

Syed Mohdmmmed Raziuddin Vs The Corporation of Calcutta

Court: Calcutta High Court

Date of Decision: April 30, 1919

Judgement

1. This is a Rule calling upon the Chairman of the Corporation and the Municipal Magistrate to show cause why the order complained of should

not be set aside. The order complained of was passed by the Municipal Magistrate on the 23rd December 1918. He has held a, certain structure

to be a fixture which is liable to be removed under sec. 341 of (he Calcutta Municipal Act (III of 1899) and has directed its demolition under sec.

450 (3) of that Act. In our opinion it has not been proved that the provisions of sec. 341 are applicable to the structure which is the subject-matter

of this dispute. The structure in question is a masonry pint-form which extends in front of the Petitioner's building and over a drain in the public

street. There is no evidence when this masonry platform was erected. But witnesses have deposed that so far as living memory goes the masonry

platform has been in existence as a part of the building. In order to take advantage of a penal section it is necessary for the prosecution to prove

the facts on which the applicability of that section depends. Sec. 341 applies to a fixture which "" has been attached to a building so as to form part

of the building and causes a projection, encroachment or obstruction over or on any public street."" As we understand them, the words "" fixture

which has been attached to a building "" cannot be applied to a part of the building which was constructed at the same time as the main building

itself. The words "" when a fixture has been attached "" seem to us to mean that the building must first be in existence and the attachment of the

fixture subsequent to the erection of the building. Taking this view, as it has not been proved that the platform in question was constructed after the

building was ejected we must hold that the Municipal Magistrate had no power to pass the order complained of and we must therefore make this

Rule absolute and set aside that order.