

(1954) 08 CAL CK 0011

Calcutta High Court

Case No: Criminal Revn. No. 84 of 1954

Ramani Ranjan Bose

APPELLANT

Vs

Corporation of Calcutta

RESPONDENT

Date of Decision: Aug. 2, 1954

Acts Referred:

- Bengal General Clauses Act, 1899 - Section 8
- Calcutta Municipal Act, 1923 - Section 363, 365
- Calcutta Municipal Act, 1951 - Section 2, 414

Citation: AIR 1955 Cal 410 : (1955) CriLJ 1063 : 59 CWN 599

Hon'ble Judges: Sen, J; J.P. Mitter, J

Bench: Division Bench

Advocate: Sailendra Nath Sen, for the Appellant; Bhudar Halder, for the Respondent

Judgement

J.P. Mitter, J.

This Rule is directed against an order of a Municipal Magistrate u/s 363, Calcutta Municipal Act, 1923, directing the demolition of a certain unauthorised structure. The principal point taken on the petitioner's behalf is that the Corporation's application for action u/s 363 of the Act having been made to the Municipal Magistrate after the new Act (West Bengal Act 33 of 1951) had come into force, the proceedings before the Municipal Magistrate and the order of demolition concerned were without jurisdiction.

2. The petitioner's case is as follows; He is the lessee of a plot of land at No. 17, Parashar Road, Calcutta. At the date of the demise of the said land there stood upon it a dilapidated structure which was a partly tiled shed and a partly corrugated shed. The repairs to the structure which the petitioner subsequently caused resulted in the roof being made entirely of corrugated iron sheets. According to the petitioner, the old structure was reconstructed, but not extended.

3. The Corporation's case is that the structure in question was a new construction for which no sanction had been obtained. On the evidence, the learned Municipal Magistrate came to the conclusion that the construction was both Unauthorised and in breach of certain building rules. Accordingly, the learned Magistrate directed the demolition of the offending structure.

4. We have examined the evidence in the case and are satisfied that the learned Magistrate's findings were amply justified. The petitioner's second point that the learned Magistrate should have exercised his discretion in favour of the petitioner is of no substance, as the evidence discloses that the petitioner completed the construction in defiance of the Corporation's notice u/s 365 of the Act.

5. It appears that the order of the Administrative Officer requiring a complaint to be made to a Magistrate was dated 30-4-1952. The new Act, i.e., The Calcutta Municipal Act, 1951 (West Bengal Act 33 of 1951) came into force on 1-5-1952. The Corporation's complaint to the Magistrate was made on 5-3-1953 i.e., long after the new Act had come into force. Now the question for decision is whether the rights and obligations of the parties as well as the procedure to enforce such rights and obligations were governed by Section 363 of the old Act or by the provisions of Section 414 of the new Act. It is fundamental that no statute, is to be construed to have a retrospective operation, unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. There is nothing in the Act of 1951 to give the provisions of Section 414 a retrospective operation. Indeed, in terms they apply to the erection of any building which has been commenced, carried on or completed without obtaining any permission required to be obtained by or under the new Act. Consequently, the point raised has to be resolved in accordance with the provisions of Section 8, Bengal General Clauses Act, 1899. This section was construed by Mukherjea, J. in -- [Babu Dharendra Nath Roy Vs. Ijjetali Miah and Others](#), . The learned Judge observed :

"Section 8 contemplates a case where the repealing enactment repeals a substantive right as well as the procedure- by which it was enforced, and in such cases if the rights are saved in respect of the transactions completed prior to the repealing of the statute, the remedies in respect of such rights, as laid down in the repealed statute, are also saved and the litigant can institute or continue proceedings in the same way for the enforcement of his rights as if the repealing Act had not come into force."

