

Neutral Citation No. - 2024:AHC-LKO:30493

Court No. - 30

Case :- APPLICATION U/S 482 No. - 7324 of 2023

Applicant :- Shankar Nath Pandey And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. (Home), U.P.
Lucknow And 2 Others

Counsel for Applicant :- Gopal Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Om Prakash Shukla,J.

- (1)** Heard learned counsel for the applicant as well as the learned Additional Government Advocate.
- (2)** The present application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the applicants, Shankar Nath Pandey and Shambhu Nath Pandey, seeking to quash the summoning order dated 15.03.2021 passed by the Judicial Magistrate-I, Faizabad in Criminal Case No.137 of 2021 : *State Vs. Shankar Nath Pandey & others* arising out of Case Crime No. 335 of 2019, under Section 3 of the Prevention of Damage to Public Property Act, 1984, Police Station Khandasa, District Ayodhya and also to quash the entire proceedings initiated against the applicants.
- (3)** The records of the case indicate that criminal proceedings were initiated pursuant to an FIR dated 01.09.2019 lodged against the applicants and one Kaushal Kishore, which was registered as Case Crime No.335 of 2019, under Section 3 of the Prevention of Damage to Public Property Act, 1984 (hereinafter referred to as PDPP Act), Police Station Khandasa, District Ayodhya. The
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case was investigated and a charge sheet dated 21.09.2019 was submitted, whereupon cognizance was taken by the Judicial Magistrate-I, Faizabad and on 15.03.2021, an order for summoning the applicants was passed. It is this order, which has been challenged before this Court in the instant application.

- (4)** It is submitted by the learned counsel for the applicants that the applicants are recorded co-tenure holder of Gata Nos.2727 adjacent to Gata No.2722 and 2729 (chak road of Gaon Sabha) situated in Village Kotiya, Pargana Khandasa Tehsil Milkipur. These Gatas belonging to the applicants are connected with the said chak road. The applicants for the purpose of safety of their crops, which were cultivated on the aforesaid gatas from the wild animals, had made fencing with the barbed wire (sparked wire), however, on raising objection by the Lekhpal on the said fencing on inspection, the applicants have removed the said fencing. In this regard, Lekhpal has also submitted its report dated 30.10.2019 to the Sub-Divisional Officer to the effect that the applicants themselves have removed the said encroachment and at present, there is no encroachment on the land in question of the Gaon Sabha. However, the Investigating Officer, in the meantime, in a hasty manner, has submitted a charge-sheet dated 21.09.2019 under Section 3 of the Prevention of Damage to Public Property Act, 1984 against the applicants i.e. within 20 days from the date of lodging the F.I.R. without taking any statement of any of the villagers nor any independent witness

and as such the whole exercise made by the Investigating Officer has been done under the influence of the then Gaon Pradhan, who has enmity with the applicants.

(5) Learned Counsel for the applicants has, thus, submitted that cognizance taken in the matter is illegal and without application of judicial mind. The disputed plot/land, for which encroachment is said to have been made, is related to Gaon Sabha land (chak road) for which specific provisions have been provided under the Uttar Pradesh Zamindari Abolition and Land Reforms Act and Revenue Code to remove such type of encroachment. It is further submitted that since there is specific provisions under U.P.Z.A. and L.R. Act/Revenue Code for eviction/removal of encroachment/ unauthorized occupation of plot/land in question, provisions of Prevention of Damage to Public Property Act are not applicable in the matter.

(6) Referring to provisions of Sections 3 of the Prevention of Damages to Public Property Act, learned counsel for the applicants submitted that continuation of prosecution against applicants in this matter is nothing but an abuse of process of law. According to the learned Counsel, the applicants are senior citizens aged about more than 70 years and as no offence under Section 3 of the Prevention of Damage of Public Property Act, 1984 as alleged in the F.I.R., charge-sheet as well as in summoning order against the applicants is made out, hence the

impugned summoning order as well as entire proceedings initiated against the applicants are liable to be quashed.

