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the point: but so far as the custom of this Court as also of the Subordinate Courts is concerned, it is established that such notice should be given to the complainant in a case in which compensation has been given to the complainant.

E. H. M.

CRIMINAL REVISION.

Before Rankin and Duval JJ.

SATISH CHANDRA BOSE

v.

CORPORATION OF CALCUTTA.*

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Building—Demolition—Order of demolition by the Corporation at the expense of the owner—Building completed before 1st April 1924—Continuation of liability under the repealed Act—Application of the procedure of the new Act—Calcutta Municipal Act (Beng. III of 1899) s. 449—Bengal General Clauses Act (Beng I of 1899) s. 8—Calcutta Municipal Act (Beng. III of 1923) ss. 3, (46), and 363.

Section 363 of the new Calcutta Municipal Act does not apply to an unauthorized building completed before the 1st April 1924, and the Municipal Magistrate has no jurisdiction, in such a case, to direct its demolition under the section by the Corporation at the cost of the owner.

A liability created under section 449 of the previous Act cannot be enforced by means of the procedure set forth in section 363 of the new Act.

Ram Gopal Goenka v. Corporation of Calcutta (1) referred to.

THE petitioner was the owner of the premises No. 54, Corporation Street. Two corrugated-iron sheds were alleged by the prosecution to have been erected

*Criminal Revision No. 290 of 1926, against the order of Abu Nasar Muhammad Ali, Municipal Magistrate, Calcutta, dated Jan. 20, 1926.

by the petitioner without sanction, and completed before the 1st April, 1924, when the new Calcutta Municipal Act (III of 1923) (B.C.) came into force. On the 22nd November 1923, the Corporation served a notice on him, under section 451 of the Calcutta Municipal Act (III of 1899) (B.C.), then in force, directing him to stop the construction of the sheds pending an application to the Magistrate under section 449 of the Act which, however, was never made. The matter came up, after notice to the petitioner, for consideration before the Roads, Buildings and Bustees Committee on the 6th June 1924, and was postponed at his request. He ultimately failed to appear, and, on the 10th July, the Committee resolved that an application be made to the Municipal Magistrate under section 363 of the Calcutta Municipal Act (III of 1923) (B.C.) for an order of demolition of the sheds by the Corporation at the petitioner's expense. A complaint was thereafter lodged before the Magistrate who made the order on the 20th January 1926. The petitioner thereupon moved the High Court and obtained the present rule.

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Babu Birbhusan Dutt (with *Babu Sekhar Kumar Bose*), for the petitioner. The sheds were completed before 1st April 1924, and section 363 of the new Act does not apply: *see* section 3(46). The liability under section 449 of the old Act cannot be enforced now.

The Advocate-General (Mr. B. L. Mitter), for the Corporation. The liability of the petitioner, as regards the demolition of the sheds, is preserved by section 8 of the Bengal General Clauses Act (I of 1899) (B.C.) The procedure of the new Act applies to the existing liability notwithstanding the fact that the General Committee under the old Act has ceased.

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RANKIN J. In this case application is made to this Court in connection with an order made by the Municipal Magistrate of Calcutta authorizing the Corporation to demolish two unauthorized corrugated-iron sheds at No. 54, Corporation Street, at the expense of the owner, namely, the present petitioner, under section 363 of the Calcutta Municipal Act of 1923. It is contended on behalf of the applicant in revision that that order should be set aside. The facts out of which the case arises are admitted. The two corrugated-iron sheds in question are said by the petitioner to have been completed in 1922, and it is said, on behalf of the opposite party, that for the present purpose it will be sufficient to say that they were completed before the new Act came into force on the 1st of April 1924. It appears that, before this new Act came into operation, a notice was served on the petitioner to appear before the Roads and Buildings Sub-Committee of the General Committee of the Corporation to show cause, under section 449 of the old Municipal Act, that is to say, Act III (B.C.) of 1899. After the new Act came into force, the petitioner was summoned on several occasions to appear before the Committee of the new Corporation, dealing with such matters, to show cause why steps should not be taken against him under section 363 of the new Act. The petitioner does not appear to have made any appearance before the Committee, and ultimately that Committee resolved, on the 10th July 1924, to apply to the Magistrate for an order under section 363 of the new Act, and that resolution was afterwards confirmed by the Corporation itself. Accordingly, the Magistrate having enquired into the matter has made the order complained of against the petitioner. The question now arises whether the Magistrate had any jurisdiction to do so, and whether the proceedings were competent proceedings. It is

