

Baldeo Prasad Vs. Emperor

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Court : Allahabad

Decided On : May-25-1910

Reported in : 7Ind.Cas.288

Judge : Karamat Husain and ;Chamier, JJ.

Appellant : Baldeo Prasad

Respondent : Emperor

Judgement :

1. This is a reference by the Sessions Judge of Maiapuri in which he recommends that the conviction of Baldeo Prasad under Section 147 of the United Provinces Municipalities Act should be set aside. The facts which are somewhat peculiar are as follows:--In a Civil suit between Baldeo Prasad as plaintiff and the Municipal Board of Etawah as defendant, it was decided by the District Judge on appeal that Baldeo Prasad was not entitled to close certain drain in front of his house; but that he might have the platform in front of his house connected with the public road by means of a stair case. The decree directed the Municipal Board to erect the stair case within two months, in default Baldeo Prasad was entitled to erect it himself and recover the cost of doing so from the Municipal Board. The Municipal Board took action, which they said complied with the decree. But Baldeo Prasad contended that the Board had not complied with the decree and he proceeded to enlarge the stair case which the Board had built and to cover over large part of the drain along the front of the house and also to erect what has been described as a

vertical buttress in front of his house projecting a foot or more from the original front of the building. Having done this he applied to the Civil Court for the costs incurred by him. An Amin was sent to the spot and reported that the constructions were in some respects in accordance with and in other respects contrary to the decree of the Civil Court. The District Magistrate says that the Amin's report is flagrantly contrary to facts, but, however, that may be, the report was laid before the Subordinate Judge and he decided that some of the constructions should be removed and that the rest might stand. The Municipal Board have not appealed against this decision. But while these proceedings were going on the Municipal Board by a resolution required Baldeo Prasad to dismantle the buttress and certain portions of the stair case erected by him. The resolution is not on the record nor is the Board's subsequent order to Baldeo Prasad requiring him to dismantle the buttress and portions of the staircase. But we may assume for the purpose of this case that the proceedings of the Board were so far in order. The question is whether it is open to the Municipal Board to prosecute Baldeo Prasad in respect of the buttress and the staircase pending the decision of the dispute by the Civil Court and to continue the prosecution after the Civil Court decided the matter in favour of Baldeo Prasad. It seems to us that inasmuch as the Board were parties to the execution proceedings they should have appealed against the Subordinate Judge's order if they considered that it was erroneous. It seems clear that the provisions of the Municipal Act were not intended to enable Municipal authorities to override the decision of a competent Civil Court in a matter of this kind by means of a criminal prosecution. We set aside the conviction of Baldeo Prasad and direct that the fine, if paid, be refunded.