(7) On the other hand, referring to provisions of U.P. Panchayat Raj Act, learned Additional Government Advocate appearing for State submitted that F.I.R. in the matter was lodged against the applicants taking recourse to the provisions of Sections 3 of the Prevention of Damages to Public Property Act, which is equally applicable in the present matter. There is no illegality or infirmity in the impugned order. It is further submitted that F.I.R. for such type of criminal act can be lodged under the provisions of Prevention of Damages to Public Property Act irrespective of the fact that there is specific provisions under U.P.Z.A. & L.R. Act / Revenue Code for eviction/removal of encroachment/unauthorized occupation from the plot/land in question.

(8) Having regard to the submissions advanced by the learned Counsel for the parties and going through the record available before this Court, this Court finds that the allegations made in the F.I.R. against the applicants that they are in wrongful occupation of the land in dispute belonging to the Goan Sabha, cannot come within the realm of mischief or wrongful occupation, till such time its actual physical measurement is not conducted by the authority concerned. Site plan prepared by the Investigating officer, which has been placed before this Court

by the applicants by means of the supplementary affidavit, is only a narration of the fact that the applicants are conducting their farming and cultivating over their land and only in order to safeguard their crops from the wild animals, they have made fencing with the barbed wire (sparked wire), but the Investigating Officer cannot decide it unless and until actual demarcation is being done by the competent revenue authority after holding the exercise of measurement and establishing its identity. In absence of this vital link, it cannot be said with certainty that charge-sheeted accused persons including the applicants have swelled their limits and encroached upon the land of the Gaon Sabha, particularly the fact that on the pointing out of the Lekhpal, the applicants themselves have removed the encroachment as is evident from the report of the Lekhpal dated 30.10.2019 annexed as Annexure No. 4 to the instant application.

- (9)** At this juncture, it would be apt to mention that the underline object and idea of enacting the Prevention of Damages to Public Property Act, 1984 is to curb acts of vandalism and damage to public property including destruction and damage caused during riots and public commotion. The “public property” as defined under Section 2(b) of the Prevention of Damage to Public Property Act, 1984 means any property, whether immovable or movable (including any machinery) which is owned by or in possession of 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. Section 3 of the P.D.P.P. Act, 1984 provides that anyone who commits mischief by doing any act in respect of any 'public property' including the nature referred in subsection (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. Thus, the P.D.P.P. Act, 1984 is a Special Act enacted to punish for the offence committed under Sections 3 and 4 of the said Act by doing any act of vandalism including the destruction or damage during any riots or public demonstration in the name of agitations, bandhs, hartals and the like. The "Mischief" has been defined under Section 2(a) of the P.D.P.P. Act, 1984 having the same meaning as in Section 425 of the Indian Penal Code (45 of 1860). Section 6 is the saving clause which says that the Act, 1984 covers the offence committed under it and the provisions of it are in addition to any other law which provides for any proceeding (whether by way of investigation or otherwise) which may be instituted or taken against the offender, apart from this Act. Special provisions with regard to disposal of a prayer for bail made by a person accused or commission of offence under the Act, 1984 has been provided under Section 5 of the P.D.P.P. Act, 1984. The provisions oblige a person found

guilty of commission of offence to pay the damage or loss caused to the public property. Thus, this Act covers the specific area of damage or loss or destruction of public property and recovery of such damages from the person(s) who is/are found guilty of such damage during the course of any public demonstration in the name of agitations, bandhs, hartals and the like.

(10) In Re. Destruction of Public and Private Properties, In Re vs. State of Andhra Pradesh and others, 2009 (5) SCC 212, 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 recommendation 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.

