

CRIMINAL REVISION.

Before Mukerji and Bartley JJ.

BASANTAKUMAR DAS

v.

CORPORATION OF CALCUTTA.*

Sanction—Revocation of sanction—Corporation of Calcutta—Misrepresentation, Ground of—Order of demolition—Court's discretion, Proper exercise of—Examination of circumstances, Necessity of—Revocation proceedings, notice of, If applicant entitled to—Calcutta Municipal Act (Beng. III of 1923), Sch. VII, r. 65; s. 363.

Although the Corporation has absolute power to revoke a sanction to build, on the ground of misrepresentation, the court, for a proper exercise of its discretion to order demolition, must examine the circumstances under which the sanction was revoked, or the extent to which the misrepresentation, if any, could have affected the granting of sanction.

Though the material rule is silent about notice, the valuable right, acquired by a party, in the shape of permission to build, cannot be revoked, behind his back, on a charge of misrepresentation, without affording him an opportunity to defend himself.

CRIMINAL REVISION.

The facts of the case and the arguments advanced at the hearing of the Rule appear in the judgment.

Pugh and Dineshchandra Ray for petitioner.

Narendrakumar Basu and *Sateendranath Mukherji* for opposite party.

Cur. adv. vult.

MUKERJI AND BARTLEY JJ. This Rule is directed against an order of demolition, passed by the Municipal Magistrate of Calcutta, under section 363 of the Calcutta Municipal Act. The magistrate has ordered that certain structures, said to be

*Criminal Revision, No. 1060 of 1933, against the order of Abdul Majid, Presidency and Municipal Magistrate of Calcutta, dated Sep. 12, 1933.

unauthorized, in premises No. 62 Baranashi Ghosh Street, be demolished by the Corporation at the expense of the owner.

1934

*Basantakumar
Das
v.
Corporation of
Calcutta.*

The facts shortly stated are the following: The petitioner was the owner of the western portion of the said premises. In February, 1926, he asked for sanction to erect certain structures, on his part of the premises, submitting with his application a plan showing the entire premises. The District Building Surveyor refused sanction upon certain grounds, and, on that, the petitioner preferred an appeal, which was heard and decided by the Building Committee on the 14th June, 1926. Their order was that the appeal should be allowed and that formal sanction should issue, on the petitioner opening out some proposed spaces as shown in the plan. This condition being fulfilled and a report to that effect being made by the Building Inspector, on the 6th June, 1927, a formal sanction was issued on the 8th of that month. On the 15th August, 1927, a motion was tabled for revocation of the sanction. On the 27th February, 1928, the Building Committee revoked the sanction. This revocation was confirmed on the 6th August, 1930. Three days after, the usual notice under section 363 of the Act was given to the petitioner, and, thereafter, on the 24th October, 1930, the Corporation resolved to move the magistrate for demolition of the structures. As the result of the proceedings thus started, the order complained of in this case has been passed by the magistrate.

One of the contentions urged in support of this Rule relates to the validity of the revocation of the sanction. The revocation was in accordance with Rule 65 of Schedule XVII and purported to be on the ground that the permission was granted in consequence of a material misrepresentation or fraudulent statement contained in the petitioner's application for sanction. Under this Rule, it may be pointed out, "when such permission is cancelled any work done thereunder shall be deemed to have been done

1934
 Basantakumar
 Das
 v.
 Corporation of
 Calcutta.

“without permission.” The misrepresentation, as far as may be gathered, was this that, while in August, 1925, a partition of the entire premises was effected by an arbitration, held at the instance of all the co-owners, the plan submitted for sanction in February, 1926, did not show any sign of that partition. The magistrate has stated in his explanation that the revocation proceedings show that this omission and perhaps some other facts also were considered as material misrepresentation, and that, if the true state of things were known, the decision of the Building Committee in the matter of granting of the sanction would have been otherwise.

