

(1989) 02 CAL CK 0035

Calcutta High Court

Case No: None

Smt. Arati Basu

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Feb. 13, 1989

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 11(6)
- Conduct of Business of the Borough Committee Regulation, 1987 - Regulation 36

Citation: (1989) 1 CALLT 413

Hon'ble Judges: K.M. Yusuf, J

Bench: Single Bench

Advocate: Dipankar Chakraborty and Hiranya Chowdhury, Tarun Chatterjee, Arunava Roy and Jiban R. Chatterjee, for the Appellant;

Final Decision: Allowed

Judgement

K.M. Yusuf, J.

In this writ application the Memo No. 1562, dated 18/19.1.1989 issued from the Chief Valuer and Surveyor's Department, Calcutta Municipal Corporation is under challenge. By this Memo the Corporation intimated the petitioner that the building plan submitted by her in respect of premises No. 48A, Badridas Temple Street, Calcutta cannot be sanctioned due to a scheme for opening: out a Park covering the entire premises in question as per resolution of the Borough Committee II, dated 17.8.87 and action is being taken for implementation of the said scheme.

2. Mr. Chatterjee, the Learned Advocate appearing for the petitioner, submits that under Sub-section (6) of Section 11 of the Calcutta Municipal Corporation Act, 1980, the Borough Committees have no such function to exercise. The functions of the Borough Committees are specifically stated in Sub-section (6) of the said Section and in no way those relate to opening out a park or making out any such scheme on the part of any Borough Committee.

3. Mr. Chakraborty, the Learned Advocate appearing for the Corporation, submits that Sub-section (6) empowers the Borough Committees to start such other functions as the Corporation may from time to time determine by the regulations, and in support of his contention he places Regulation 36 of the Conduct of Business of the Borough Committee Regulations, 1987, which, inter alia, indicates that a Borough Committee may bring any of its resolution to the notice of the Mayor and that on receipt of such resolution the Mayor may take such action as he deems fit. But Mr. Chakraborty has not placed before the Court: any resolution or Order of the Corporation by which it empowered the Borough Committees to undertake the work of recommending the creation of any Park for the public or any such determination by the Corporation to that effect.

4. There is enough substance in the argument of Mr. Chatterjee. The Borough Committee have no locus standi to pass resolution recommending schemes for creating or opening out Parks in view of the provisions of Section 11(6) of the Calcutta Municipal Corporation Act, 1980 and Regulation 36 of the Conduct of Business of the Borough Committee Regulations, 1987. Section 11(6) of the Act only enjoins upon the Borough Committees the "maintenance of Parks" and not creating or opening out Parks. Maintenance of Parks and creating or opening out Parks are diametrically opposite functions to one another and the two cannot be reconciled. Here the Borough Committee II went out of its way to opening out new Park instead of maintaining Parks. Adoption of such a resolution, in my opinion, is beyond the power and scope of a Borough Committee and as such this Borough Committee acted wrongly, more so when the Borough Committee are not empowered for this purpose as required by the Regulations.

5. After considering the facts and submissions of the Learned Advocates of the respective parties, I consider that the resolution adopted on 17th August, 1987 by the Borough Committee II in respect of premises; No. 48A, Badridas Temple Street is beyond its jurisdiction and as such bad and illegal, and the Corporation Authorities should not make it a plea to withhold sanction of the building plan to the petitioner.

6. In that view of the matter I quash the resolution, dated 17th August, 1987 adopted by the Borough Committee II in respect of premises No. 48A, Badridas Temple Street for opening out a Park covering the entire premises and direct the Corporation Authorities to consider and sanction the building plan submitted by the petitioner on 16th January, 1989 in accordance with law.

7. The writ application is accordingly allowed. There will be no Order as to costs.