(11) In Kodungallur Film Society and another vs. Union of India and others, 2018 (10) SCC 713, the relief was sought to issue a mandamus to the appropriate authorities to strictly follow and

implement the guidelines formulated by the Apex Court in **Re: Destruction of Public & Private Properties (supra)**, 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. It was observed in **Kodungallur Film Society (Supra)** 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. 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 Society (supra)** to both the Central and the State Government to do the same at the earliest. Accordingly, the State of Uttar Pradesh too has notified “Uttar Pradesh Recovery of Damages to Public and Private Property Rules, 2020” with a view to provide for recovery of damages to public and private property during hartal, bundh, riots, public commotion, protests etc. in regard to property and imposition of fine. The said Rules provides for constitution of the claims

tribunal to investigate the damages caused and to award compensation related thereto.

(12) Learned Counsel for the applicants has also drawn attention of the Court to the provisions of Section 67 of the U.P. Revenue Code which speaks about the power to prevent damages, misappropriation and wrongful occupation of Gram Panchayat property:-

“(i) Where any property entrusted or deemed to be entrusted under the provisions of this Code to a Gram Panchayat or other local authority is damaged or misappropriated, or where any Gram Panchayat or other authority is entitled to take possession of any land under the provisions of this Code and such land is occupied otherwise than in accordance with the said provisions, the Bhumi Prabandhak Samiti or other authority or the Lekhpal concerned, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(ii) Where from the information received under sub-section (i) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (i) has been damaged or misappropriated, or any person is in occupation of any land referred to in that sub-section in contravention of the provisions of this Code, he shall issue notice to the person concerned to show cause why compensation for damage, misappropriation or wrongful occupation not exceeding the amount specified in the notice be not recovered from him and why he should not be evicted from such land.

(iii) If the person to whom a notice has been issued under sub-section (ii) fails to show cause within the time specified in the notice or within such extended time as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person shall be evicted from the land, and may, for that purpose, use or cause to be used such

force as may be necessary, and may direct that the amount of compensation for damage or misappropriation of the property or for wrongful occupation as the case may be, be recovered from such person as arrears of land revenue.

(iv) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under sub-section (ii), he shall discharge the notice.

(v) Any person aggrieved by an order of the Assistant Collector under Sub-section (iii) or Sub-Section (iv), may within thirty days from the date of such order, prefer an appeal to the Collector.

(vi) Notwithstanding anything contained in any other provisions of this Code, and subject to the provisions of this section every order of the Sub-Divisional Officer under this section shall, subject to the provisions of sub-section (5) be final.

(vii) The procedure to be followed in any action taken under this section shall be such as may be prescribed.

Explanation.- For the purposes of this section, the word "land" shall include the trees and building standing thereon."

(13) Rule 67 (1) of U.P. Revenue Code, 2016 reveals that it is incumbent upon the Assistant Collector to make an inquiry as he deems proper and obtain further information regarding the following issues :-

“(a) full description of damage or misappropriation caused or the wrongful occupation made with details of village, plot number, area, boundary, property damaged or misappropriated and market value thereof;

(b) full address along with parentage of the person responsible for such damage, misappropriation or wrongful occupation;

(c) period of wrongful occupation, damage or misappropriation and class of soil of the plots involved;

(d) value of the property damaged or misappropriated calculated at the circle rate fixed by the Collector and the amount sought to be recovered as damages.”

(14) Thus, from the above, it is crystal clear that as per the U.P.

Revenue Code, it is the Assistant Collector of the area who is the authority concerned to act a pivotal role in demarcation and holding and declaring the land in dispute is encroached by the applicants. However, the Investigating Officer of criminal cases is not even remotely connected to conduct this exercise. The entire procedure has been laid down in Section 67 (2) of the U.P. Revenue Code that only after getting a reply from the alleged encroacher, the Assistant Commissioner/Sub Divisional Officer has to pass an order giving reasons for not exceeding the explanation, if so offered by the person concerned. The eviction from the land in dispute can only be recorded after disposal of the explanation offered by the person concerned keeping in line with the cardinal principle of natural justice by passing a well reasoned and speaking order while disposing of the said explanation. The Act is itself contained the amount of compensation of damage or misappropriation of the property or for wrongful occupation, as the case may be, may be recovered from such person as arrears of land revenue. Section 210 of the Revenue Code, 2006 confers supervisory power on the Board or the Commissioner to call for the record of any proceeding

decided by the subordinate revenue court 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 or proceeding.

