

(1911) 02 CAL CK 0001

Calcutta High Court

Case No: Rev. No. 60 of 1911

Basanta Kumari Debi

APPELLANT

Vs

The Corporation of Calcutta

RESPONDENT

Date of Decision: Feb. 10, 1911

Judgement

1. This is a Rule calling upon the Municipal Magistrate of Calcutta to show cause why the conviction and sentence on the Petitioner should not be set aside on the ground that there was no sanction or refusal under sec. 374 of the Act and that the order of demolition was therefore illegal and, secondly, that the alternative sentence of simple imprisonment is contrary to law. As regards the first point, we find that sec. 374 is governed by sec. 376 and that when the Chairman did not refuse or grant permission within 30 days, the Petitioner's only remedy was to apply to the General Committee by a written request for permission to execute the work. She states in her petition that she appealed : but no such procedure is known to the law unless the Chairman had refused sanction. However that may be, she did file a petition purporting to be an appeal. The appeal was filed on the 19th March 1910 and her present contention is that proceedings had been started against her on the 8th February 1910. Those proceedings were postponed pending the decision of the appeal and on the 25th June 1910 the General Committee rejected her petition and confirmed the resolution. Thereupon the Chairman through his authorised subordinate issued a fresh demolition order on the 30th June 1910 and the Petitioner was prosecuted on the 22nd November 1910 for disobedience of that order of the 30th June. There is therefore no defect in the proceedings.

2. As regards the legality of the demolition order, that should have been made the subject of an application for revision in this Court within two months of the date on which it was passed. We cannot now go behind the decision of the Chairman and the General Committee. The Rule is therefore discharged as regards the first point on which it was issued and the fine imposed will be upheld.

3. But, with regard to the second point, namely, the alternative sentence of simple imprisonment, we are clearly of opinion that there is no authority under the Calcutta Municipal Act to impose imprisonment in default of payment of fine, at any rate for such offences to which a daily penalty is assigned in addition to the substantive fine. It is not necessary for us to discuss the somewhat difficult question which was sought to be raised on behalf of the Corporation as regards the imprisonment in default of fine under all special and local Acts, the interpretations put upon the General Clauses Act, sec 64 of the Indian Penal Code and the Code of Criminal Procedure. It is enough for us to say that sec. 580 under which this person has been fined, clearly lays down that she is liable to a fine which may extend in the case of a masonry building to Rs. 500 and in the case of a hut to Rs. 50 and to further fine which may extend in the case of a masonry building to one hundred rupees for each day during which she fails to carry out the direction to demolish; and in the case of a hut to ten rupees. Now, it is clear that if a man was put in jail, he could not very well be asked to pay a daily fine for not carrying out the direction and it is extremely doubtful whether the word " offence" used in sec. 631 applies to these penalties for failing to carry out the directions of the Corporation officials. There are certain offences which are clearly made punishable by the Act itself under the Penal Code; but these technical offences which very properly carry penalties in the shape of fines with them are not in our opinion to be classed as offences within the meaning of sec.64 of Penal Code. Sec. 580 precludes any alternative sentence of imprisonment. This part of the rule is made absolute therefore, and the order directing imprisonment will be discharged.