

Kalipada Das Vs. the King

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Court : Kolkata

Decided On : May-02-1949

Reported in : 1950CriLJ125

Judge : Harries, C.J. and; J.P. Mitter, J.

Appellant : Kalipada Das

Respondent : The King

Judgement :

J. P. Mitter, J

1. This is a petition for revision of an order of Mr. U. N. Ghatak, Magistrate First Class, Ulubaria, dated 25th October 1948, whereby he made absolute an order Under Section 133, Criminal P.C. requiring the petitioner to remove the shed which he had constructed on a piece of khas mahal land.

2. The petitioner's case is that until about five years ago he had a shop near the Lock-gate at Ulubaria. As the Military authorities wanted to construct a bridge across the Ulubaria Canal, the petitioner's shop was removed to the present site, where he was permitted by Government Officers to construct a shed or a stall. For several years he has since been carrying on business there without causing inconvenience to the public and he claims to have acquired some sort of tenancy right under the Irrigation Department.

3. On 31st March 1948, the Executive Engineer of Cossy Division wrote to the Sub-divisional Magistrate of Ulubaria to say that the petitioner had trespassed on Government khas mahal land by erecting the said stall. Acting upon this report the Sub-divisional Magistrate drew up proceedings against the petitioner Under Section 183 of the Code as stated above and thereafter transferred the matter to Mr. Ghatak for enquiry Under Section 139A of the said Code. In the meantime, the petitioner in showing case Under Section 135 had denied the existence of a public right to the land in question. The learned Magistrate Mr. U. N. Ghatak held his enquiry Under Section 139A and on hearing both parties made the said order Under Section 133 absolute.

4. Against this order the petitioner moved the Sessions Judge who, by his order dated 17th January 1949, dismissed the petitioner's application.

5. Mr. S. S. Mukherjee, appearing on behalf of the petitioner, contends firstly, that the learned Magistrate did not comply with the requirements of Section 139A and, secondly, that there was no enquiry at all Under Section 137. Consequently, says Mr. Mukherjee, the order complained of is bad.

6. It appears from a perusal of the record that the learned Magistrate neither questioned the petitioner as to whether he denied the existence of a public right in respect of the land in question nor came to a definite finding in support of the petitioner's denial of a public right made in his petition before the learned Sub-divisional Magistrate. Proceedings under chap. 10 of the Code are to be taken in distinct stages. The enquiry Under Section 139A must end with a finding in terms of that section and it is only when the denial of the public right is found not to be well-founded that the enquiry Under Section 137 should be undertaken. In this case there was no finding one way or the other and there appears to have been no enquiry other than a purported enquiry Under Section 139A. That being so, the order dated 25th October 1948 must be held to be bad.

7. In the result, we set aside the order of Mr. U. N. Ghatak, Magistrate First Class, Ulubaria dated 25th October 1948 and direct that an enquiry Under Section 137, Criminal P.C. be conducted by a learned Magistrate other than Mr. U. N. Ghatak to be nominated by the District Magistrate of Howrah. With these directions this

rule is made absolute.

Harries C. J.

8. I agree.

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