(1991) 12 CAL CK 0016

Calcutta High Court

Case No: Civil Order No. 1876 off 1991

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| Dilip Ranjan Chatterjee | | APPELLANT |
| | Vs | |
| Sarbari Ranjan Chatterjee | | RESPONDENT |

Date of Decision: Dec. 5, 1991

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 2(66), 48, 48(4)
- Constitution of India, 1950 - Article 227

Citation: (1992) 1 ILR (Cal) 126

Hon'ble Judges: S.K. Mookherjee, J; A.M. Sinha, J

Bench: Division Bench

Advocate: Party in Person, for the Appellant;Milan Bhattacherjee, Bikash Kumar Chatterjee for opposite party No. 1 and Partha Sarathi Bose, for opposite party No. 2, for the Respondent

Judgement

S.K. Mookherjee, J.

This is an application under Article 227 of the Constitution of India against an order dated March 7, 1991, passed by the Municipal Building Tribunal, Calcutta, in B.T. Appeal No. 253 of 1985-86. The short question, which arises before us, is whether the Building Tribunal, hereinafter called the Tribunal, was justified in setting aside the order of demolition passed by the Special Officer with regard to a part of the premises in question.

2. Upon hearing the learned Advocates, representing the different contesting parties as also the Petitioner in person, we find that the Tribunal set aside the impugned order of the Special Officer upon a firm finding that the Special Officer, in view of the Municipal Act of 1980 having come into force, had not the jurisdiction to pass any order of demolition which he possessed only under the repealed Act of

1951. In arriving at the said finding, the Tribunal interpreted Section 48 of the Calcutta Municipal Corporation Act, 1980, which contained a specific provision for delegation of powers and functions. At this stage it is necessary to quote Section 48 which runs as follows:

Section 48(1) - The Corporation may, by resolution delegate, subject to such conditions as may be specified in the resolution, any of its powers or functions to the Mayor-in-Council.

(2) The Mayor-in-Council may by order delegate, subject to such conditions as may be specified in the order, any of its powers or functions to the Mayor or to Municipal Commissioner.

(3) Subject to such standing orders as may be made by the Mayor-in-Council in this behalf-

(a) The Mayor may by order delegate, subject to such condition as may be specified in the order, any of his powers or functions to the Deputy Mayor or the Municipal Commissioner.

(b) The Municipal Commissioner may by order delegate, subject to such conditions as may be specified in the order, any of his powers or functions to any other officer or any employee of the Corporation and

(c) any officer of the Corporation other than the Municipal Commissioner may by order delegate, subject to such conditions as may be specified in the order, any of his powers or functions to any other officer subordinate to him.

(4) Notwithstanding anything contained in this section, the Mayor-in-Council, the Mayor, the Municipal Commissioner, or the other officer referred to in Clause (c) of Sub-section (3), shall not delegate.

(a) any of its or his powers or functions delegated to it or him under this section,

(b) such of its or his powers or functions as may be prescribed.

3. In our view, the Tribunal went wrong in holding that in the absence of rules to be framed by the State Government under the new Act, the right to delegate the authority of the Commissioner to his officers and employees remains inchoate and uncertain and, accordingly, the order of delegation, as produced on behalf of the Municipal Authority before the Tribunal on the strength of which the impugned order of demolition had been passed by the Special Officer concerned, did invest. The Special Officer with necessary authority to pass such order, We say so because Sub-section (4) of Section 48 prohibits delegation of powers or functions as may be prescribed and ''prescribe'' here in terms of the definition clause, to wit, Section 2, Sub-section (66) means prescribed by Rules made under this Act. Since no rule has been framed as yet, there is no specific prohibition in existence in terms of Clause (b) of Sub-section (4) of Section 48 for delegation of the power to pass orders of

demolition to the Special Officer by the Municipal Commissioner. This construction will also be borne out by the other provisions of the said Section 48. We must keep on record at this stage that there was no contention raised before the Tribunal challenging the validity otherwise of the order of delegation produced.

Accordingly, we feel that the Tribunal went wrong in holding, in the manner as summarised hereinabove. We hold that the Special Officer was fully authorised to pass the order of demolition and, accordingly, it is necessary to set the impugned order and we do so by setting aside the impugned judgment and order of the Tribunal. We direct in consequence that the Tribunal will now proceed to hear the appeal on merit on all other points, excepting the one decided by us by this order. The appeal is, therefore, remanded back to he Tribunal for being heard out, as directed, on the lines of our observations. We make it clear that we have not entered into the merits of the other contentions as might be raised by the parties.

4. The Revisional application is thus disposed of.

5. There will, however, be no order as to costs.

6. Let xerox copies of this order passed today be handed over to all the contesting parties including the Petitioner in person on the usual terms on their undertaking to apply for and obtain urgent certified copies.

A.M. Sinha, J.

7. I agree.

8. Impugned Older set aside and Appeal remanded back to the Tribunal.