

Court No. - 29

Case :- APPLICATION U/S 482 No. - 4282 of 2024

Applicant :- Akhilesh Kumar Sachan And 3 Others

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Home Affairs
Govt. Lko. And 3 Others

Counsel for Applicant :- Sanjay Kumar Srivastava, Akshat Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Renu Agarwal, J.

1. Heard learned counsel for the applicant as well as learned AGA for the State.
2. Instant petition under Section 482 Cr.P.C. has been preferred for quashing of the F.I.R. and consequential criminal proceedings with the following prayer:-

“Wherefore, it is most respectfully prayed that for the reasons mentioned in the accompanying petition this Hon’ble Court may very kindly be pleased to set-aside the impugned order dated 23.06.2022 passed by learned Additional Chief Judicial Magistrate-V, Lucknow, in case No. 82783 of 2022 in First Information Report No. 0631 of 2018 under Section 447 I.P.C. and 2/3 Prevention of Damage to Public Property Act, 1984 at the police station-Ashiyana, District-Lucknow.

It is further prayed that this Hon’ble Court may kindly be pleased to quash the chargesheet No.1 dated 29.06.2020 in First Information Report No. 0631 of 2018 under Section 447 I.P.C. and 2/3 Prevention of Damage to Public Property Act, 1984 at the police station-Ashiyana, District-Lucknow.

It is further prayed that this Hon’ble Court may kindly be pleased to quash the entire proceedings of Case No. 82783 of 2022 State Vs. Shrawan Sachan and Ors. arises out from First Information Report No. 0631 of 2018 under Section 447 I.P.C. and 2/3 Prevention of Damage to Public Property Act, 1984, at the police station-Ashiyana, District-Lucknow pending in the court of learned Additional Chief Judicial Magistrate-V, Lucknow”

3. It is submitted by learned counsel for the petitioner that impugned order dated 23.06.2022 passed by the learned Additional Chief Judicial Magistrate-V, Lucknow in case No. 82783 of 2022 in First Information Report No. 0631 of 2018 under Section 447 I.P.C. and 2/3 Prevention of Damage to Public Property Act, 1984 at the police station-Ashiyana, District-Lucknow is a non speaking,

unreasoned and cryptic order. The Court has taken cognizance of charge-sheet and summoned the accused on the basis of charge-sheet submitted by Investigating Officer on 19.06.2020 under Section 447 I.P.C. and 2/3 of Prevention of Damage of Public Property Act, 1984 with respect to Gata No. 436 measuring area 0.635 hectare situated in village Aurangabad Jagir, Tehsil Sarojni Nagar, Police Station-Ashiyana, District-Lucknow. Investigating Officer without investigating the matter at all submitted charge-sheet arbitrarily under Section 447 I.P.C. Gata No. 437-Sa of village Aurangabad Jageer, Sarojini Nagar, Lucknow consist of total area of 20 Biswa. Out of total 20 Biswa of Gata No. 437-Sa, the petitioner No. 2 purchased 10 Biswa through registered sale deed dated 02.06.2003 and reamining 10 Biswa land of Gata No. 437-Sa was purchased by the petitioner No. 3 through registered sale-deed dated 23.05.2006 and the name of petitioner No. 2 and 3 were also mutated in the revenue records. It is further submitted that petitioners have never raised any construction over any part of Gata No. 436 situated in Village Aurangabad and they are in peaceful possession of Khasra No. 437-Sa and constructed four rooms, one Kitchen, Two Latrines and Bathrooms and one Gate and also started living with effect from the year 2009. Tehsildar, Lucknow Nagar Nigam issued a notice dated 02.07.2007 regarding the encroachment over land of Khasra No. 436. Immediately after the service of notice, petitioner No. 2 submitted the reply on 16.07.2007. After the lapse of about 8 years, when the petitioners were on their work and were not present over the aforesaid property, opposite party No. 4 demolished the part of the construction of the petitioners with the help of officials. Petitioner, thereafter, approached the Hon'ble High Court by filing Writ Petition No. 7423 (M/B)/2015 Akhilesh Kumar Sachan and Ors. Vs. State of U.P. After hearing the matter at length, Hon'ble Court directed "petitioners are permitted to apply for demarcation and directed that if the said application is made, the demarcation shall be carried out in accordance with law expeditiously preferably within period of one month from the date of receipt of certified copy of this order". It is next contended that petitioners along with certified copy of the order dated 18.08.2015 applied for demarcation in the office of Commissioner on 18.08.2015, thereafter, the Additional Commissioner, Lucknow Nagar Nigam

