

part and parcel of the building and a most important part of that building for the purpose of letting it out to gentlemen as a place of residence.

We must, therefore, set aside the order made by the learned Judge and direct that this portion of the building be not acquired unless the whole premises are acquired by the Land Acquisition Collector. The costs given against the claimant in the lower Court must be refunded, if paid, and there will be costs of this hearing in favour of the appellant.

The Rule will be made absolute for the same reasons without costs.

G. S.

Appeal allowed.
Rule absolute.

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DALCHAND
SINGHI
C.
THE
SECRETARY
OF STATE
FOR INDIA.

CRIMINAL REVISION.

Before Greaves and Walmsley JJ.

ABDUL ALI CHOWDHURY

v.

EMPEROR.*

Security to keep the Peace—Conviction under s. 143 of the Penal Code—Absence of finding of acts involving breach of the peace or evident intention of committing the same—Legality of order for security—Criminal Procedure Code (Act V of 1898) s. 106.

To bring a case within the terms of s. 106 of the Criminal Procedure Code, the Magistrate should expressly find that the acts of the accused involved a breach of the peace or were done with the evident intention of committing the same, or at all events the evidence must be so clear that,

* Criminal Revision No. 1159 of 1915, against the order of H. A. Street, Sessions Judge of Sylhet, dated July 28, 1915.

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without an express finding, a superior Court is satisfied that such was the case.

Jib Lal Gir v. Jogmohan Gir (1) followed.

A finding that the common object of the unlawful assembly was by means of criminal force or show thereof to take possession of land cultivated by a tenant of the rival landlord, and that, but for the direction of the latter to the tenants to retire, which was carried out, there might have been a serious riot, *held* insufficient to bring the case within the purview of s. 106 of the Code.

THE facts of the case were as follows. One Afroz Bakht Chowdhury, a zemindar in the Arangpur pargana, purchased in 1312 B.S. the lands of two brothers, Sonai Mia and Monai Mia, and settled them with Syama Bap. A dispute last year between Afroz and his brother, Yar Bakht, on the one side, and a Hindu *mirasdar* on the other, led to the former being bound down, under s. 107 of the Criminal Procedure Code, to keep the peace for one year in the sum of Rs. 5,000. The prosecution story was that on the 23rd March 1915 Shabaz Mia, the son of Sonai, and Abdul Ali Chowdhury, the brother-in-law of Monai, went in a large body numbering about 200 men, armed with *batlis* and spears, to take forcible possession of the lands of Syama Bap. Afroz, on being informed of the fact, directed Syama and other tenants cultivating in adjoining plots not to resist the party of the accused but to retire quietly to the house of one Alphu Morali which they did. Afroz also sent a letter to the Balaganj police station relating what had happened. The police held an investigation upon the letter and sent up 19 persons. Sixteen of them were placed on trial before the Additional District Magistrate of Sylhet, three having been prevented from appearance in Court through illness. The Magistrate acquitted two of the accused and convicted the rest under s. 143 of the Penal Code, on the 5th July, sentencing them

to three months' rigorous imprisonment, and binding them down, under s. 106 of the Code, to keep the peace for one year. His findings were as follows:—

I hold it proved that on the 23rd March last accused No. 1, Shabaz Mia, and No. 2, Abdul Ali Chowdhury, led a large body of armed men and drove out Syama Bap from the land he was cultivating as *jotejar* under Afroz. The common object of the unlawful assembly was by means of criminal force or show of it to take possession of the plot of land cultivated by Syama Bap, and all the persons proved to have been members of this unlawful assembly are guilty under s. 143 I. P. C. It remains to be considered what sentence should be inflicted on the 14 accused. There can be no doubt that, had not Afroz directed Syama Bap and his other tenants not to resist the accused but to remain quietly in Alphi Morali's *bari*, there might have been a serious riot, as Afroz is the leading zemindar in Aurangpur and must have many men under his control. Obviously the accused thought they had their enemy at their mercy, as, if on account of having been bound down he decided not to resist, they could do what they liked in seizing the land by force; while if he did resist and a riot ensued, they would get him mulcted of Rs. 5,000.

