

(2004) 09 CAL CK 0058

Calcutta High Court

Case No: C.O. No. 281 of 1999

Mewa Devi Agarwal and Others

APPELLANT

Vs

Calcutta Municipal Corporation
and Another

RESPONDENT

Date of Decision: Sept. 10, 2004

Acts Referred:

- Calcutta Municipal Corporation Act, 1980 - Section 400, 400(1)

Citation: (2005) 1 CHN 567

Hon'ble Judges: Arun Kumar Bhattacharya, J

Bench: Single Bench

Advocate: Jiban Ratan Chatterjee, for the Appellant; Dipankar Chakraborty and Sima Chakraborty, for the Respondent

Judgement

Arun Kumar Bhattacharya, J.

The hearing stems from an application filed by the petitioners praying for revision of the order dated 05.12.1998 passed by the Municipal Building Tribunal, Calcutta Municipal Corporation in Appeal No. 13/1993 affirming in part the order dated 27.01.1990 passed by the Municipal Commissioner in Case No. 89-D of 1987-88.

2. The background history of the said revision is that the petitioners are tenants in respect of a tin shade at a monthly rental of Rs 100/- under Estate Kumar Jagadish Chandra Sinha since June, 1987. The O.Ps. initiated a demolition case being No. 89-D of 1987-88 in respect of the said tenanted premises without service of any notice upon the petitioners, and the Special Officer (Building) passed an order dated. 27.01.1990 for demolition of the said tenanted room without assigning any reason holding petitioners as also landlord responsible for the unauthorized construction. Neither any notice of the inspection alleged to have been held by the Building Inspector nor report of inspection was served upon the petitioners and the owner of the premises. The order of demolition could not be passed as the structure is a

kutchra one and garage should stand always in front of the premises. The appeal being No. 13/1993 preferred by the petitioners was allowed in part by the Municipal Building Tribunal with a direction to the petitioners and owner to demolish the wall of southern and eastern side to the extent of 1.20 meters of vacant space and to pay Rs. 10,000/- towards penalty, sketch fees etc. without specifying the basis therefor.

3. Being aggrieved by, and dissatisfied with, the said order, the petitioners have preferred the present revision.

4. All that now requires to be considered is whether the Id. Tribunal was justified in passing the said order.

5. Indubitably, Jagadish Ch. Agarwal, predecessor of the present petitioners, was originally tenant in respect of the disputed shed under the Estate Kumar Jagadish Chandra Sinha at a monthly rental of Rs. 100/- payable according to English calendar month, as is evinced from the documents filed. The petitioners' case is that they are tenants in respect of the said shed since June, 1987.

6. Mr. Jiban Ratan Chatterjee, Id. Counsel for the petitioners, assailed the impugned order on the ground that no notice upon his client was served in respect of the demolition Case No. 89-D of 1987-88, and on this ground alone the order is liable to be set aside.

7. Sub-section (1) of Section 400 of the Kolkata Municipal Corporation Act, 1980 authorizes the Municipal Commissioner to make an order directing the person concerned who has made unauthorized erection to demolish the said unauthorized construction within the period specified therein after delivery of a copy of order of demolition with a brief statement of the reasons therefore to the said person. The first proviso to the said Sub-section (1) prohibits in mandatory terms to pass order of demolition unless such person has been given, by means of a notice served in such manner as the Municipal Commissioner may think fit, a reasonable opportunity by showing cause as to why such order shall not be made. As per Explanation to the said sub-section, the expression "the person at whose instance" means the owner, occupier or any other person who causes the erection of any building or execution of any work to be done, including alterations or additions, if any, or does it by himself. It is the specific case of the petitioners that their landlord after construction of the tin shed inducted them as tenant in June, 1987, that they have been carrying on business of garrage in the said tin shed room and they did not make any construction and that they are not aware as to when the construction was made but the proceeding was initiated in 1987 itself. The expression "by the person at whose instance" denotes only such person having something to do with the work of such construction which is unauthorized and is to be demolished. Accordingly, the said expression does not include an occupier of such unauthorized construction if he has nothing to do with such construction or any addition to it. The service of notice prior to demolition is to provide an occupier of such unauthorized construction to vacate

the said structure within the period as mentioned after service of such notice of demolition and he has no right at all to stall the demolition of the said construction. In this connection, the decisions reported in *Ram Awatar v. Calcutta Corporation*, AIR 1982 Cal 314 and [Sankar Dutta Vs. The Corporation of Calcutta and others](#), may well be referred to. Nevertheless, natural justice or fair play, as it is characterized at times, is regarded as the best instrument to secure justice or to prevent miscarriage of justice and to promote the interest of the individual. It is not merely an empty ritual or a formal incantation but an effective procedural safeguard against undue or improper use of power. Audi alteram partem rule which is one of the two main limbs of natural justice requires that the very first step in the hearing procedure is a notice to the person concerned of the proposed action against him. Giving of such notice is mandatory and denial of notice cannot be justified on the ground that the knowledge of the matter in dispute was imputable to the concerned person. The notice must be adequate so that the concerned person has an adequate opportunity to represent against impugned action. Here, it is the specific case of the petitioners that no notice of the said demolition proceeding 89-D of 1987-88 was served upon them. There is no affidavit-in-opposition against the above allegation. In the recommendation of the Officer-on-Special Duty (B) in connection with the said demolition proceeding, though it has been stated that notice u/s 400 Calcutta Municipal Corporation Act was served upon Jagadish Agarwal & Jagadish Sinha on 17.06.1988 and 25.02.1988 respectively but they did not give any reply thereto, no document has been produced on behalf of the opposite party to substantiate the alleged service. Mr. Dipankar Chakraborty, Id. Counsel for the opposite parties took time for production of the record, but ultimately could not do so as the record being old is reported to have been misplaced. In the absence of the said record, this Court is quite in the dark as to whether the petitioners took the said plea of non-service of notice before the appellate authority. Had any such ground not been taken, there was no scope to entertain the said ground. Nevertheless, in view of the above discussion, and in the absence of any material showing service of notice relating to the demolition proceeding which is a first step in the hearing procedure, this Court has no other alternative but to set aside the orders of the concerned authority and Municipal Building Tribunal.

8. Let the matter be remitted to the authority concerned for disposal of the demolition proceeding in accordance with the law within three months from the receipt of the order after giving an opportunity to the parties of being heard.

9. Let a copy of this order be sent down at once to the Id. Municipal Building Tribunal, Calcutta Municipal Corporation, Calcutta for communication of the order to the authority concerned.