issued a letter dated 04.09.2015 to apply for demarcation of land in question in the Court of Deputy Collector Sarojini Nagar, Lucknow. When the petitioners moved an application dated 15.09.2015 before the Commissioner, it was replied that the land in question comes within the territorial limit of Municipal Authorities, therefore demarcation was also done by Nagar Nigam, Lucknow. Thereafter, the petitioner filed contempt petition dated 2271(C) of 2015 but demarcation could not take place because of non-availability of fixed point the demarcation of plot is not possible. The Tehsildar, Shri Rajesh Kumar Srivastava appeared before the Hon'ble Court in contempt proceedings and stated that because of non-availability of fixed point, demarcation of land is not possible by traditional method of demarcation. Finally the contempt petition was disposed of with a note that petitioner are directed to apply for demarcation in terms of order issued by Writ Court dated 18.08.2018 within a period of three months. Opposite parties instead of demarcating the lands lodged F.I.R. against the petitioner. It is also submitted that the informant was itself part of committee who was assigned the work of demarcation and he was well aware of the fact that demarcation of the land is not possible. It is also submitted that it is civil dispute which has been given the colour of criminality. It is further contended by learned counsel for the applicant that he has purchased Khasra No. 437 and he is very well in possession of Khasra No. 437 and he has nothing to do with Khasra No. 436. When the petitioners came to know about the said F.I.R. they provided all the documents of Court proceedings to Investigating Officer including copy of the judgments but Investigating Officer without taking into account the said orders, arbitrarily filed charge-sheet against petitioners. Learned trial court had taken cognizance on 23.06.2022 without application of mind and without looking into the fact whether any material is available against the petitioners for cognizance. Hence, it is prayed to quash the impugned order dated 23.06.2022.

4. Learned AGA for the State submitted that petitioners encroached Gata No. 436 in the garb of Gata No. 437 and the Gata No. 436 is public land, therefore, charge-sheet is filed with due care and Court has taken cognizance well on the basis of evidence collected during the investigation.

5. I have heard the rival submissions advanced on behalf of the parties and perused the entire material brought on record. The questions arises as to whether the land in dispute belonged to applicants or they had illegally encroached upon the land vested in Gram Sabha. It can be adjudicated by Revenue Court itself, if it is found that petitioners have encroached public land then the proper proceedings for eviction of the unauthorized occupants can be undertaken under Section 67 of the Revenue Code 2006. The short cut procedure should not be adopted to dis-possess the petitioner without applying due procedure of law.

6. The Sub-Divisional Officer is empowered to take action on the information received from Bhumi Prabandhak Samiti or other authority or Lekhpal concerned about such illegal occupation or damage or mis-appropriation of Gram Sabha land. In any case, any person is found in illegal possession of such land in contravention of provisions of Revenue Code, The Sub-Divisional Officer has to issue notice to the person concerned to show cause as to :- (I) why compensation for damage, misappropriation or wrongful occupation specified in the notice be not recovered from him? (ii) why he should not be evicted from such land?

7. The person to whom such a notice is issued under sub-Section (2) of Section 67 of the Code, can submit his reply disclosing his right or entitlement or nature of occupation over the land in question, thereafter the Sub-Divisional Officer should pass a reasoned order. The amount of compensation for damage or misappropriation of the property or for wrongful occupation, as the case may be, recovered from such person as arrears of land revenue. Under sub-Section (4) of Section 67, the Officer is empowered to discharge the notice if he forms an opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation of the property in question. Any person aggrieved by the order of Sub-Divisional Officer may prefer an appeal to the Collector within thirty days from the date of such order. The procedure for undertaking the procedure under Section 67 of the Revenue Code, thus, is complete in itself and does not leave any scope for any further computation of damage for wrongful occupation, damage caused or misappropriation of Gram

Sabha land.