On appeal, the Sessions Judge of Sylhet acquitted Shabaz and upheld the conviction and sentences of the rest. He merely found that "no occurrence in the way of a fight actually took place." The accused thereupon moved the High Court and obtained a Rule on the ground that the order under s. 106 was illegal.

Mr. Rasul (with him *Babu Hemendra K. Dass*), for the petitioner. The offence under s. 143 of the Penal Code does not involve a breach of the peace, and a conviction thereunder does not justify an order under s. 106 of the Criminal Procedure Code: *Jib Lal Gir v. Jogmohan Gir* (1), *Baidya Nath Majumdar v. Nibaran Chunder Gope* (2), *Raj Narain Roy v. Bhagabat Chunder Nandi* (3). There must be a conviction of an offence involving a breach of the peace: *Kishore Sirkar v. King-Emperor* (4). The findings here are insufficient.

(1) (1899) I. L. R., 26 Calc. 576.

(3) (1903) I. L. R., 35 Cal'c. 315.

(2) (1902) I. L. R., 30 Calc. 93.

(4) (1903) 8 C. W. N. 517.

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The Deputy Legal Remembrancer (Mr. Orr), for the Crown referred to *Jib Lal Gir v. Jogmohan Gir* (1). The findings show an intention to commit a breach of the peace which was frustrated in the circumstances of the case by the prosecutor's party retiring from the disputed land.

GREAVES AND WALMSLEY JJ. The accused in this case were convicted under section 143 of the Indian Penal Code and bound down under section 106 of the Code of Criminal Procedure. It has been urged before us that the order under section 106 of the Criminal Procedure Code is without jurisdiction as there was no finding of any likelihood of a breach of the peace being committed or of any evident intention of committing acts which would involve a breach of the peace. The Appellate Court came to no finding upon this point. All that is said in the judgment of the Appellate Court is that the appellants formed with others an unlawful assembly with the common object set forth in the charge. In the lower Court the findings are as follows: "The common object of this unlawful assembly was by means of criminal force or show of criminal force to take possession of the plot of land cultivated by Syama Bap." There is a further finding to this effect: "There can be no doubt that, had not Afroz Bakht Chowdhry directed Syama Bap and his other tenants not to resist the accused but to remain quietly in Alpha Morali's *bari*, there might have been a serious riot, as Afroz Bakht is, according to the evidence on the record, the leading zemindar in Aurangpur and must have many men under his control. Obviously the accused persons thought that they had their enemy at their mercy, as if on account of having been bound down under

(1) (1899) I. L. R. 26 Calc. 576.

section 107 of the Code of Criminal Procedure he decided not to resist their attacks they could do what they liked in seizing the land by force, while if he did resist their armed attack by sending a similar body of men and a riot ensued, they would be able to get him mulcted of the amount of Rs. 5,000." Various decisions have been quoted before us, but it seems to us that the law is succinctly and accurately laid down in *Jib Lal Gir v. Jogmohan Gir* (1) where it is said that "being a member of an unlawful assembly does not necessarily involve a breach of the peace. It does, however, involve an apprehension that a breach of the peace may result. Nor does a conviction of an offence under section 143 of being a member of an unlawful assembly necessarily amount to a conviction of 'taking unlawful measures with the evident intention of committing' a breach of the peace. In order to bring the acts of the accused within either of these terms it is necessary that the Magistrate should expressly find that the acts of the person convicted amounted to this, or at all events that the evidence is so clear that, without such an express finding, a superior Court, such as a Court of Revision, should be satisfied that the acts do involve a breach of the peace or an evident intention of committing the same." We have already referred to the findings in this case and they do not seem to us to sufficiently and clearly show that the acts for which the accused were convicted under section 143 necessarily involve a breach of the peace or any evident intention of committing the same.

The Rule is, therefore, made absolute, and the order under section 106 of the Code of Criminal Procedure set aside.

E. H. M.

Rule absolute.

(1) (1899) I. L. R. 26 Cal. 576.

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