The magistrate has held that Rule 65 of Schedule XVII makes the Corporation the final authority to decide whether there was any material misrepresentation or not and that he had no authority to go into that question. He, therefore, held that the structures erected under the sanction must be taken as erected without sanction. There was a complaint on behalf of the petitioner that no notice had been given to him of the revocation proceeding. On this point, the magistrate held that no notice was necessary as the Rule did not speak of any; and he found also that the petitioner was present during the consideration of the revocation matter. On these findings, and also upon the finding that the structures infringed rules 3, 23, 29 and 32 of Schedule XVII—a fact which does not seem to have been disputed—the learned magistrate has made the order of demolition.

The learned magistrate, in our judgment, was in error in supposing that, once he arrived at the findings aforesaid, nothing else was necessary for him to consider, in order to justify the order that he made. It is true that, under Rule 65 of Schedule XVII, the power of the Corporation to cancel a permission, on the ground of material misrepresentation by the applicant, is absolute. But it is so only in the sense that no other authority can revise the order of revocation or restore the permission so cancelled. In

the court, which has to make the order of demolition, there is a discretion, which the word "may," used in section 363 of the Act in reference to this matter, plainly indicates. For a proper exercise of that discretion, it is absolutely necessary for the court to go into the question, as to what the exact circumstances were, under which the revocation was made, or the extent to which the misrepresentation or fraudulent statement, if any, could have affected in granting of the permission. Unless a consideration of these matters were open to the court, its existence can hardly be justified, and it would not be possible for it to shape its order in the light of those principles, which have to be borne in mind, by a court issuing an injunction for demolition—the powers and duties of which are *pari passu* with those of the Municipal Magistrate in a matter of this description.

1934
Basantakumar
Das
v.
Corporation of
Calcutta.

So far as notice is concerned, the Rule does not speak of any. But it can hardly be expected that Rules framed under the Act should embody and incorporate into themselves such an elementary and fundamental principle of natural justice, which no individual or body corporate can be permitted to forget, namely, that, when a party has acquired a valuable right in the shape of a permission to build, that permission could be withdrawn, behind his back, on a charge that he has been guilty of fraud or misrepresentation, and without an opportunity being allowed to him to say what he may have to say in his defence. In the present case, however, this omission has not resulted in prejudice to the petitioner, for the finding is that he was present at the deliberations relating to the revocation.

To determine whether the discretion, which the law vests in the court, should be exercised in favour of Corporation in this case, one of the matters that must be taken into consideration is the length of time that has elapsed since the completion of the structures, which, on account of the revocation, must now be deemed to be unauthorized. On this point, the

1934
 Basantakumar
 Das
 v.
 Corporation of
 Calcutta.

evidence stands thus. An officer of the Corporation has said definitely that the erection was completed by March or April, 1927. Mr. Basu, appearing on behalf of the Corporation, has asked us to regard this statement as a mistake, because the petitioner, in his petition to this Court, has stated that the constructions were made after the formal sanction was obtained, that is to say, after the 14th June, 1927. Speaking of events nearly five years old, one is not unlikely to make mistakes; and the petitioner is not less likely to make such a mistake than the Corporation officer. But the construction must have been completed, in any event, within a short time of the sanction, that is to say, sometime about the end of 1927. It is a wonder that, though the sanction was revoked on the 27th February, 1928, the revocation was not confirmed till the 6th August, 1930, that is to say, that the matter was left hanging in the air for two years and a half, the matter not being considered of any sufficient importance for any decisive action being taken. In such circumstances, it would, in our opinion, be quite wrong to make an order for demolition. The deviations from the Rules, such as they are in the present case, were all condoned by the District Building Committee, on the petitioner fulfilling certain requirements. Such misrepresentations, if any, as there may have been, had little bearing on the question of the safety of the building or its sanitation, though there may have been some inconvenience to the petitioner's co-owner, or, it may as well be that the rights of the latter have been infringed. With that, however, we are not concerned in the present case.

The Rule is made absolute and the order complained of is set aside.

Rule absolute.

S. D.