

## CRIMINAL REVISION.

1929

Mar. 22

*Before Suhrawardy and Graham JJ.*

OSMAN MUNSHI

v.

KADER PRAMANIK.\*

*Revision—Order under Bengal Alluvial Lands Act (Beng. V of 1920), if a judicial order—Code of Criminal Procedure (Act V of 1898), s. 439.*

An order under the Bengal Alluvial Lands Act, 1920, directing huts erected on a *char* to be sold and the sale-proceeds to be credited to the treasury, is an executive and not a judicial order.

An order under the said Act is not open to appeal or revision by any Court, civil or criminal, the Collector acting thereunder in his capacity as a revenue officer.

Section 439 of the Code of Criminal Procedure has no application to such a case.

CRIMINAL RULE obtained on behalf of Osman Munshi and others with respect to an order in a proceeding under section 3 of the Bengal Alluvial Lands Act, 1920.

The Subdivisional Officer of Tangail, being satisfied that there was a likelihood of a breach of the peace in a newly formed *char* within his jurisdiction, by an order dated the 18th November, 1928, attached the same under section 3 of the Bengal Alluvial Lands Act. On the 24th November, he ordered all huts which had no thatch to be removed and the sale-proceeds to be credited to the Treasury. Against this order, the second party obtained this Rule.

*Mr. Langford James* (with him *Mr. Asitaranjan Ghosh*), for the petitioners. The order of the learned Subdivisional Magistrate was *ultra vires*. He purported to act under section 3 of the Bengal Alluvial Lands Act, which did not authorise any Magistrate or Collector to order demolition of huts

\*Criminal Revision No. 1211 of 1928, against the order of J. N. Talukdar, Subdivisional Magistrate of Tangail, dated Nov. 24, 1928.

already in the possession of a party. Such a thing was never contemplated by the Act. Such an order was passed by the Subdivisional Officer in his capacity as a magistrate and, therefore, came within the Revisional Jurisdiction of the High Court. Section 2 of the Act defines "Collector" to be also a Deputy Collector exercising the powers of a magistrate of the first class appointed by the Local Government to discharge any of the functions under the Act. Thus a Deputy Collector acts in his capacity of a magistrate and the High Court has jurisdiction to revise his order. In the circumstances of the present case, neither section 5 nor section 7 has any application.

*Mr. Prabodhchandra Chatterji*, for the Crown. The application in revision is incompetent. The order was not a judicial order, but was passed by the Subdivisional Officer in his capacity as a Deputy Collector and hence the High Court has no jurisdiction to revise it. The order complained of was passed under the Bengal Alluvial Lands Act, section 5 of which provides for a reference to the principal civil court of original jurisdiction in the district. This was not done. Section 7 of the Act provides for an appeal to the Commissioner. These indicate that such orders are executive orders and cannot be revised by the High Court. In any case, section 439 of the Code of Criminal Procedure has no application. The application to the Criminal Bench was misconceived.

*Mr. Mukundabehari Mallik*, for the opposite party.

SUHRAWARDY J. This Rule is directed against an order purported to have been passed by the Subdivisional Officer of Tangail under the Bengal Alluvial Lands Act (Beng. V of 1920), directing that some huts, which were erected by the second party on the disputed *char*, were to be sold and the sale-proceeds credited to the Treasury. This Rule should, in my opinion, be discharged on several grounds. The first is that the order passed by the Subdivisional Officer

1929.  
OSMAN MUNSHI  
v.  
KADER  
PRAMANIK.

1929

OSMAN MUNSHI

v.

KADER

PRAMANIK.

SUHRAWARDY J.

is an order passed in his capacity as Collector as defined in the Act. That being so, it is an order which is passed not in his judicial capacity, but as an executive officer invested with certain powers under the Act. That an order passed under the Act is an executive order, is indicated by certain provisions in the Act itself. It is laid down that, in attaching a *char*, the Collector has to determine what costs are to be paid by any party, and any person who is aggrieved by such order must prefer an appeal to the Commissioner. Thus it is clear that the order passed by the Collector is not a judicial order but an executive one.

The second ground on which this Rule should fail is that, conceding that it is a judicial order, it is not an order which can be revised by the Criminal Bench of this Court under section 439 of the Code of Criminal Procedure. I am not prepared to say that it is an order which can be revised by the civil side of this Court, but that is the proper side to approach in matters like this.

The third ground which seems to settle the matter is that there is no indication in the Act that an order under it is open to appeal or revision by any court, civil or criminal. The Collector acts in his ordinary capacity of a revenue officer and is not subject to the control of ordinary courts. Moreover, considering the circumstances of this case, it seems to me that it is a very proper order to secure tranquillity in the locality.

The Rule fails and is discharged.

GRAHAM J. I agree; but I prefer to base my decision solely upon the ground that the order complained of having been passed by the Collector in his capacity as such, we have no jurisdiction to deal with the matter in the exercise of our criminal jurisdiction.

*Rule discharged.*

A. C. R. C.