

1913

SARASWATI
BARMANIA
v.
GOLAP DAS
BARMAN.

The appeal is accordingly dismissed with costs. Let the record be sent down to the lower Court at once.

It is not necessary to pass any order with reference to the Rule.

S. K. B.

Appeal dismissed.

 CRIMINAL REVISION.

Before Imam and Chapman JJ.

BENODE LAL GHOSE.

v.

CORPORATION OF CALCUTTA.*

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June 16.

Bustee land—Lease of same by owner to others—Sub-lease by latter—Requisition on owners to carry out improvements—Application by him to Chief Judge only against his lessee—"Occupier," meaning of—Obstruction by sub-tenants in actual occupation—Discharge of owner from liability—Previous conviction of owner—Calcutta Municipal Act (Beng. III of 1899), ss. 3 (30), 408, 575, 622.

The owner of a bustee, who has leased it out to others, and is thereafter served with a notice, under s. 408 of the Calcutta Municipal Act, to carry out certain bustee improvements, is discharged from obligation where he has proceeded and obtained an order under s. 622 against his lessee only and is prevented by the sub-tenants of the latter, actually in occupation, from executing the required improvements.

Semle: The lessee may take action under s. 622 against his tenants in the event of their proving refractory, and he can, on failure to do so, be himself proceeded against under ss. 574 and 575 of the Act.

THE petitioner was the owner of a bustee, No. 3-1, Phul Bagan Road, which he had leased out, by a deed dated the 1st March 1911, to one Johur Mull and others for 60 years. The latter in turn had sublet the same to certain tenants who were in actual occupation.

* Criminal Revision No. 713 of 1913, against the order of N. C. Ghatak, Municipal Magistrate, Calcutta, dated April 10, 1913.

In December 1911, the petitioner was served with a notice under s. 408 of the Calcutta Municipal Act requiring him to carry out the improvements specified in the schedule, viz., to construct roads and surface drains, fill up a tank, open out spaces between the huts, and to provide filtered water hydrants, bathing places and two three-storied latrines. The petitioner failed to comply with the requisition in consequence of the property being in the possession of the lessees and their tenants. He was prosecuted and fined three times, on the 9th May, 5th September and 5th December 1912, respectively. There was some correspondence thereafter between him and the solicitors to the Corporation. On the 8th February 1913, another prosecution was started against him, but on the 14th he wrote to the Chairman for, and was given, a fortnight's time to enable him to take action under s. 622 of the Act. He accordingly filed an application thereunder, on the 24th February, before the Chief Judge of the Small Cause Court against his lessees only, and obtained an order on the 20th March, requiring them to afford him all reasonable facilities for complying with the requisition made by the Corporation. The petitioner's contractors then went to the bustee in order to carry out the necessary improvements, but was obstructed by the sub-tenants. The Corporation thereupon proceeded with the prosecution and the petitioner was convicted by the Municipal Magistrate, on the 10th April, under ss. 575 and 408 of the Act, and sentenced to a fine of Rs. 30. He then moved the High Court and obtained the present Rule.

Babu Debendra Chandra Mullick, for the Corporation. The petitioner should have proceeded, under s. 622, against the sub-tenants in actual occupation and not against his lessees. The lessees and the sub-tenants are both "occupiers" within the definition

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in s. 3(30), but s. 622 applies only to the *recalcitrant* occupiers, viz., the latter. There is no evidence of obstruction or refusal under sub-section (3) of s. 622. Under s. 645 the General Committee has power to determine which of several grades of owners or occupiers shall be held liable, and they have considered the petitioner to be the proper person to carry out the terms of the requisition. The High Court cannot interfere with the discretion of the General Committee in this respect: *Shamul Dhone Dutt v. Corporation of Calcutta* (1).

Babu Manmatha Nath Mukerjee, for the petitioner. The word "occupier" in s. 622 means the petitioner's occupier, viz., the lessees. By the latter not proceeding thereunder against the sub-tenants, they have prevented the petitioner from carrying out the scheme of improvements.

Cur. adv. vult.

IMAM AND CHAPMAN JJ. The petitioner was sentenced, under section 575 read with section 408 of the Calcutta Municipal Act, to a fine for repeated failure to comply with a notice served upon him under section 408 requiring him to make improvements upon certain property which he owns in the city of Calcutta. It appears that the petitioner had, before the service of the notice, leased the property upon a long lease. His reply to the case against him was that he had not been able to execute the improvements owing to the property being in possession of the lessee and of certain tenants under the lessee. The petitioner had instituted a proceeding against the lessee under section 622 of the Act and had obtained an order from the Chief Judge of the Calcutta Small Cause Court requiring the lessee to give him reasonable

facilities to carry out the improvements required of him. Thereafter the petitioner's contractor had made an attempt to carry out the improvements but had been obstructed by the tenants of the lessee. The petitioner's defence was that, under the provisions of sub-section (3) of section 622, he was discharged from his obligation during the continuance of the refusal of the lessee to give him reasonable facilities to carry out the improvements.

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We are of opinion that the petitioner's contention must prevail. It has been argued on behalf of the Municipality that the petitioner should have brought his case under section 622, not against the lessee, but against the tenants actually residing on the land. The contention is that the word "occupier" in section 622 means only the person in actual occupation. The interpretation contended for cannot be accepted. The lessee, in his relations with the petitioner who is the owner of the property, is an occupier within the definition of the word "occupier" in sub-section (30) of section 3 of the Act. This is made clearer still by reference to section 645 which speaks of gradation of occupiers. We are of opinion, therefore, that the case under section 622 was rightly brought against the lessee and that so long as the lessee refuses to provide reasonable facilities, the petitioner is discharged.

The lessee can himself proceed against the tenants under section 622, in the event of their proving refractory. In the event of the lessee failing to perform his part in the matter he can be proceeded against under sections 574 and 575. The Rule is made absolute. The conviction and sentence are set aside.

E. H. M.

Rule absolute.