

(1949) 04 AHC CK 0006

Allahabad High Court

Case No: Second Appeal No. 1805 of 1946

Maiku

APPELLANT

Vs

Ram Lal

RESPONDENT

Date of Decision: April 12, 1949**Acts Referred:**

- Uttar Pradesh Municipalities Act, 1916 - Section 321, 321(2)

Citation: AIR 1952 All 430**Hon'ble Judges:** Wanchoo, J**Bench:** Single Bench**Advocate:** Ishaq Ahmad, for the Appellant;**Final Decision:** Dismissed

Judgement

Wanchoo, J.

This is an appeal by Maiku against the decree of the Civil Judge of Shahjahanpur by which he upheld the decree of the Munsif of Shahjanpur in a suit brought by the plaintiff respondent.

2. The suit of the plaintiff-respondent was for an injunction restraining the defendant-appellant from constructing a mosque within a hundred yards of the plaintiff-respondent's temple. The parties reside in Mohalla Azizganj within the Municipal limits of Shahjahanpur. In that Mohalla, there is an old temple of Shivji of which the plaintiff-respondent is the manager. The appellant had been trying to construct a mosque at a distance of about forty-four yards from the temple. In that connection, the Appellant had once before applied to the Municipal Board of Shahjahanpur in 1938. At that time, however, his application was rejected on the opposition of the Hindus of the locality. In 1943, the appellant again applied to the Municipal Board for permission to build a mosque and was granted the necessary permission to do so. There is a Municipal bye law which forbids the building of mosques within a distant of a hundred yards of temples except in special

circumstances. In this case, the appellant was given this permission even though the mosque built was within a hundred yards of the temple because of a special circumstance, namely that the mosque was being re-built on the site of an old mosque. After this permission by the Municipal Board, the plaintiff-respondent went up to the Collector. There is an order of the Collector on the record, dated 21.2.1914. The order produced does not show whether it was passed on appeal by the plaintiff-respondent u/s 318, U.P. Municipalities Act. But it appears that the case of the plaintiff-respondent was that there was an appeal by him to the District Magistrate and this order was passed in appeal. By this order, the District Magistrate directed the Hindus to file a suit within a fortnight. Consequently, the present suit was filed within the time allowed.

3. A number of defences were raised on behalf of the appellant. I am here concerned, however, with one to them, namely, that the civil Court had no jurisdiction to try the suit. Both the Courts below have held that the Civil Court has jurisdiction to try the suit because the District magistrate, in his order, dated 21.2.1944, ordered the Hindus to file a suit within a fortnight. I am of opinion that the order of the District Magistrate will not confer any jurisdiction on the civil Courts if, under the law, civil Courts have no jurisdiction. Permission in this case was given by the Municipal Board u/s 180, Municipalities Act. u/s 318, U.P. Municipalities Act No. II [2] of 1916, and any person aggrieved by any order or direction made by a board u/s 180(1) or under a bye-law made under heading G of Section 298 may, within the time fixed, appeal to the District Magistrate. u/s 320, it is the duty of the District Magistrate to hear the appeal according to law. u/s 321(1), no order or direction referred to in Section 318 shall be questioned in any other manner or by any other authority than is provided therein. Further u/s 321(2), the order of the appellate authority confirming, setting aside or modifying such direction shall be final.

4. It is obvious that if the plaintiff-respondent had appealed to the District Magistrate, as appears to be the case here, it was the duty of the District Magistrate either to confirm or set aside or modify the order of the Board. The order of the District Magistrate, dated 21.2.1944 does not do any of these three things. The District Magistrate took the trouble of making a local inspection and has put down in this order what he saw at the spot and what his inferences from those observations were. But after doing so, he did not decide the matter in appeal before him, but said that it appeared to him that the best course for the Hindus would be to file a civil suit restraining Maiku Bhatiyara from erecting a mosque and that the building work should not proceed unless the matter had been decided in favour of him. He then proceeded to give the Hindus a fortnight in which to file a suit. This order of the District Magistrate, in my opinion, does not dispose of the appeal pending before him. He could not pass on his duty of deciding the appeal and confirming, setting aside or modifying the order of the Board to any other authority. Nor could such an order confer jurisdiction on civil Court, if such jurisdiction was not, otherwise, vested in it. I am, therefore, of opinion that either u/s 321(1) or 321(2), the Civil Court has no

jurisdiction to interfere with an order passed by the Municipal Board in one case or by the District Magistrate in appeal in the other case provided the Board has acted within its powers. It cannot be said in this case that the Board had not acted within its powers. The Board had the power to grant permission to build a mosque within a hundred yards of a temple, provided there were special circumstances in existence. Rightly or wrongly, the Board did consider that there were special circumstances in this case, As such the civil Court would have no jurisdiction to entertain a suit of this nature. I may, however, add, as I have already pointed out, that the order of the District Magistrate dated 21.2.1944, does not dispose of the appeal before him, if there was such an appeal pending and that the District Magistrate cannot pass on his duty of confirming, setting aside or modifying the order of the Board to the civil Court by making the parties to go to it. It will be for the District Magistrate to decide the appeal, if an appeal has been made to him.

5. I, therefore, allow the appeal, set aside the order of the Courts below and dismiss the suit. In view, however, of the circumstances that the suit was filed after the order of the District Magistrate and also of the fact that no one has appeared to defend this appeal. I order the parties to bear their own costs throughout.