

## CIVIL REVISION.

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*Before Costello J.*

1933  
Dec. 18.

### CORPORATION OF CALCUTTA

*v.*

### RASHMANI DEBEE.\*

*Corporation of Calcutta—Additions to buildings—Refusal to sanction—  
Compensation, Liability for—Calcutta Municipal Act (Beng. III of  
1923), s. 303 (1), (2).*

Under section 303(1) of the Calcutta Municipal Act, the Corporation of Calcutta may sanction only such additions to the existing buildings, as from their nature do not cause further obstruction on the actual ground site of a projected street.

The Corporation is not liable to pay any compensation under section 303(2) of the Calcutta Municipal Act to the owner of a site, except for refusal to sanction such additions as they can sanction under section 303(1) of the Calcutta Municipal Act.

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

*Krishnalal Banerji* for the petitioner.

*Bijankumar Mukherji* and *Sanatkumar Chatterji*  
for the opposite party.

COSTELLO J. This Rule was issued under the provisions of section 25 of the Provincial Small Causes Courts Act (XI of 1887) and is directed against a decision of a judge of the Small Causes Court, Sealdah, dated the 11th March, 1933. One of the points in that judgment raises a question of considerable public importance. The suit, in which the judgment was given, was brought by a lady named Sreemati Rashmani Debee against the Corporation of

\*Civil Revision, No. 766 of 1933, against the order of P. C. Guha, Judge of the Court of Small Causes at Sealdah, dated March 11, 1933.

Calcutta and was for the recovery of compensation under the provisions of section 303(2) of the Calcutta Municipal Act, 1923, which is Bengal Act III of 1923.

The plaintiff is the owner of certain premises known as No. 27, Hâldârpârha Road. On the front portion of those premises, there is a small two-storeyed house and the back portion of the premises consists of low-lying land, which was formerly occupied by a tank. In the month of January, 1929, the plaintiff submitted to the Corporation of Calcutta a plan of a proposed new building, which, according to the case for the defendants, was to be entirely detached and situated at some distance behind the existing building and to the west of it. A reference to the site plan of the proposed building shows that the land belonging to the plaintiff was of irregular shape and most of the back portion of the premises lies in a line to the west of the front portion. On the 20th February, 1929, the Corporation refused to sanction the proposed building on various grounds, including the fact that there were various violations of the building rules and also because the proposed building would be erected within the alignment of a projected street. Some two years later, that is to say, on the 20th July, 1931, the same plan was re-submitted to the Corporation and, on the 17th August, 1931, the plan was returned to the plaintiff and the Corporation informed her that sanction was refused, as the site of the proposed building fell entirely within the projected road alignment, and the Corporation did not think it necessary to repeat all the other grounds for their refusal of sanction. On the 16th of November, 1931, an agent of the plaintiff, one Ramchandra Mukherji, wrote a letter to the Surveyor to the Corporation, requesting him to place the matter before the Estates and General Purposes Committee for consideration; but, on the 16th of February, 1932, the plaintiff, without waiting for the decision of that Committee, served a notice on the Corporation under section 538 of the Calcutta Municipal Act, giving the

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Corporation notice that the plaintiff proposed to take legal proceedings. On the 29th of March, 1932, the Surveyor to the Corporation wrote to the plaintiff to the effect that the matter would be decided by the Estates and General Purposes Committee and in fact that Committee, in a meeting of the 31st March, 1932, resolved :

That consideration of the matter be postponed for a report from the Building Department as to whether, apart from the objection that the building was affected by the alignment, there were other objections under the Building Regulations and whether there was any independent access to the proposed building from Haldârpârhâ Road.

Before any decision of the Estates and General Purposes Committee of the Corporation was arrived at, however, the plaintiff, in the month of April, 1932, instituted the suit, out of which this matter arises, claiming damages, as I have indicated, under section 303(2) of the Calcutta Municipal Act, and putting such damages at the figure of Rs. 175. The matter, in fact, did come up before the Estates and General Purposes Committee of the Corporation on the 10th November, 1932, for consideration, but, in view of the fact that a suit had then been instituted, the Committee resolved "that the item was withdrawn as "it was reported to be *sub judice*."