quite clear that, whereas originally in March 1924 proceedings were started under the old Act which was then in force, those proceedings, on the coming into force of the new Act, were dropped, and proceedings were started and continued under section 363 of the new Act. Now, the contention on behalf of the petitioner is this that in the 46th sub-clause of section 3 of the Calcutta Municipal Act of 1923, there is a definition of the phrase "new building," and this definition says it "means and includes any building erected from the ground upwards after the commencement of this Act"; in other words, it is said, the test whether a building is new or not within the meaning of the Act has reference to the date of commencement of the Act. Section 363 (1) says "If the Corporation are satisfied" that "the erection of any new building has been commenced without obtaining the written permission of the Corporation, or is being carried on, or has been completed otherwise than in accordance with the particulars on which such permission was based" then the Corporation may, after giving such notice to the owner of it, apply to a Magistrate for an order that the building be demolished by the owner or by the Corporation at the expense of the owner. Now, what is said is that the building in the present case, which was completed prior to the commencement of this new Act, is not within the scope of section 363 at all because it is not a new building within the meaning of the definition; and, as to that, the learned Advocate-General has not attempted to contend the contrary. He has not contended that this building is a new building within the definition given in section 3. He says, however, that, notwithstanding that fact, section 8 of the Bengal General Clauses Act (B.C. I of 1899, shows that the liability as regards the demolition is preserved, notwithstanding the new Act because

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under the previous Act, namely, Act III of 1899, the liability was established by section 449. That liability continued according to the argument of the opposite party, but the procedure for enforcing the liability has to be distinguished from the liability itself. The contention is that what has happened in this case is that the Magistrate has made an order enforcing the liability which existed under section 449 of the old Act, but in doing that he has applied the procedure of the new Act, being the procedure laid down in section 363. The question is whether that contention is sustainable or not. In my opinion it is not sustainable. Section 449 of the Calcutta Municipal Act of 1899 says that "if the General Committee are satisfied that the erection of any building has been commenced without obtaining the permission of the Chairman, or in contravention of any order passed by the General Committee, the General Committee may apply to a Magistrate and such Magistrate may make an order of demolition." In the present case, the General Committee had come to an end, and did not exist at any material time. The General Committee never applied its mind, in fact, to the question of this building, and it did never make any application to the Magistrate. What happened was that the Corporation, acting in the first instance by a sub-committee of seven of the new Corporation, took steps and made the application to the Magistrate; and, in my opinion, it is quite impossible to say that, in a case such as this, section 449 of the old Act goes on with the procedure under section 363 of the new Act made applicable to it. In my judgment, the consequences which may follow as regards the case of a building erected prior to the new Act have nothing to do with the duty of this Court in construing the statute. I can appreciate the inconvenience that would result from the construction of

the statute as I have stated; but that does not authorize this Court to permit orders being made by Magistrates where there is no jurisdiction to do so. The matter must be set right by the Legislature. In my judgment, it is quite impossible to carry out the provisions of section 449 of the old Act by means of the procedure set forth in section 363 of the new Act. For these reasons it appears to me that this rule should be made absolute.

I would just add that the case to which we have been referred, namely, the case of *Ram Gopal Goenka v. Corporation of Calcutta* (1) does not appear to have raised the exact question that calls for determination in this case, though there is some discussion therein with reference to section 449 of the old Act.

DUVAL J. I agree.

E. H. M.

(1) (1925) I. L. R. 52 Calc. 962

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