8. Section 210 of Revenue Code confers supervisory power on Board or Commissioner to call for the record of any proceedings decided by Sub-Divisional Officer in which no appeal lies for the purpose of satisfying itself or himself as to the legality or propriety of any order passed in such suit. The nature of eviction proceedings under Section 67 of Revenue Code, 2006 is however, summary in nature. The rights of parties claimed, if gives rise to a dispute requiring adjudication on the question of fact, a suit for declaration has to be instituted against such person. Gram Sabha may institute a suit under Section 145 of the U.P. Revenue Code, 2006 for declaration of its right or to seek any further relief.

9. As far as criminal proceeding for illegal encroachment, damage or trespass over the land belonging to Gram Sabha is concerned, the same can be undertaken but it would be subject to the adjudication of rights of parties over the land in dispute as the said determination can be done only by the revenue Court. As far as the P.D.P.P. Act, 1984 is concerned, the same has been enacted with the specific purpose. The statement of objects and reasons of the said Act shows that it was enacted with a view to curb acts of vandalism and damages to public property including destruction and damage caused during riots and public commotion. A need was felt to strengthen the law to enable the authorities to deal with cases of damage to public property. The “Public Property” as defined under Section 2(b) of P.D.P.P. Act, 1984 means any property, whether immovable or movable (including any machinery) which is owned by or under possession or under the control of the Central or State Government or any local authority or any Corporation or any institution established by the Central Provincial or State Act or its undertaking.

10. Section 3 of the P.D.P.P. Act, 1984 provided that anyone who commits mischief by doing any act in respect of any ‘public property’ including the nature referred in sub-Section(2) in the said Section shall be punished with imprisonment and a fine depending upon the nature of the property as per sub-Section (1) and sub-Section (2) of Section 3 of the P.D.P.P. Act, 1984. Section 4

provides punishment for an act of 'Mischief' causing damage to public property by fire or explosive substance.

11. The provisions oblige a person found guilty of commission of offence to pay the damage or loss caused to the public property. This Act, thus, covers the specific area of damage or loss or destruction to the public properties and recovery of such damages from a person who is found guilty of such damage.

12. In *Re. Destruction of Public and Private Properties, In Re vs. State of Andhra Pradesh and others*¹. Taking a serious note of various instances where there was a large scale destruction of public and private properties in the name of agitations, bandhs, hartals and the like, suo motu proceedings had been initiated by the Apex Court and two committees were appointed to give suggestions on strengthening of the legal provisions of P.D.P.P. Act to effectively deal with such instances. The recommendations of two committees were considered and it was observed that the suggestions were extremely important and they constitute sufficient guidelines which need to be adopted. It was left open to the appropriate authorities to take effective steps for their implementation.

13. In a recent decision in *Kodungallur Film Society and another vs. Union of India and others*², relief was sought to issue a mandamus to the appropriate authorities to strictly follow and implement the guidelines formulated by the Apex Court "*Destruction of Public & Private Properties In re:*", with regard to measures to be taken to prevent destruction of public and private properties in mass protests and demonstrations and also regarding the modalities of fixing liability and recovering compensation for damages caused to public and private properties during such demonstration and protests.

14. It was acknowledged in *Kodungallur Film Society*² that the recommendations of the Committee noted in the said judgment traversed the length and breadth of the issue at hand and, if implemented in their entirety, would go a long way in removing the bane of violence caused against persons and property.

15. As far as implementation of the said recommendations, the Union had advised the States to follow the same in its letter and spirit. Issuing directions to implement recommendations made by the Apex Court in both the above decisions. Direction was issued in Kodungallur Film Society² to both the Central and the State Government to do the same at the earliest.

16. In compliance thereof, the State of U.P. notified the "Uttar Pradesh Recovery of Damages to Public and Private Property Rules, 2020", framed with a view to provide for recovery of damages to public and private property during hartal, bundh, riots, public commotion, protests etc. in respect of the property and imposition of fine. The said 'Rules' provide for constitution of the claims tribunal to investigate the damages caused and to award compensation related thereto.