With this interpretation of Section 8 I respectfully agree. That being the -position, the proceedings against the opposite party were properly commenced and concluded before the learned Municipal Magistrate. I should conclude by saying that where an enactment alters both the substantive rights and obligations of the parties as well as the procedure to enforce them, the intention of the legislature would seem fairly clear, namely, that the old rights and obligations are still to be determined by the old procedure and that only the new rights or obligations are to

be dealt with by the new procedure. In my view, upon a true construction of Section 8 of the Bengal General Clauses Act the learned Municipal Magistrate had jurisdiction to deal with the matter as he did.

6. In the result, this application fails and the Rule is discharged.

Sen, J.

7. I agree with the order passed by my Lord but in view of the importance of the case I would like to add a few words.

8. The allegation of the Corporation against the petitioner Ramani Ranjan Bose is that he erected a structure with masonry works covered with corrugated iron sheets in 17 Parasar Road, Calcutta without obtaining any sanction of the Corporation and in contravention of the building rules relating to back space and side space. The structure was completed long before the Calcutta Municipal Act 1951 came into force and it was completed in spite of service of notice u/s 365 of the Calcutta Municipal Act, 1923. The Corporation authorities therefore started a case u/s 363 before the Municipal Magistrate. The order of the Administrative Officer for starting such a case was passed on 30-4-52 just before the 1951 Act came into force which was on 1-5-52. The proceedings before the Municipal Magistrate u/s 363 of the Calcutta Municipal Act, 1923, were actually started some time after the Calcutta Municipal Act, 1951, had come into force.

9. The contention of Mr. Sen appearing for the petitioner is that after the 1951 Act had come into force, it is the Commissioner of the Corporation and not the Municipal Magistrate who has jurisdiction to order demolition of unauthorised structures and that therefore the order of the learned Magistrate in proceedings actually started after 1-5-52 was without jurisdiction. Mr. Halder appearing for the Corporation has relied on Section 8, Bengal General Clauses Act and has urged that the proceedings u/s 363, Calcutta Municipal Act 1923 are saved thereby and therefore the proceedings before the Municipal Magistrate and the order passed by him were not without jurisdiction but were legal and valid. Mr. Sen has however urged that Section 8, Bengal General Clauses Act, applied only when a substantive right is altered by the repeal and that it does not apply to an alteration of the procedure only by the repeal of an Act and he has contended therefore that Section 8, Bengal General Clauses Act has no application to the present circumstances. In support of his contention Mr. Sen has relied on the observations made in the case of [Babu Dharendra Nath Roy Vs. Ijjetali Miah and Others](#), (A), where Mukherjea, J., delivering the judgment of the Court observed as follows : "Where an Act merely alters the procedure without altering the substantive rights of the parties, the new procedure would be retrospective in operation and extend to rights accrued before the changes were made and to pending actions." Mr. Sen has urged strenuously that the repeal of the Calcutta Municipal Act, 1923 by Section 2(1) of the Calcutta Municipal Act of 1951 has only altered the procedure and has not altered the

respective rights of the parties because the Corporation, as before, has the right to secure demolition of unauthorised premises. He has therefore urged that the old procedure will no longer apply and the case would be governed by the new procedure.

10. It cannot however be accepted that the substantive rights of the parties have not been affected by the repeal of the 1923 Act and the enactment of the 1951 Act. Under the 1923 Act, if an unauthorised structure had stood for 5 years before the Corporation started proceedings for demolition thereof, the party erecting the structure would have a valid defence and the Corporation could not obtain an order for demolition. Under the new Act, the Corporation may obtain an order for demolition of unauthorised structure erected within 12 year's before the date of proceedings before the Commissioner. More important is the point that u/s 414, Calcutta Municipal Act, 1951, the Commissioner has jurisdiction to order demolition only when any building contravenes any provision of the 1951 Act or any of the rules or by-laws made thereunder or when it is erected without obtaining the permission which is required to be obtained under the Calcutta Municipal Act, 1951. This is clear from the wording of Clauses (a), (b) and (c) of Section 414(1).

