

Moran and ors. Vs. Chairman of Motihari Municipality

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Court : Kolkata

Decided On : Aug-01-1889

Reported in : (1890)ILR17Cal330

Judge : Pigot and ;Rampini, JJ.

Appellant : Moran and ors.

Respondent : Chairman of Motihari Municipality

Judgement :

Pigot and Rampini, JJ.

1. This is an appeal from a decision of the Subordinate Judge of Champarun so far as it dismisses the suit which is brought by the plaintiffs in respect of the refusal by the Municipality of Motihari of a license for the use of certain lands in the occupation of the plaintiffs, as a market.

2. There is no doubt, and it has been so found, that this is an ancient market. There is no doubt that the powers possessed by the Municipality under Part X of Bengal Act III of 1884 have been so used as to put an end to that market to the profit of a market established by the Municipality under the authority of one of the sections of Part X of the Act; and the question before us is whether, under the provisions of Bengal Act III of 1884, power was conferred upon the Municipality of doing those acts destructive of the plaintiffs' property, and yet no remedy or no

right was allowed by the Act to persons in the position of the plaintiffs in case of the Act being so used to the destruction of their property.

3. The sections which relate to this matter are Sections 337 to 340 inclusive, and perhaps one or two of the later sections of Part X. Section 337 gives the Commissioners power to 'order that within such limits as they may fix, no land shall be used as a market for the sale of meat, fish, butter, ghee, fruits, vegetable and similar provisions, otherwise than under a license to be granted by the Commissioners.' Section 338 confers upon them the power, when they have passed such a prohibitory order as Section 337 provides, of granting such a license as is contemplated by Section 337.

4. Section 339 provides that the Commissioners may grant such a license year by year on the certificate of the Chairman. Section 340 provides that the Chairman shall grant such a certificate, unless the land be defective for the purposes of a market in the respects specified in the section; and the second part of this section (340), which is that upon which the appellants rely, enacts that 'the owners or lessees of all lands used as markets for the sale of provisions as aforesaid at the time of the extension of this part to the Municipality shall be entitled to receive a license for the current year without the certificate required by Section 339, but in subsequent years the license shall not be renewed without such certificate.'

5. There is no doubt the plaintiffs were the owners or lessees of land used as a market at the time of the extension of this part of the Act to the Municipality of Motihari.

6. What the Municipality did was to start a market of their own and then refuse the plaintiffs a license, thereby shutting up their market; and with reference to that, one of the later sections of this part may be referred to, that is, Section 344, which makes it an offence, punishable by fine, to permit land to be used as a market without a license under Section 338. It is contended that the later words of Section 340 may, and assuredly, if they may, they ought to be read so as to save the property of the plaintiffs from the complete confiscation with which this public body, in exercise of the powers with which they have been vested, has visited them. If they cannot obtain a remedy in damages for the refusal to grant a license, they are

wholly without any remedy at all. The Legislature in its wisdom having deliberately withdrawn from the Courts in this country that power, which is possessed by the Courts of Justice at home, to compel corporations to do their duty, and to restrain them from doing that which it is not in their province to do,-a power, which has been reserved to the High Court in its Ordinary Original Jurisdiction with respect to the presidency-town, but which has been withheld in respect of any of the Municipalities in the mofussil, the plaintiffs are wholly without remedy, unless we can give them damages for the conduct of the Municipality: but to do that, we must be satisfied that it was the duty of the Municipality under the provisions of the Act to issue the license which they have refused: for breach of such a duty they might perhaps (at least, that is plaintiff's case), be liable in damages. There are no words in Sections 339 or 340 rendering it obligatory on the Municipality to issue a license, unless, in the words in Section 339 'and the Commissioners may grant such license year by year' the word 'may' is to be read as 'shall' or is to be read in some cases as 'shall.' That is the contention of the appellant; and the cases in which it is contended that 'may' ought in that section to be read 'shall' are cases in which land was actually being used as a market at the time of the extension of this part of the Act to the Municipalities. It is argued that as the owners of lands so used at such a time are declared entitled to receive a license for the current year without the certificate required by Section 339, but for subsequent years it is provided that the license shall not be renewed without such certificate, that that must mean that the license in subsequent years must also be renewed, provided the certificate is granted.

7. There are two difficulties in the way of adopting this construction. One, that the word 'may' in Section 339 must, according to it, in the majority of cases be read as 'may,' but in exceptional cases as 'shall.' That is a serious difficulty: and the second difficulty is that the scope of the sentence at the close of Section 240, which it is suggested ought to be read as 'provided that in subsequent years a license is to be issued in case a certificate is granted,' seems not capable of bearing such a construction and not to contemplate anything of the kind. We think that the effect of it is merely to relieve persons, using land as a market at the time the Act is made applicable, from the necessity in that year of obtaining a certificate; and the words 'but in subsequent years the license shall not be

renewed without such certificate' are merely words, as we read them, of caution to avoid the very unreasonable supposition that the one year's holding without a certificate involved the right to a license for subsequent years without a certificate. That they contemplate an enactment that such holders shall get a license for all subsequent years, if they please, without a certificate, we much regret we are unable to hold.

8. That being so, we must affirm the decision of the Court below and dismiss the appeal.

9. We think that it is most lamentable that Acts should be drawn, as they too often are, without that intelligent consideration of, or that anxious regard for, private rights, which ought to be the study of every Legislature that springs from English authority.

10. The cross-appeal must be allowed. As we have pointed out in our judgment in the plaintiff's appeal, the Municipality was legally entitled to refuse the renewal of the license; the Subordinate Judge, with a very natural wish to do something for the loss sustained by the plaintiffs, gave them damages for that legal refusal. It is impossible that that order of the Subordinate Judge can be sustained. We therefore set it aside.

11. We are very glad to hear from the learned Counsel for the respondent that a license will be granted to the plaintiffs, and that the preposterous proceeding of which we have been studying the consequences will be so far corrected. Under the circumstances we shall give no costs either in the appeal or cross-appeal.