

Sreemati Atarmani Dasi Vs The Corporation of Calcutta

Court: Calcutta High Court

Date of Decision: Aug. 10, 1908

Judgement

1. The rule in this case was obtained by the Petitioner upon the Municipal Magistrate of Calcutta to show cause why the order convicting the

Petitioner under secs. 408 and 574 of the Municipal Act and sentencing her to pay a fine of Its. 25, should not be set aside on the ground that the

objections of the Petitioner were not heard before the modified plan was approved by the General Committee under the provisions of sec. 407 of

the Municipal Act and generally that the conviction does not appear to be good in law. The case in support of the Rule has been very ably argued

by the learned Counsel, but after reading the explanation of the Municipal Magistrate and hearing the learned Counsel in opposition to the rule, we

hold that it is not a case for our interference and that the rule must be discharged.

2. It seems that under the provisions of sec. 406 of the Municipal Act, an inspection of the bustee in which the premises belonging to the present

Petitioner are situated, was made and a standard plan was prepared on a report of a Medical Officer and an Engineer. The Medical Officer was

an officer of the Corporation, but the Engineer was not.

3. It is argued in support of the rule that the Engineer ought also to have been a servant of the Municipality. The (sic)contentions does not appear

to us to (sic)be sound. The terms of the section do not (sic)require that the officer should be a permanent Municipal officer and sec. 83 of the Act

provides that a person appointed for a special purpose is a Municipal servant. Notices were afterwards issued on all the owners of the land of the

bustee including the vendor of the Petitioner. Objections were made by the Petitioner's vendor and also by her neighbor, Abdul Samad. The

latter's objection was that the proposed road passed through his masonry building. His objection with that of the Petitioner's vendor and others

were heard by the Sub-committee on the 14th July 1904 and a decision was arrived at that the course of the road should be deflected so as to

avoid the masonry buildings. The modification of the original plan was approved by the General Committee on the 29th July 1904.

4. It has been argued that a fresh notice should have been served on the owner of the house, the Petitioner's vendor, and her objection to the

deflection of the road heard as it injuriously affected her property. There is nothing, however, in the law which requires the adoption of this

procedure and apparently the law contemplates that all persons interested will be present before the Sub-committee and will present not merely

their own objections to the scheme but also any objection which they may have to any modification of the scheme on the objections raised by

others. The deflection was no doubt made at the expense of the Petitioner's vendor and it may have inflicted a serious hardship on her. But it

seems to us that it was her duty at the time when the matter was before the Sub-committee to have ascertained what the various objections of

other persons were and then to have opposed the objection which was made by Abdul Samad.

5. It has however been argued that the deflection of the road approved by the Sub-committee was sanctioned merely to avoid expense and not for

the purpose of improving the bustee and therefore it was not an act which the Committee were empowered to do under the Municipal Act. The

Municipal Magistrate in dealing with this question seems to have been of opinion that the deflection of the road was not an improvement on the

original plan, but he held that the Subcommittee had power under the Act to sanction any amendment of the original plan and therefore that it was

not open to him in the case before him to hold that the action of the Sub-committee was illegal. In our opinion the view taken by the Magistrate is

correct.

6. The Petitioner's vendor was served on the 1st December 1904, with a notice to carry out the improvements according to the revised plan. On

the 5th March 1905, she sold the premises to the Petitioner. Meanwhile, a prosecution for failure to obey the notice had been instituted against the

Petitioner's vendor and when that case came on for hearing on the 5th May 1905 it was dismissed on the ground that the vendor's interest in the

premises had been sold to the Petitioner. By an order of the General Committee a fresh notice under sec. 408 was then served upon the Petitioner

on the 7th September 1906 and in consequence of her failure to carry out the improvements, a prosecution against her was instituted in April

1907. On the 31st May 1907, she was acquitted on the ground that the plan according to which she had been directed to make the improvement

did not correspond with the plan sanctioned by the General Committee after modification on the 29th July 1904.

7. It appears that some officer of the Municipality had on his own responsibility inserted in the plan a privy by the side of the road. The case again

went back to the General Committee and by an order of that body the unauthorized addition to the plan was struck out and it was ordered that a

fresh notice be issued to the Petitioner to carry out the improvements to her premises in the bustee according to the original plan as passed by the

General Committee on the 29th July 1904. The notice was served on her on the 26th September 1907 and on the 13th May 1908 she was

convicted and sentenced to pay a fine of Rs. 25 for her failure to carry out the improvements as directed in the notice.

8. It has been argued in support of the Rule that in this case there was no real urgency for the improvement of the bustee and that the Municipal

Committee ought not to have proceeded under sec. 406 of the Act but under sec. 409. It seems, however, to us that the law gives the General

Committee full discretion to proceed under either of the two sections and there are no materials which would justify us in holding that there was on

the part of the Commissioners any intention to evade the provisions of the law.

9. The Petitioner has been rather unfortunate in having purchased the premises after the revised plan had been sanctioned and apparently without

ascertaining that any change in the original plan had taken place. It is also not impossible that the deflection of the road may not be an improvement

on the original plan, but that in itself is not sufficient under the law to invalidate the proceedings of the General Committee if the whole scheme was

one calculated to effect a necessary improvement in the land covered by the bustee. The Petitioner's case may be a hard case, but it is not in our

power under the law to interfere. The rule is therefore discharged.