1932 - Section 200, 6(11)

**Citation:** AIR 1933 Cal 553 : 145 Ind. Cas. 692**Hon'ble Judges:** M.C. Ghose, J**Bench:** Division Bench**Judgement**

@JUDGMENTTAG-ORDER

M.C. Ghose, J.

In this case Kanaidas Mahanta who is a Mahant of Banku Behari Akhra within Narayanganj Municipality was called upon u/s 200, Bengal Municipal Act, to fill up or cleanse an insanitary tank belonging to the Akhra. On receipt of the requisition he filed a representation to the Municipality asking for six months" time to carry out the requisition. Thereupon the present prosecution was instituted. The trial Magistrate sentenced him to a fine of Rs. 100. On appeal the Additional District Magistrate has reduced the fine to Rs. 30 and in addition sentenced him to a daily fine of Rs. 2 until the requisition of the Municipal Chairman is complied with. The Rule was issued on three grounds. The first ground is that in view of the provisions of Section 6, Clause 11, Bengal Municipal Act, which lay down that in the absence of sufficient funds in the hands of the Manager, agent or trustee, as contemplated in the said section, no fine could be imposed upon him for his omission to comply with any requisition of the Municipality the prosecution cannot be maintained. The learned Counsel appearing for the Grown has urged that the Mahanta is in effect the owner of the Akhra lands. On the other side it is strenuously urged that the Mahanta of the Akhra cannot be considered to be a full owner of the lands belonging to the Akhra. It is said that he may not come exactly under the definition

of a manager, agent or a trustee, but he is certainly less than an owner. He is in fact a manager on behalf of the idol and as such he is entitled to the benefit of the provisions of Section 6, Clause 11. It appears that the Mahant is entitled to the benefits of the provisions of that section.

2. The second ground taken is that the learned Court of appeal below was wrong in assuming that the filing of the petition for time to re-excavate amounted to an admission of ownership in respect of the tank and also that of existence of funds by the petitioner. As to this the finding of the Court of appeal below is clear that the petitioner is the Mahant of the Akhra and that the insanitary tank is a part of the Akhra lands. The learned appellate Court below found that the Mahant must have had the requisite funds. It is urged that the grounds on which the finding was based are rather weak. The third ground taken is that the imposition of a daily fine is clearly an enhancement of the sentence which the appellate Court was not entitled to direct. The learned Counsel for the Crown has urged that the intention is that the daily fine should be imposed for a period of 30 days and as such the total fine would be less than the fine imposed by the trial Court. But on reading the judgment of the lower appellate Court it does not appear that the said Court has limited the fine to a period of one month. In the circumstances of the case it is inequitable to impose a daily fine. It is apparent that the Mahant's capacity to carry out the orders of the Municipality is limited by the funds obtained by him from the properties of the Akhra. If the said funds be not sufficient to fill up the tank it would not be just or proper to sentence the Mahant to a fine. On the other hand although the petitioner pleaded poverty he did not show that he took the urgent steps necessary to cleanse the tank so as to remove the insanitary condition. In this view the fine of Rs. 30 appears to be appropriate. The daily fine imposed by the lower appellate Court is set aside. With this modification the Rule is discharged.