

SUPREME COURT OF INDIA

Municipal Commissioner, Calcutta

Vs.

Salil Kumar Banerjee

(S.P. Bharucha, N. S. Hegde and Ruma Pal JJ.)

03.02.2000

ORDER

S.P. BHARUCHA, J.

1. We find the conduct of the first respondent thoroughly dishonest.

2. The first respondent was required by the appellant to demolish a construction that he had put up. He challenged the order of demolition before the Building Tribunal constituted in this behalf under the Municipal Corporation Act, 1980. The decision of the Tribunal having gone against him, he filed a writ petition before the High Court at Calcutta and contended that the Tribunal which had heard and disposed of his appeal was improperly constituted in that it consisted of only two members. The writ petition was allowed and the Municipal Corporation has filed this appeal there against by special leave.

3. At the time the demolition order was passed, the provisions of the Calcutta Municipal Act, 1951 were in force. It provided for the Constitution of a Building Tribunal under Section 391-B. It was to consist of a President and two assessors. It was empowered under Section 391-A read with Section 414-A to hear appeals against orders passed by the Commissioner, which included orders requiring demolition. Section 415 of the Calcutta Municipal Corporation Act, 1980, which replaced the 1951 Act, originally provided for a Tribunal of a Chairman and two assessors. Section 415 was, thereafter amended and the Tribunal was then to consist of a Chairman and such number of members not exceeding six as the State Government might determine. The Chairman was empowered to constitute one or more benches, each bench to comprise of at least two members of whom one would be a Judicial Member and the other would be a Technical Member. The 1980 Act, in Section 631, made provisions for savings as to certain suits and proceedings. Sub-section (3) thereof stated :

(3) Save as provided in Sub-section (2) the procedure laid down in this Act shall be followed in all proceedings relating to the contravention of the provisions of the Calcutta Municipal Act, 1951.

4. In the first place, by reason of Section 631(3), the Tribunal that heard the first respondent's appeal was properly constituted. That Sub-section expressly made provision that the procedure of the 1980 Act would be followed in respect of proceedings that related to contraventions of the 1951 Act. This provision was overlooked by the High Court. The High Court also overlooked the fact that it was

the first respondent, the writ petitioner before it, who had filed the appeal under the 1980 Act before the Tribunal and had at no stage before the Tribunal ever contended that it was improperly constituted. Even assuming that it ought to have consisted of three or more members, had that objection been taken at the initial stage of the hearing of the appeal before the Tribunal, that position could have been rectified. Certainly, in circumstances such as these, the High Court ought not to have exercised its discretion in favour of the first respondent.

5. The decision of this Court in *Narhari Shivram Shet Narvekar v. Pannalal Umediram* squarely applies to the facts of the present case.

6. In the circumstances, the appeal is allowed. The judgment and order under appeal is set aside. The writ petition filed by the first respondent is dismissed. The first respondent shall pay to the appellants and respondents No. 2 and 3 the costs of this appeal.

7. It is needless to say, having regard to the passage of time that the appellant must act expeditiously to implement the order of the Tribunal.