

(1877) 06 CAL CK 0010

Calcutta High Court

Case No: None

Empress on the
Prosecution of
Jodoonath Ghose

APPELLANT

Vs

Brojonath Dey

RESPONDENT

Date of Decision: June 21, 1877

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 521

Citation: (1877) ILR (Cal) 425

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

The question turns on the construction of Bong. Act III of 1864, which was in force when the order of Mr. Jeffery was made. The powers and duties of the Municipal Commissioners are defined in Sections 6 to 23. No power to stop up or divert public highways is anywhere in express terms given by the Act; but public highways not being the property of Government or private property are, by Section 10, vested in the Municipal Commissioners, By s, 9 the Municipal Commissioners are enabled to sue and he sued in their corporate name, to hold parties, moveable and immoveable, and to convey the same, and to enter into all necessary contracts for the purposes of the Act. By Section 12, the Municipal Commissioners are required to apply all property vested in them for the purposes of the Act.

2. The argument is, that Shudgoppara Lane was a public highway vested in the Municipal Commissioners, and that, under the Act, the Municipal Commissioners may dispose of their property in any way they please, provided they do so for the purposes of the Act, which purposes it is further said, are defined in the preamble, namely, the "conservancy, improvement and watching" the district where they have jurisdiction. The Commissioners, therefore, it is argued, had a right to stop up this

road, if their doing so was for the improvement of the town, of which they are the sole judges. I am of opinion, however, that it was not the intention of the Legislature to give by implication those very wide powers to the Municipal Commissioners. I read the provisions of those sections of the Act which define the powers and duties of the Commissioners quite differently. I think the general words of Sections 9, 10, and 12 are controlled by the specific provisions of Sections 13, 14, 15 and 16. In regard to highways, which are the property of the Municipal Commissioners, I think that the only powers which Municipal Commissioners have over them is to make, repair, and keep properly cleansed such highways, and to do such things upon them as are necessary for conservancy (Section 15). If any more extensive works are necessary, then the consent of the Lieutenant-Governor must be taken (Section 16), and even with the consent of the Lieutenant-Governor there is no power to stop up a road. It seems to me that if the mere fact of property being vested in the Municipal Commissioners for the purposes of the Act gave them the extensive powers contended for, those sections which define the powers of the Municipal Commissioners over their property would be meaningless.

3. This construction of the Act appears to me to be most in accordance with what is reasonable and proper. By Section 20, the Chairman or Vice-Chairman may make any order authorized by the Act unless it be expressly required to be made at a public meeting, and, therefore, if by the Act the Municipal Commissioners are authorized to make an order for the stopping up of a public highway, it would be very difficult to say that that order might not be made by the Chairman or Vice-Chairman acting alone, and the order in the present case was in fact made by the Vice-Chairman upon his sole responsibility. It is most improbable that the Legislature intended to confer such extraordinary powers upon a single individual.

4. The construction which I have put upon Beng. Act III of 1864 is further confirmed by a comparison of its provisions with those of Beng. Act VI of 1863, relating to the town of Calcutta, upon which the Act of 1864 was obviously modelled; Section 109 of Act VI of 1863 vests the streets of Calcutta in the Justices almost in the same words as Section 10 of Act III of 1864 vests public highways in the Municipal Commissioners. But by Section 110 of the former Act express power is given to the Justices, with the sanction of the Bengal Government, "to turn, direct, discontinue or stop up any public street." This, I think, shows that merely vesting highways in a Municipality does not ipso facto empower the Municipal body to stop them up, if they happen to consider that to do so is advantageous for the town. I may also observe that to hold that the Municipal Commissioners derive a power to stop up highways from the circumstances that certain highways of the town are vested in them would lead to this, that highways not vested in them could not be stopped up. This distinction would be reasonable enough as regards highways vested in Government, but quite unreasonable as regards highways which are the property of private individuals.

4. I, therefore, consider that this order of Mr. Jeffery permitting Baboo Brojonath Dey, upon certain conditions, to stop up this lane, was an order which neither he, as Vice-Chairman, nor the Municipal Commissioners, had power to make; and that the order of the Joint-Magistrate of 21st December, 1876, holding Mr. Jeffery's order to be legal, was wrong in law, and ought to be set aside. The record of the proceedings against Brojonath Dey, u/s 521, will be returned to the Joint-Magistrate, and he will finally dispose of those proceedings by such order as he thinks proper, treating Mr. Jeffery's order for the purpose of those proceedings as a nullity.

5. I am very glad to have arrived at a result which will probably have the effect of re-storing to the inhabitants of the neighbourhood the use of the road of which they appear to me to have been very improperly deprived. I quite agree with the condemnation passed by the Magistrate and present Joint-Magistrate upon Mr. Jeffery's order, by which the interests of the public seem to have been sacrificed to those of a single individual.

Prinsep, J.

6. I concur in holding that Mr. Jeffery, as Vice-Chairman of the Serampore Municipality, was not competent under Beng. Act III of 1864 to close the Shudgoppara Lane; that his order must be considered to be a nullity; and that the proceedings taken u/s 521 of the Code of Criminal Procedure, by the present Joint-Magistrate of Serampore, should proceed.