

(1895) 04 AHC CK 0006
In the Allahabad High Court
In Re: Rahmat-ullah

Date of Decision : 05-04-1895

Acts Referred:

Citation : (1895) ILR (All) 485

Hon'ble Judges : John Edge, J;Burkitt, J;Banerji, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

John Edge, Kt., C.J., Banerji and Burkitt, J.—We have to consider in revision certain orders passed by the Magistrate of Benares. So far as we need refer to those orders, they were that one Rahmat-ullah should re-build two baradaris which, according to the order, had partly fallen in the rains and which he had by misconception dismantled. The order directed the applicant in the proceeding in revision to re-build them on their old site, and of the same shape and stone structure as they were formerly and directed him to begin the rebuilding at once. The other part of the order was that nobody, even though possessing a decree for the plot there, should act without report to, and permission of the District Magistrate in any new way in dismantling, building, renaming or should cut or get cut any tree from the place there without report to or permission of, the District Magistrate. The District Magistrate's explanation of his powers was that he had got power to make these orders as an executive officer; and he also suggested that, whether he had power or not as an executive officer, they were good orders u/s 144 of Act No. X of 1882, and as such, ought to be upheld by this Court. When the matter came before us we were anxious to ascertain whether there was any statutory authority conferring power on Magistrates to make orders such as these, and we directed notice to go to the Magistrate to show cause why his order should not be set aside. The Public Prosecutor has appeared here to show cause. His contention has been, as to the order to re-build, that that was an order which could lawfully be made u/s 144 of Act No. X of 1882; that it came under the words "to take certain order with certain property in his possession or under his management," that is to say in the possession, or under the management, of Rahmat-ullah. Those words are

undoubtedly very wide and equally vague, but we must assume that the Legislature in using those words in the section did not intend to give a Magistrate such extraordinary powers as would enable him to order, under that section, a building which had fallen down in private grounds to be re-built by the owner of those grounds. If Mr. Beid's contention as to the re-building part of the order were correct, a litigant who had established his right to open windows in his house or to maintain open ancient windows in his house could be restrained for two months by a Magistrate's order u/s 144; and in certain cases, by a further order of a Local Government under that section, permanently, from availing himself of the right decreed to him by the Civil Court, and that even if the decree were a decree of the Queen in Council. We may give another illustration. A, a private person, in order to prevent his neighbour B overlooking A's, premises might put up a hoarding on his own land, and on his removing it, if B objected that the removal of the hoarding would cause annoyance to him and his family, who could be overlooked from A's, ground, the Magistrate could, if Mr. Reid's contention is correct, make a lawful order u/s 144 ordering A to resuscitate the hoarding on his own ground, which he had pulled down. There must be a reasonable construction put on these vague words of the statute.

2. To refer to the other portion of the order. Mr. Reid at first contended that the Magistrate would have jurisdiction u/s 144 to restrain a man from executing a Civil Court decree, if he was not satisfied that the man was rightfully led to execute the decree in the way in which it was being executed. The execution of a Civil Court decree is provided, for by the CPC and, in our opinion, a Magistrate has no more jurisdiction to interfere, with the execution of a Civil Court decree than he has to question the legality or propriety of the decree itself.

3. Where a Magistrate happens to be Collector, he may have to execute the decree, if execution is sought against ancestral property, but there he is a quasi court executing the decree; but, as Magistrate, his duty in connection with the execution of a Civil Court decree begins and ends with the rendering of necessary protection to the officers of the Civil Court lawfully executing the decree of the Civil Court, and neither he nor the Local Government, u/s 144, has any jurisdiction to make any order restraining the execution of a Civil Court decree, or threatening with a prosecution u/s 188 of the Indian Penal Code any person who attempts to execute a Civil Court decree in the particular place, without the Magistrate's permission.

4. The authority of every Magistrate to do any act as Magistrate or as Collector, if such authority exists, must ultimately be found in the powers, conferred by Parliament. The immediate power may be an executive order of the local administration, but the power of the local administration to make an order must be derived either directly or indirectly from Parliament, and it is a mistake to assume that, because an officer is an executive officer or a judicial officer, he has any power to interfere with private or public persons which cannot be derived from a lawful origin, viz., the Acts of Parliament.

5. We hold that these orders in the respects which we have mentioned were ultra vires, and that the Magistrate had no power or jurisdiction to make them.

6. In order to avoid being misunderstood, we think it right to say that it is necessary that a Magistrate should have the extensive powers which are conferred on him by Section 144 of Act No. X of 1882 and we think that as long as his order is within that section, that is, so long as he has jurisdiction under that section to make it, he should be given the widest discretion. The powers under that section are intended to be used summarily for the protection of the public, including private individuals, and the preservation of the peace. If this order had been one which the Magistrate had power to make u/s 144, we should have had no jurisdiction or power to interfere with it. We may say further that the Magistrate of Benares, in our opinion, acted with the very best intentions, but unfortunately he did exceed his jurisdiction.

7. Our order is that the orders prohibiting any persons from executing Civil Court decrees in that place and directing Rahmat-allah to re-build the baradari are hereby set aside.

8. The proceedings which have been instituted u/s 188 of the Indian Penal Code for disobeying the orders we have set aside must be discontinued,, otherwise a remedy may be sought by application to this Court.