

- (b) no officer acting under section 131 in good faith,
- (c) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, and
- (d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence:

Provided that no such prosecution shall be instituted in any Criminal Court against any officer or soldier in the Bangladesh Army except with the sanction of the Government.

## CHAPTER X

### PUBLIC NUISANCES

Application

<sup>1</sup>[132A. The provisions of this Chapter shall not apply to <sup>2</sup>[a Metropolitan Area.]]

Conditional order for removal of nuisance

**133.**(1) Whenever a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class considers, on receiving a police-report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated, or

<sup>1</sup> Section 132A was inserted by the Schedule of the Dacca Metropolitan Police (Amendment) Ordinance, 1976 (Ordinance No. LXIX of 1976).

<sup>2</sup> The letter and words "a Metropolitan Area" were substituted, for the words "the Dacca Metropolitan Area" by the Schedule III of the Chittagong Metropolitan Police Ordinance, 1978 (Ordinance No. XLVIII of 1978).

that the construction of any building, or the disposal of any substance, as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building, tent or structure, or any tree is in such condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary, or

that any tank well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public, or

that any dangerous animal should be destroyed, confined or otherwise disposed of,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation; or

to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

to prevent or stop the erection of, or to remove, repair or support, such building, tent or structure; or

to remove or support such tree; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do,

to appear before himself or some other Magistrate of the first or second class at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner hereinafter provided.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

**Explanation**—A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Service or  
notification of  
order

**134.**(1) The order shall, if practicable, be served on the person against whom it is made, in manner herein provided for service of a summons.

(2) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Person to  
whom order is  
addressed to  
obey or show  
cause or claim  
jury

**135.** The person against whom such order is made shall-

- (a) perform, within the time and in the manner specified in the order, the act directed thereby; or
- <sup>1</sup>(b) appear in accordance with such order and show cause against the same.]

Consequence  
of his failing to  
do so

**136.** If such person does not perform such act or appear and show cause <sup>2</sup>[\* \* \*] he shall be liable to the penalty prescribed in that behalf in section 188 of the Penal Code, and the order shall be made absolute.

<sup>1</sup> Clause (b) was substituted, for clause (b) by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words and figure "or apply for the appointment of a jury as required by section 2 and Schedule of section 135" were omitted by the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

**137.**(1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter <sup>1</sup>[in the manner provided in Chapter XX].

Procedure where he appears to show cause

(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(3) If the Magistrate is not so satisfied, the order shall be made absolute.

**138 and 139.** [Omitted by the Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]

<sup>2</sup>[**139A.**(1) Where an order is made under section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of anyway, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place, and if he does so, the Magistrate shall, before proceeding under section 137 <sup>3</sup>[\* \* \*], inquire into the matter.

Procedure where existence of public right is denied

(2) If in such inquiry the Magistrate finds that there is any reliable evidence in support of such denial, he shall stay the proceedings until the matter of the existence of such right has been decided by a competent Civil Court; and, if he finds that there is no such evidence, he shall proceed as laid down in section 137 <sup>4</sup>[\* \* \*].

(3) A person who has, on being questioned by the Magistrate under sub-section (1) failed to deny the existence of a public right of the nature therein referred to, or who, having

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<sup>1</sup> The words "in the manner provided in Chapter XX" were substituted, for the words "as in a summons case" by section 8 of the Code of Criminal Procedure (Second Amendment) Ordinance, 1982 (Ordinance No. XXIV of 1982).

<sup>2</sup> Section 139A was inserted by section 26 of the Code of Criminal Procedure (Amendment) Act, 1923 (Act No. XVIII of 1923).

<sup>3</sup> The words and figure "or section 138" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>4</sup> The words, figure and comma "or section 138, as the case may require" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

made such denial, has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial <sup>1</sup>[\* \* \*].]

Procedure on order being made absolute

**140.**(1) When an order has been made absolute under section 136 <sup>2</sup>[or section 137], the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Penal Code.

(2) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other movable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(3) No suit shall lie in respect of anything done in good faith under this section.

**141.** [Omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).]

Injunction pending inquiry

**142.**(1) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may <sup>3</sup>[\* \* \*] issue such an injunction to the person against whom the order was made, as is required to obviate or prevent such danger or injury pending the determination of the matter.

<sup>1</sup> The comma, words and figure ", nor shall any question in respect of the existence of any such public right be inquired into by any jury appointed under section 138" were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>2</sup> The words and figure "or section 137" were substituted, for the comma, words and figures ", section 137 or section 139" by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

<sup>3</sup> The commas and words ", whether a jury to be, or has been, appointed or not," were omitted by section 2 and Schedule of the Law Reforms Ordinance, 1978 (Ordinance No. XLIX of 1978).

(2) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(3) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

**143.** A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Penal Code or any special <sup>1</sup>[\* \* \*] law.

Magistrate may prohibit repetition or continuance of public nuisance

## CHAPTER XI

### TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR APPREHENDED DANGER.

**144.(1)** In cases where, in the opinion of a District Magistrate, Sub-divisional Magistrate, or of any other Magistrate (not being a Magistrate of the third class) specially empowered by the Government or the District Magistrate to act under this section, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable,

Power to issue order

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk or obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquillity, or a riot, or an affray.

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<sup>1</sup> The words "or local" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).