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Madho Das Vs. Rex

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SooperKanoon Citation : sooperkanoon.com/453891

Court : Allahabad

Decided On : Jun-22-1949

Reported in : AIR1949All738

Appellant : Madho Das

Respondent : Rex

Judgement :
ORDER

Seth, J.

1. This is an application against an order of a Magistrate passed under Section 310., U.P. Municipalities Act.

2. By a notice dated 23rd October 1948 issued under Section 263 (1) (a), Municipalities Act Maharaj Bahadur Singh as owner of house No. K25/27 was directed to make certain constructions or to demolish certain portion of that house on the ground that that portion of the house had become dangerous to the public safety. The house itself was in the occupation of the applicant, Madho Das, who claims to be occupying it as a tenant of Maharaj Bahadur Singh.

3. Adya Prasad, claiming to be a pairokar of Maharaj Bahadur Singh, applied to the City Magistrate of Banaras on 25th October 1948 for an order directing Madho Das to vacate the house so that the notice issued by the Municipal Board might be

complied with. The case was transferred to a Bench of Honorary Magistrates. On 21st January 1949 the Bench passed the following order:

No sufficient cause shown. It is sufficient that the Board has ordered the owner to demolish the house, We, therefore, order the occupier, Madho Das to vacate the house within a week. Put up on 31st January 1949 for further orders in case the opposite party refuses to vacate.

Applicant, Madho Das, has come up in revision against this order.

4. It is manifest that the order passed by the Bench Magistrates is an erroneous order and an order passed without jurisdiction. It is an order passed without jurisdiction because it is only on an application by an owner of the house that a Magistrate acquires jurisdiction to make an order under Section 310 (2), Municipalities Act; and in this case/admittedly, no application was, made by Maharaj Bahadur Singh, the owner of the house. It is an illegal order for the reasons that the section does not empower a Magistrate to order an occupier to vacate a house. It only empowers a Magistrate to require the occupier to allow the owner to execute all such work, with respect to the house, as may be necessary for compliance with the notice issued by the .Board to the owner.

5. A preliminary objection has, however, been taken to the hearing of this revision. It is contended that a proceeding under Section 310 (2), Municipalities Act is not a criminal proceeding and therefore, this Court has no jurisdiction to revise the order of the Magistrate under Section 439, Criminal P.C.

6. Section 439, Criminal P.C., empowers the High Court to pass such orders as it may deem fit in the case of a proceeding, the record of which has been called for by itself, under Section 435, Criminal P.C., or which has been reported for orders to it under Section 438, Criminal P.C. A reference to Section 435, Criminal P.C., is, therefore, necessary for the decision of the preliminary objection. According to Section 435, Criminal P.C. the High Court may call for and examine the record of any proceeding before any inferior criminal Court situate within the local limit of its jurisdiction.

7. The question, therefore, is whether the Bench of Magistrates, while acting under Section 310 was acting as a criminal Court. It could not have been acting as such when the proceedings before it were not proceedings of a criminal nature. It is apparent that a Magistrate may have to perform certain functions under the Municipalities Act or under other Acts, which cannot be described to be criminal proceeding Vide: Municipal Board Banaras v. Ram Sahai Gupta : AIR1933 All281 and Madusudan Lal v. Emperor : AIR1929 All931 . In the present case the Bench of Magistrates was neither trying the applicant for any offence nor was it holding any enquiry into the commission of an offence or crime. It was not conducting any proceeding contemplated by the Code of Criminal Procedure and was not exercising any power of the Magistrate detailed in Schedule 3 of the Code. I am, therefore, of the opinion that the proceedings under Section 310 (2), Municipalities Act were not criminal proceedings and, therefore, the record which, has been called for by this Court is not the record of the proceedings of an inferior criminal Court. The preliminary objection, is, therefore, well founded and should be upheld.

8. This application in revision is accordingly rejected. The stay order is vacated.

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