Mr. Sen has urged that any permission obtained under the 1923 Act would also be deemed to be permission obtained under the 1951 Act. But subsection (2) of Section 2 of the 1951 Act provides that any permission granted under the Calcutta Municipal Act, 1923, would be deemed to be permission granted under the Calcutta Municipal Act, 1951 only in so far as it was in force at the time of the commencement of the 1951 Act. The permission can be deemed to be in force only if the building has not been completed. With the completion of the building, the permission can no longer be deemed to be in force. Accordingly it is clear that in respect of structures completed before the 1951 Act came into force, the permission granted under the 1923 Act could not be deemed to be in force and could not therefore be deemed to be permission within the 1951 Act. In this case moreover we are not concerned with permission granted under the 1923 Act because no such permission was obtained. We are really concerned with Clause (c) of Section 414(1) which relates to structures erected in violation of any provision contained in this Act or in any rules or by-laws made thereunder. The breach of provision contained in this Act would be the breach of provision contained in Schedule 16, Calcutta Municipal Act, 1951. Though many of the provisions contained in Schedule 17, Calcutta Municipal Act, 1923 are similar to the provisions contained in Schedule 16 of the new Act, any breach of the old provision cannot be deemed to be a breach of the provisions of the Calcutta Municipal Act, 1951.

The provisions of the 1951 Act came into force only on 1-5-52 and there could be no contravention thereof before the Rules had come into force. It is therefore clear that in respect of the structures erected before 1-5-52, the Commissioner would have no jurisdiction to order demolition and if the present proceedings had been started

before the Commissioner, the defence could successfully be taken that the Municipal Magistrate and not he was competent to order demolition. In this case therefore the repeal of the 1923 Act and the enactment of the 1951. Act has affected not only the procedure but also the substantive rights of the parties -- both the Corporation and the party who has erected this structure. In this case therefore, Section 8, Bengal General Clauses Act would save the old procedure. This point was also made clear by Mukherjea J., in the case cited by Mr. Sen [Babu Dhirendra Nath Roy Vs. Iijetali Miah and Others,](#) (A), Mukherjea J. quoted with approval from an English case -- "In Re Hale's Patent", 1920 2 Ch 377 (B), as follows:

"No doubt the general law is that, while rights are not statutorily altered retrospectively, procedure is, apart from indications to the contrary, altered retrospectively; but where rights and procedure are dealt with together in the way in which Section 8 of the Act of 1919 deals with them, the intention of the Legislature would seem fairly clear namely, that the old rights are still to be determined by the old tribunal under the Act of 1907, and that only the new rights under the substituted section are to be dealt with by the tribunal thereby substituted for the Treasury."

11. This case is a precisely similar case and we must hold that in respect of the unauthorised structures completed before 1-5-1952, it is the Municipal Magistrate and not the Commissioner of the Corporation who has jurisdiction to order demolition. Apart from the provisions of the Calcutta Municipal Act the Corporation has no right to grant permission to build according to a plan or to enforce building regulations. Each successive Calcutta Municipal Act prescribes a set of building regulations and authorises the Corporation to grant sanction to building plans which conform to the regulations and to take proceedings to enforce the building regulations. This right given by a particular Calcutta Municipal Act can only be enforced according to the procedure prescribed by that particular Act. The new Calcutta Municipal Act of 1951 repealing the 1923 Act does not merely change the procedure for the enforcement of the building regulations; but it also takes away the right the Corporation had under the 1923 Act to enforce the building regulations contained in that. Act and gives the fresh right to enforce the building regulations prescribed by the new Act. The fact that many of the building regulations are identical is immaterial; the Corporation can enforce the building regulations of the 1951 Act only by the procedure prescribed by that Act, and for breach of the building regulations of the older Act, action must be taken under the old procedure which is saved along with the old right by section 8 of the Bengal General Clauses Act.

12. Clearly therefore the proceedings before the Municipal Magistrate in this case were quite in order.