

CALCUTTA HIGH COURT

Keshabdeo Kedia

Vs

P. Banerjee

(Lodge ,J.)

09.06.1942

JUDGMENT

Lodge, J.

1. This was a rule on the District Magistrate of Howrah to show cause why an order passed under Section 535, Calcutta Municipal Act, by the Police Magistrate of Howrah should not be set aside. The material facts are that a complaint was made by P. Banerji, Sanitary Inspector of Howrah Municipality, against the present petitioner and three others praying for action under Section 535, Calcutta Municipal Act. After a number of adjournments the case was taken up for hearing on 19th March 1942. P. Banerji was examined as a witness and an order was passed directing the Commissioners of the Howrah Municipality to take measures and close down the khatal (cattle-shed) and thereby remedy the nuisance. The petitioner has asked us to set aside this order. Section 535, Calcutta Municipal Act, provides that the Corporation or any person who resides or owns property in Calcutta may complain to a Magistrate of the existence of any nuisance. Section 535(2) specifies the action which the Magistrate is entitled to take upon receipt of any such complaint. There is nothing in the petition of complaint or in the evidence of the one witness examined or in any of the papers on the record to show that the Sanitary-Inspector P. Banerji was authorised by the chairman of the municipality to make a complaint or that he was complaining on behalf of the municipality. So far as the record goes P. Banerji filed the complaint in his personal capacity and not on behalf of the municipality. There is nothing on the record to show that P. Banerji is a person who resides or owns property in Howrah and in the counter-affidavit sworn in this Court it has been frankly admitted that he is not a resident of Howrah nor owns any property in that town. In the circumstances it is clear that the complaint was not one upon which the Magistrate was entitled to act under Section 535(2), Calcutta Municipal Act. It is obvious therefore that the order of the Magistrate was without jurisdiction and must be set aside. The rule is accordingly made absolute. The order of the Magistrate directing the Municipal Commissioners to take measures and close down the khatal is set aside. The Commissioners of the Howrah Municipality are at liberty to present a proper complaint to the Magistrate, if so advised.

Blagden, J.

2. The present opposite party failed before the learned Magistrate to show that he was in any way

entitled by Section 535, Calcutta Municipal Act, to make the complaint out of which this application arises, and he supported that part of his case which he did attempt to prove by evidence which in part, at all events, was inadmissible by Section 60, Evidence Act. For this state of affairs the learned Magistrate cannot justly be blamed because on the other side the present petitioner was absenting himself and it is not now seriously contended that he was doing this except for the reason that he thought it to his best interest to do so. In this highly unsatisfactory state of affairs the only possible order to be made is the order which my learned brother has made and I entirely agree with his order.