17. The area which is covered by the P.D.P.P. Act, 1984 is, thus, confined to the destruction or damage to the 'public property' within the meaning of Section 2(b) of the Act during the course of riots or public demonstrations (commotion). The said provisions, in the considered opinion of the Court, cannot be invoked for lodging the criminal complaint or the first information report on the allegations of damage or loss caused to the Gram Sabha land by illegal encroachment against a person permanently residing in the village or a tenure holder of any land in the village in question.

18. In the said set of circumstances, the inherent dispute is whether the construction were raised by petitioner in Gata no. 437-Sa or Gata No. 436 which can be decided very well by demarcation proceedings. Demarcation of the land was directed by this Court itself, and the Committee of seven members reported that the land in dispute is now thickly populated and no fixed point can be ascertained, therefore, at this stage, it is not possible to conduct demarcation proceedings. It is the duty of State to demarcate and show that the disputed land on which construction is raised belongs to State before lodging the F.I.R. against a person stating that he had encroached public land. First of all, State should show that it is public land. There is no dispute over the fact that land of Gata No. 436 belongs to State, however, Gata no. 437 containing 20 Biswa of land was

purchased by petitioner No. 2 and 3. The construction, as per the petitioner, is raised only on gata No. 437. If State wants to proceed to lodge F.I.R. on the ground that construction was raised on Gata No. 436, prima facie, there must be demarcation

19. So far as allegation of criminal offence under Section 447 I.P.C. is concerned, prosecution has to prove and the Court has to return a finding on the fact that trespassing was committed with one of the intent enumerated in Section 441 I.P.C. Prosecution has not only to allege but also to prove that entry of unlawful occupation must be with the intention “to commit an offence” or “to intimidate, insult or annoy any person in possession of property”. Every trespass by itself is not criminal. In the absence of such finding conviction under Section 447 cannot be sustained.

20. Offence under Section 447 I.P.C. is compoundable by Magistrate it is to be tried summarily. Even if there is there is no trespass, an accused may lay a bonafide claim and right in the land in question, then too, offence under Section 447 I.P.C. cannot be charged against accused. If the petitioners are bonafide purchasers of the land in dispute and in possession State has right to dispossess him by proving that it is the part of Gata No. 436 but State cannot take action against the citizen. Mere trespassing without intention to intimidate, insult or annoy is not sufficient to constitute offence under Section 447 of the I.P.C.

21. Here in the case at hand, petitioners specifically established their right that they are bona fide purchaser, hence, the lodging of F.I.R. for demolishing the construction of petitioner is unfair. Information lodged F.I.R. without disclosing the fact that demarcation proceedings were directed by this Court and the Committee of seven members failed to demarcate, even charge-sheet does not disclose the appreciation of any particular material on record against the petitioners. The order of taking cognizance passed by the Magistrate is also passed in a cursory manner, even without mentioning the contents of case diary, hence, the criminal action proposed against the accused is a result of inadvertent taking of cognizance. In view of the discussions as above, F.I.R., charge-sheet and the criminal proceedings initiated against the applicants vide order dated

23.06.2022 in case crime No. 82783 of 2022 in First Information Report No. 0631 of 2018 under Section 447 I.P.C. and 2/3 of Prevention of Damage to Public Property Act, 1984, Police Station-Ashiyana, District-Lucknow pending the Court of learned Additional Chief Judicial Magistrate-V, Lucknow deserves to be set-aside.

22. In view of the discussions as above, impugned order dated 23.06.2022 passed by the learned Additional Chief Judicial Magistrate-V, Lucknow, in case No. 82783 of 2022 in First Information Report No. 0631 of 2018 under Section 447 I.P.C. and 2/3 Prevention of Damage to Public Property Act, 1984, Police Station-Ashiyana, District-Lucknow is hereby **set-aside** and instant petition is hereby **allowed**.

(Renu Agarwal,J.)

Order Date :- 9.5.2024
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