

Before Sir John Sturley, Knight, Chief Justice and Mr. Justice Banerji,
 BULAKI DAS (PLAINTIFF) v. THE SECRETARY OF STATE FOR INDIA
 IN COUNCIL AND OTHERS (DEFENDANTS).*

1909
 April 21.

Act (Local) No. I of 1900 (Municipalities Act), section 183—Jurisdiction of Civil Courts.

A Municipal Board granted permission to *B* to build a temple. The District Magistrate acting under section 183 of the Municipalities Act made an order cancelling the permission given by the Municipal Board and the Local Government confirmed this order of the District Magistrate. *B* brought a suit for a declaration that he had a right to build the temple.

Held that the suit was not maintainable; *held* further, that the Civil Court had no power to disturb the order of the District Magistrate who acted within his jurisdiction and whose order had been duly confirmed by the Local Government. *Abdul Aziz v. Municipal Board of Pilibhit* (1) followed.

THE facts of the case are as follows :—

In the city of Moradabad there is a sarai in which both Hindus and Muhammadans live. In the sarai there is a chabutra with an image of Shiva on it. On the 3rd August 1905 the plaintiff Bulaki Das applied to the Municipal Board, Moradabad for permission to build a temple on the chabutra. The application was granted on the 25th October and the plaintiff commenced building operations. Subsequently some Muhammadan residents of the sarai submitted a petition to the District Magistrate of Moradabad protesting against the erection of the temple. On the 6th February 1906, the District Magistrate, acting under section 183 of the Municipalities Act (No. I of 1900,) cancelled the permission given by the Municipal Board. This order of the District Magistrate was confirmed by the Local Government on the 7th of March 1906. The plaintiff thereupon brought suit for a declaration that the plaintiff had a right to construct the temple. The court of first instance (Subordinate Judge of Moradabad) decreed the suit. The District Judge set aside the decree of the first court and dismissed the suit. The plaintiff appealed to the High Court.

Babu *Durga Charan Banerjee* for the appellant submitted that section 183 of the Municipalities Act referred to matters falling within the scope of a Municipality. The remedy sought

*Second Appeal No. 1391 of 1907, from a decree of W. F. Kirton, Additional District Judge of Moradabad, dated the 20th of August 1907, reversing a decree of Nihal Chandra, Subordinate Judge of Moradabad, dated the 15th of April 1907.

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by the civil suit was outside its scope. There was no legal bar to the suit. A Civil Court could consider the propriety of an order of the Local Government affecting the legal rights of a party and could give the declaration sought by the suit.

Maulvi *Ghulam Mujtaba* (with him Mr. *W. Wallach*) for the respondents, submitted that where a special tribunal was constituted to decide certain matters, the ordinary Civil Courts could not interfere. *Abdul Aziz v. The Municipal Board of Pilibhit* (1).

STANLEY, C. J., and BANERJI, J.—We think that the decision of the learned Additional Judge of Moradabad, from which this appeal is preferred, is correct. The plaintiff sued for a declaration that he is entitled to build a temple on a site in Moradabad. In a *sarai* in that city there is a *Chabutra* with an image of the god Mahadeo. It is said that there was formerly a *kuchha* temple upon this site which had fallen into ruin and that the plaintiff was desirous of restoring it. He applied to the Municipal Board on the 3rd of August 1905, for permission to build a temple on the *Chabutra* and his application was granted and the building was commenced. Later on, however, some Muhammadan members of the community protested against the building and, in consequence, the District Magistrate on the 6th of February 1906 cancelled the order of the Board in favour of the plaintiff, purporting to act under the provisions of section 183 of the Municipalities Act, Act I of 1900. The order of the District Magistrate was confirmed by the Local Government on the 7th of March 1906. The learned Additional Judge held that it was not open to the plaintiff to maintain his suit in view of the order of the District Magistrate. Hence this appeal.

We think that the view of the law taken by the learned Judge is correct. Section 183 provides that a District Magistrate may by an order in writing suspend within the limits of his district the execution of any order of the Municipal Board and may prohibit the doing within those limits of any act which is about to be done or is being done in pursuance of or under cover of the act, if in his opinion the doing of the act is likely to lead to breach of the peace, or cause injury or inconvenience to the

public or any class or body of persons. The order of the District Magistrate cancelling the order of the Municipal Board, giving permission to the building of the temple in question, was passed in pursuance of this Act and it was confirmed by an order of the Local Government as provided for by subsection (2) of section 183. In view of this action of the District Magistrate we are of opinion that the plaintiff is not entitled to maintain a suit for a declaration that he is entitled to build despite the order so passed and confirmed. The principle governing the ruling of a Bench of this Court in the case of *Abdul Aziz v. The Municipal Board of Pilibhit* (1) appears to us to be applicable to this case. There it was held that where a Municipal Board acting under its statutory powers ordered the course of a drain which is considered to be prejudicial to health to be diverted, it was held that the Civil Court had no power to disturb the order of the Board inasmuch as it was acting within its statutory powers. So here we think that the Civil Court has no power to disturb the order of the District Magistrate, who acted within his jurisdiction and whose order has been duly confirmed by the Local Government. We dismiss the appeal with two separate sets of costs, one payable to the defendant No. 1 and one to other defendants respondents.

Appeal dismissed.

Before Mr. Justice Banerji and Mr. Justice Tubball.

KAMTA PRASAD AND ANOTHER (APPLICANTS) v. SAIYED AHMAD AND ANOTHER (OPPOSITE PARTIES).*

Act No. IV of 1882 (Transfer of Property Act), sections 89 and 90.—Two separate suits on two mortgages held by same person—Sale under the decree on the first mortgage—Paid off first mortgage and part of second mortgage—Application under section 90—No decree absolute.

A person held two mortgages over the same property, brought two separate suits on those mortgages and obtained two decrees. The first decree was made absolute and in execution thereof the decree-holder himself purchased the property. The sale-proceeds discharged the decree on the first mortgage in full and the second decree in part. He then applied for a decree under section 90, Transfer of Property Act, to realise the balance due under the second decree. Held that no decree under section 90, Transfer of Property

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*Appeal No. 77 of 1908 under section 10 of the Letters Patent.

(1) (1905) 2, A. L. J. R., 222.