

(1964) 07 CAL CK 0001

Calcutta High Court

Case No: Matter No. 440 of 1963

Kanai Lal Paul

APPELLANT

Vs

Corporation of Calcutta and
OthersRESPONDENT

Date of Decision: July 8, 1964**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 144

Citation: 68 CWN 1049**Hon'ble Judges:** D.N. Sinha, J**Bench:** Single Bench**Advocate:** Noni Coomar Chakravarti and Chittatosh Mookherjee, for the Appellant; R. Dutt and Purnendu Sekhar Basu, for the Respondent

Judgement

D.N. Sinha, J.

Previous to the year 1918 premises Nos. 67 and 69, Simla Street, Calcutta, formed contiguous premises with a common owner. On the 4th February, 1918 a decree was passed by this Court in Partition Suit No. 655 of 1912 whereby the property was divided into two lots, being Lot A and Lot B. Lot A was allotted to Paresh Nath Paul and has been renumbered as premises No. 88, Vivekananda Road. Lot B was allotted to Narendra Nath Paul, the predecessor-in-interest of the petitioner and his brother Balai Chandra Paul, and renumbered as premises Nos. 86A and 86B Vivekananda Road. The allottee of premises Nos. 88, Vivekananda Road constructed a three-storeyed building on the vacant plot at the back portion of the said premises, keeping approximately 12" open space on the south western side, adjoining the premises Nos. 86A and 86B Vivekananda Road. Sometime on 7th February, 1958 the respondent No. 13, Madan Mohan Pal Choudhury purchased the back portion of 88, Vivekananda Road. Having purchased it, he applied for mutation of his name and for the allotment of separate premises number. The Corporation of Calcutta made it into a separate holding and allotted to it premises No. 57/3/A, Simla

Street. This premises No. 57/3/A, Simla Street is not on Vivekananda Road. Between it and Vivekananda Road there is premises No. 88, Vivekananda Road. The said respondent No. 13 after purchasing the said property No. 57/3/A, Simla Street, submitted a plan to the Corporation of Calcutta for certain constructions. The plan was rejected by the department on the ground that Rules 23 and 30 of Schedule XVI of the Calcutta Municipal Act, 1951 (hereinafter referred to as the "said Act") have been infringed. The petitioner states that no notice was given to him about the submission of this plan for sanction although it was against the Building Rules in the said Act and affected the amenities of the petitioner as an owner of the contiguous premises, and although the department had pointed out that the application for sanction cannot be entertained as being violative of the said rules. He came to know of it sometime in 1962 and on the 5th March, 1962 made a complaint to the Corporation that the plan submitted by the respondent No. 13 was contrary to law and should not be sanctioned and notice of hearing should be given to the petitioner when the plan was placed before the Standing Building Committee for sanction. In spite of the said letter, the application for sanction of the plan was placed before the Standing Building Committee without any notice to the petitioner and on the 16th July, 1962 the plan was sanctioned inspite of the recommendation of the Building Department to the effect that no sanction should be given. The petitioner complained to the Mayor and to the Corporation in July and August, 1962 but nothing happened until the petitioner, through his solicitor Mr. S.C. Roy Chowdhury, complained about the illegal sanction of the plan. The Chief Law Officer to the Corporation referred the case for reconsideration of the Standing Building Committee. On the 26th November, 1962 the Standing Building Committee considered the objections of the petitioner in his presence and in the presence of his consulting Engineer Mr. D.C. Banerjee. After hearing the parties and considering the objections, the Standing Building Committee passed the following resolution:-- That the plans regarding 57/3/A, Simla Street, Dist. I be sanctioned taking Vivekananda Road as front subject to the party complying with Rule 30 against the proposal, complying with Rules 51, 25 and departmental requisitions relaxing Rule 23 under Rule 91 and also subject to the party proving that the building existed prior to 1900, in case the party is unable to prove the Rule 23 too.

No attempt was made to prove that the building existed prior to 1900. In fact, from the materials placed before me it appears that it did not so exist. Before I proceed further, it will be convenient to further elucidate the objections put forward by the petitioner. The relevant part of Rule 23 of Schedule XVI of the Building Rules runs as follows:--

23. The total area covered by all the buildings on any site used for a dwelling-house shall not exceed two-thirds, or, in localities where the erection of only detached buildings is allowed, one-half, of the total area of the site, and the area not so covered shall form part of the site:

Provided that the Commissioner with the approval of the Standing Committee may permit-

(a) an area not exceeding 75 per cent, of the total area of the building site, to be covered, in case the site is situated in a locality other than localities where erection of only detached building is allowed and abuts at the junction of two streets each of which is not less than 12 feet in width throughout the length of the site abutting on it, or....."

