

Emperor Vs. AsiruddIn Sarkar, on Behalf of the Firm of Abed Ali Tufani

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Court : Kolkata

Decided On : May-17-1921

Reported in : AIR1921Cal118,62Ind.Cas.412

Judge : Teunon and ;Suhrawardy, JJ.

Appellant : Emperor

Respondent : AsiruddIn Sarkar, on Behalf of the Firm of Abed Ali Tufani

Judgement :

1. This case comes before us on a reference made under the provisions of Section 438 of the Code of Criminal Procedure by the learned Sessions Judge of Pabna, It is directed against an order made or purporting to be made under the provisions of Section 137, Criminal Procedure Code, by the Sub Divisional Magistrate of Serajgunge. By this order he directs the removal of two obstructions to a certain drain or water channel, one such obstruction being a wall north to south for a distance of nine feet from the northern extremity thereof, another a wall running east and west along the bed of the channel. The reference is made on a number of grounds, some of which do not appear to be well founded. But we are of opinion that we must accept the reference and set aside the orders to which we have referred on two grounds, namely, that the Sub-Divisional Magistrate appears to have fixed an arbitrary limit of time, namely, five minutes for the cross examination of the witnesses and, secondly, on the ground that he comes to no final findings as to the bona fides of the claim set up by the second party, that is to say, the

party against whom the order is directed.

2. For these reasons we set aside the order and direct that the proceedings be taken up at the point reached on the 15th December and that the case be re-tried and heard and disposed of in accordance with law. the re trial will take place in the Court of a stipendiary Magistrate exercising the powers of a Magistrate of the First Class at the Headquarters Station of the District of Pabna such Magistrate to be nominated by the District Magistrate.

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