

Mt. Buggan And Ors. vs Abdul Karim And Ors. on 12 September, 1950

Equivalent citations: AIR1951ALL577, AIR 1951 ALLAHABAD 577

ORDER

1. This is a reference made Under Section 319, U. P. Municipalities Act, by the District Magistrate of Rae Bareli.

2. It appears that the Municipal Board of Rae Bareli granted permission to Abdul Karim and Sharfuddin for certain constructions by resolution No. 138, dated 27-1-1943. An appeal against the order was made to the District Magistrate Under Section 318 of the Municipalities Act. The appeal was decided by the predecessor of Shri Rameshwar Dayal who had made the present reference. The appeal was decided on 21-6-1946, and the permission granted by the Board was cancelled. Abdul Karim and Sharfuddin then applied on 10-8-1946, for review of the order canceling the permission. No order was passed till 25-4-1947, when the previous order of 21-6-1946, was modified. Mt. Buggan, Mt. Zahuran, Mt. Ghuran and Sankatha then applied again before the District Magistrate on 14-7-1947, for review of the order of the District Magistrate Under section 321 (2) of the Municipalities Act. Thereupon, the District Magistrate has purported to act Under section 319 of the Municipalities Act and forwarded the papers to this Court for interpretation of the words "order passed within three months from the date of his original order" occurring in the proviso to Sub-section (2) of Section 321 of the Municipalities Act.

3. On behalf of Abdul Karim and Sharfuddin, it has been contended as a preliminary point that this reference does not comply with the requirements of Section 319 and is, therefore, incompetent. Nobody appears on behalf of Mt. Buggan and others. The contention of learned counsel for Abdul Karim and Sharfuddin must prevail. It will be seen that the application of Mt. Buggan and others was given on 14-7-1947, not when the appeal was being heard but long after the appeal had been decided. Section 819, Sub-section (1) authorises the appellate authority to make the reference if there is any doubt as to the legality of the prohibition, direction, notice or order appealed against at the time of the hearing of the appeal. There is no such doubt expressed by the District Magistrate. His doubt is with respect to the meaning of certain words in the proviso to Section 821 (2) of the Municipalities Act. Clearly, in the present case, the essential requirement was not complied with. Further Section 819 requires the District Magistrate to express his own opinion which in this case he has not done. "We have no hesitation in holding that the reference made by the learned District Magistrate does not comply with the requirements of Section 319 (1). The reference is, in the circumstances, incompetent and is here by rejected.