Rule 91 (2) of the said Rules provides that the Corporation may at any time, in dealing with an application to add to, alter, or do any work referred to in section 387 to any building erected before the first day of April, 1900, relax, for special reasons to be recorded in writing, rule 23, provided that some substantial increase is nevertheless made in the area of the open space belonging to the premises and already forming a part of the site.

2. The plan that was submitted for sanction by the respondent No. 13 shows only 225 sq. ft. as open space in place of 338 sq. ft. as required under Rule 23 of Schedule XVI. In the above resolution of the Standing Building Committee it is stated that in the plan regarding 57/3/A, Simla Street, Vivekananda Road should be taken as the front. It further provided that Rule 23 should be relaxed under Rule 91, but only if the said respondent proved that the building existed prior to 1900. The premises No. 57/3/A, Simla Street has not got Vivekananda Road as a frontage. Its frontage is on a passage 8 ft. wide, leading to Simla Street. In fact, between the said premises No. 57/3/A, Simla Street and Vivekananda Road, there is premises No. 88, Vivekananda Road. The petitioner made no effort to prove that the premises existed before 1900, for the simple reason that it did not. What next happened was a most peculiar thing. Sometime on 7th December, 1962, that is to say, about a month after the previous resolution, which was passed upon notice to and in the presence of the petitioner and his engineer, the respondent No. 13 caused a motion to be moved through a Corporation Councillor, Mr. Ganapati Sur, before the Standing Building Committee for rescinding the said resolution. The motion was heard and the Standing Building Committee gave a hearing to Mr. Ganapati Sur, without any notice to the petitioner and behind his back, and on the 30th March, 1962 modified the previous resolution. The modified resolution reads as follows:--

That the plans regarding 57/3/A, Simla Street be approved for sanction allowing 1/4th open area, the mother premises being a corner plot subject to the party complying with rule 30 against the new proposal, relaxing rule 23, complying with rule 51 and also departmental requisition.

3. The petitioner only came to know of it in September, 1963 after which proceedings were instituted u/s 144 of the Criminal Procedure Code and this rule was issued on the 21st November, 1963 upon the respondents to show cause why a writ in the nature of mandamus should not be issued directing the respondents to

cancel, rescind or withdraw the plans sanctioned by the Standing Building Committee in respect of premises No. 57/3/A, Simla Street, Calcutta, dated 26th November, 1962 and 5th March, 1964 and for other reliefs.

4. In this case, really two points arise for consideration. The first point is whether rules of natural justice have been violated, and the second point is whether Rule 23, of the Building Rules has been infringed and whether it could be relaxed in the facts and circumstances of this case. With regard to the first point I do not think that there can be any possible doubt on the point that in this case the rules of natural justice have been flagrantly violated. If there is a breach of the Building Rules, then every adjoining owner affected by it is entitled to object to it.

5. The Building Rules of the Corporation of Calcutta have been framed with a view to ensure public health, sanitation and access of light and air to adjoining premises. Some rules are relaxable under specified circumstances, others are not. Unrelaxable rules cannot be relaxed under any circumstances. Rules which are relaxable can only be relaxed upon a strict compliance of the conditions laid down, but not otherwise. Where there is a violation of the Building Rules, the adjoining owner is primarily affected. If the plan submitted for sanction violates the rule regarding the permissible area which can be built up, or if it has not the requisite open spaces, it necessarily affects the adjoining owner. Where he is to be deprived of his rights, he must have an opportunity of being heard. (See (1) *Cooper v. Wandsworth District Board of Works*, (1863) 143 E.R. 414; (2) *Hopkins v. Smethwick Local Board of Health*, (1890) 24 Q.B.D. 712). It is not, however, necessary to go into any case law. In this case, upon an objection filed by an adjoining owner, the Standing Building Committee had to reconsider its previous decision and on the 26th November, 1962 passed a resolution in the presence of the petitioner and his engineer. Surely, this resolution could not be changed behind the back of the petitioner and without any opportunity given to him to deal with a proposed amendment. In my opinion, this could not be done without notice to the petitioner and the way it was done amply demonstrates that it was done deliberately, to keep out any objection being preferred by the petitioner. I have no doubt whatsoever that the reason was that the respondent No. 13 realised that he could not possibly establish that the premises existed prior to 1900. In that case, he would have to comply with the provisions of Rule 23. So far as the second point is concerned it is not disputed that if we confine ourselves to premises No. 57/3/A, Simla Street, there is a violation of Rule 23. It is proposed to get out of this difficulty in a very ingenuous manner. According to the learned counsel appearing on behalf of the respondent, in order to consider whether premises No. 57/3/A, Simla Street offends against Rule 23, it should not be taken by itself but only as a part of the "mother premises". This is an expression used in the ex parte resolution of the Standing Building Committee dated 30.3.1962. The argument is somewhat as follows: As I have stated above, prior to the partition decree, the said premises formed a part of the larger premises Nos. 67 and 69, Simla Street, which belonged to common owners. If we take the whole

