

(1908) 08 CAL CK 0013
In the Calcutta High Court

Ram Autar Sahu

APPELLANT

Vs

Kishnuput Ram

RESPONDENT

Date of Decision : 24-08-1908

Acts Referred:

Citation : 4 Ind. Cas. 577a

Hon'ble Judges : Ryves, J; Brett, J

Bench : Division Bench

Judgement

1. The present rule is directed against two orders issued by the Deputy Commissioner of Palamau. The first hearing date, the 19th May 1908, runs as follows:

It appears from the report of Baba Matukdhari Singh, the Deputy Collector, that you are having an embankment (bandh) erected in Bhojpur Tuppay Utary, in consequence of which Kishnuput Ram and others inhabitants of that place, may suffer great loss, you are, therefore, ordered that you do at once stop the erection of the embankment or appear before me on the 29th May 1908, and show cause. Treat this as peremptory.

2. On the 29th May the second order was passed which was to the following effect:

3. I have directed the petitioner to stop work this year. At the beginning of next cold weather I will visit the place. Copy to Police for information.

4. The rule was issued calling upon the Deputy Commissioner to show cause why his order, dated the 29th May 1908, should not be set aside on the ground that it is not clear from the proceedings adopted by the Deputy Commissioner under what provisions of law the order had been passed or with what object it had been passed.

5. We have read the explanation which has been furnished by the Deputy Commissioner. In that he states that the order was an executive order having for

its object the prevention of a disturbance of the peace and that he was unable to specify any provision of the law under which he proceeded. In our opinion the rule must be made absolute and the order must be set aside. The only provisions of the law which would enable a Magistrate to pass an order somewhat of the description of that passed in the present case are those of Section 144 but it is clear that that section cannot apply to a case like the present where the object of the order appears to have been merely to prevent pecuniary loss to the opposite party. In support of this view we are supported by the decision of this Court in the case *Prayag Singh v. The Empress* 9 C. 103 which is a case somewhat similar to the present which was decided under the old Code, of which Section 518 was the section corresponding to the present Section 144. There is another late ruling in support of the same view *Isab Mondal v. The Emperor* 8 C.W.N. 373. These rulings clearly indicate that the proper remedy for a party aggrieved by an act such as the present is by an application or suit in the Civil Court, and by obtaining from that Court an injunction restraining the other party from carrying on the work which is likely to cause pecuniary loss.

6. We, therefore, make the rule absolute and set aside the order.