It appears that it was contended, on behalf of the defendant Corporation, before the Court of Small Causes that section 303(2) of the Calcutta Municipal Act had no application; but the learned judge overruled that contention and allowed the plaintiff's claim assessing the damages at Rs. 70. This was on the 11th March, 1933, when the judgment, now under review, was delivered.

It seems that, at the trial, the case was contested on two main grounds. The learned judge in his judgment says :

It is in evidence that, in the letter written by the defendant refusing sanction of the plaintiff's plan, the ground of its being included within the street alignment was only set forth; it is not denied again that the defendant did not acquire the site within the meaning of section 303, clause 2 of

the Municipal Act; as such, the provisions of this section seem to be applicable in this case; the defendant's plea that the site was such that the plan could not be sanctioned on other grounds as well has not been made out by any independent evidence.

The learned judge, therefore, came to the conclusion that the plaintiff was entitled to compensation under sub-section (2) of section 303. I am of opinion, however, that the learned judge has entirely misconceived the purpose and the effect of section 303; indeed, it is now admitted by the learned advocate, who has appeared before me in the present proceeding, that no one, in the course of the case, seems to have appreciated the fact that sub-section (2) of section 303 provides for compensation only in very limited circumstances. The purpose of section 303 is to place restriction on the erection of or additions to a building or boundary wall within a street alignment or building line. The object of the section clearly is to prevent the erection of structures which will seriously add to an obstruction already existing on land which falls within a projected street alignment. The operative part of this section is contained in sub-section (1), which says:

No portion of any building or boundary wall shall be erected or added to within a street alignment prescribed under section 302.

So that, we start with a clear and definite declaration that anything, which may put further difficulties in the way of clearing or preparing ground which has been allocated for the purpose of a public street, must not be sanctioned. Sub-section (1), however, contains a proviso, which says that

The Corporation may, in their discretion, permit additions to a building to be made within a street alignment, if such additions merely add to the height of, and rest upon, an existing building or wall, upon the owner of the building executing, if required to do so by the Corporation, an agreement binding himself and his successors-in-interest

(a) not to claim compensation in the event of the Corporation at any time, thereafter calling upon him or such successors by written notice, to remove any addition made to any building in pursuance of such permission, or any portion thereof, and

(b) to pay the expenses of such removal.

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That proviso enables the Corporation, at their discretion, to permit additions to a building, which are upwards and not sideways, if I may so express it; in other words, the Corporation may, if they choose, permit such additions, as from their nature, do not in fact cause any further obstruction on the actual ground site of a projected street. Reading, therefore, sub-section (1), in its entirety, it comes to this that lateral or detached additions are prohibited, whereas vertical additions may be permitted under the conditions specified in the proviso. Now, it seems to me that it is abundantly clear that sub-section (2) has reference solely to the latter class of additions, namely, the kind of additions which the Corporation can sanction if they choose. The section provides that, if the Corporation refuse to grant permission to add to any building, then in certain circumstances, namely, if the land destined for a street is not in fact acquired by the Corporation within six months from the date of their refusal of the sanction, then they will be liable to pay reasonable compensation to the owner of the site. Now, it seems to be beyond any question—indeed it is shewn on the plan, to which I have referred and is, moreover, now admitted by Dr. Mukherji, who appears for the plaintiff, the respondent in the present proceeding—that the projected building could, in no sense, be described as an addition to any existing building either vertical or even lateral. It was, in fact, an entirely separate building that the plaintiff desired to erect. Dr. Mukherji has also very frankly conceded that, in those circumstances, he finds himself in the position of having to admit that sub-section (2) affords the plaintiff no relief.

Having regard to the interpretation and construction of section 303 and in particular of sub-section (2), which I have enunciated, it follows that the decision of the learned judge of the Small Causes Court of Sealdah was erroneous in law, or, to use the words of section 25, is not “according to law”.

Therefore, the decree which he has made must be set aside and the plaintiff's suit dismissed. The Rule is made absolute on those terms; but, having regard to the fact that the precise point on which I decide the matter was never raised by the defendants in the court below, there will be no order as to costs.

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*Rule absolute.*

S. D.