premises as it then stood, it would form a corner premises, situated at the intersection of Simla Street and Vivekananda Road. In other words, notwithstanding partition which took place by decree passed on 4.2.1918, and notwithstanding the division of the original premises into different units by allotting different premises Nos. and notwithstanding the fact that the respondent No. 13 is the owner only of premises No. 57/3/A, Simla Street which does not abut either on Simla Street or on Vivekananda Road, it should be considered as a corner premises at the intersection of Simla Street and Vivekananda Road, because many years ago it formed part of a larger premises which was a corner premises, facing the intersection. In my opinion, this is an absurd argument. In the Municipal Act and the building Rules contained therein there is no such thing as a "mother premises". The unit of computation under the said Act and the rules is a holding numbered as premises. When a plan is submitted for the sanction of the construction or reconstruction of a building, in a particular premises, the building rules must be applied to the plan in connection with the said premises. There is no scope for deeming the said premises to be a part of a larger premises, which it formed in the past, but which now has been divided and renumbered as different premises and belongs to a different owner. In the present case, the premises No. 57/3.A, Simla Street has not got Vivekananda Road as a frontage in any direction. Between the said premises and Vivekananda Road, there is premises No. 88 Vivekananda Road, belonging to a different owner. Therefore, the Standing Building Committee was in error in directing that for the purpose of the sanction of the plan for construction of premises No. 57/3/A, Simla Street, Vivekananda Road should be taken as a frontage. Secondly, it was in error in directing that it should be taken as a corner plot, for the simple reason that it is not a corner plot. There is no legal foundation for linking it with another "mother premises". There is no such thing known to law. It is rather curious, and I cannot help commenting on the fact, that the real opposition in this case came from the Corporation. Mr. Dutt appearing on behalf of the Corporation cited several cases, namely, (3) [Kishan Chand Arora Vs. Commissioner of Police, Calcutta,](#) and (4) [Sri Provash Chandra Sett and Others Vs. Gouripore Electric Supply Co. Ltd. and Others,](#) for the proposition that in an administrative order, no notice was necessary to be given to anybody. These cases have no analogy to the present case. Whether in the case of an administrative order notice is necessary to be given, depends on the facts of each case. As I have stated above, where the right to property of a person is affected he is entitled to notice. In this particular case, the respondent No. 13 is proposing to construct a building in violation of the building rules provided under the said under the said Act. An adjoining owner is affected thereby and is entitled to object. In this particular case his objection was heard in his presence and an order made. This cannot be altered exparte behind his back, to the detriment of his property rights. In my opinion, the sanction given by the Standing Building Committee is in violation of the building rules and in this case there has been a gross violation of the rules of natural justice. The result is that this rule must be made absolute and there will be a writ in the nature of certiorari quashing the

sanctions accorded by the Standing Building Committee by resolutions dated 26th November, 1962 and 30th March, 1963, and there will be a writ in the nature of mandamus directing the respondents not to give effect to the said resolutions and to cancel and/or withdraw the sanction of the plan which is the subject-matter of the said resolutions, in respect of premises No. 57/3/A, Simla Street, Calcutta. There will be an injunction restraining the respondent No. 13 from making any further construction in accordance with the said plans. This order will be without prejudice to the said respondent submitting a plan which is in accordance with the Building Rules and having it sanctioned in accordance with law. There will be no order as to costs.