(15) A careful reading of the provisions of the Revenue Code, 2006, thus, makes it clear that the proceeding for causing damage to the public property can be undertaken against any person who is in wrongful occupation of the same or causes damage or misappropriations to the said property. The nature of eviction proceeding under Section 67 of the Revenue Code, 2006, is, however, summary in nature. The rights of the parties claimed, if gives rise to a dispute requiring adjudication on the questions of fact, a suit for declaration has to be instituted against such person. The 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. In case of institution of such a suit, a temporary injunction may be granted by the Court concerned to prevent wastage, damage or alienation of the suit property. The Revenue Code, 2006 is a Special enactment providing for the law relating to the 'land' defined under Section 4(14) of the Code.

(16) 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 the parties over the land in dispute as the said determination can be done only by the revenue Court.

(17) Thus, taking into account the gravity of offence and its nature in which there is no criminality as such, the apt remedy would be to proceed against the erring so called encroacher under Section 67 of the U.P. Revenue Code and get the land in dispute demarcated. It is the case exclusively falls within the domain of concerned revenue authority to impose the fine, if any, after taking the whole exercise as per the provisions of law contained under Section 67 of the U.P. Revenue Code.

(18) In the instant case, the applicants have specifically pleaded before this Court in this application under Section 482 Cr.P.C. that they have moved an application duly supported by an affidavit regarding the alleged encroachment before the Sub-Divisional Officer on 09.09.2019 i.e. prior to filing the charge-sheet dated 21.09.2019, upon which the Sub-Divisional Officer directed the area Lekhpal to submit its report. In compliance thereof, the Area Lekhpal had visited the site and prepared its report dated 30.10.2019 and submitted the same before the Sub-Divisional Officer. As per the said report dated 30.10.2019, the applicants themselves have removed the encroachment and now there is no encroachment over the chak road of the Gaon Sabha. Though the action of the revenue authorities on the application

of the applicants appears to have in the knowledge of the Investigating Officer, however, without waiting for the outcome of the decision of the revenue authorities, the Investigating Officer had proceeded with the investigation and submitted charge-sheet dated 21.09.2019 i.e. within 20 days of lodging of the F.I.R. and before submission of the report of the Lekhpal dated 30.10.2019, which smacks the action of the Investigating Officer arbitrary and mala fide.

(19) Thus, taking note of the law laid down by the Hon'ble Apex Court in abovementioned cases and also keeping in view the totality of facts and circumstances of the case, this Court has no hesitation to allow this application under Section 482 Cr.P.C. and quash the impugned summoning/cognizance orders as well as proceedings challenged therein.

(20) Accordingly, the impugned summoning order dated 15.03.2021 as well as entire criminal proceeding of Criminal Case No. 137 of 2021 : State Vs. Shankar Nath Pandey and others, arising out of Case Crime No.335 of 2019, under Section 3 of Prevention of Damages to Public Property Act, Police Station Khandasa, District Ayodhya, pending in the Court of Judicial Magistrate-I, Faizabad are hereby quashed.

(21) As the Area Lekhpal vide report dated 30.10.2019 (Annexure No. 4), which is not disputed by the State Counsel, itself reported that now there is no encroachment of the land of the
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Goan Sabha as alleged in the F.I.R., therefore, no fruitful purpose would be served in remitting the matter to the concerned authority for fresh consideration.

(22) The instant application under Section 482 Cr.P.C. is, accordingly, **allowed**.

(Om Prakash Shukla, J.)

Order Date : 18.04.2024
Shubhankar

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