

A.F.R.**Neutral Citation No. - 2024:AHC-LKO:36055****Court No. - 27****Case :- APPLICATION U/S 482 No. - 7662 of 2023****Applicant :- Jitendra****Opposite Party :- State Of U.P. Thru. Prin.Secy. Home Deptt. And Another****Counsel for Applicant :- Neeranjan,Pratyush Mishra****Counsel for Opposite Party :- G.A.****Hon'ble Shamim Ahmed,J.**

1. The instant application has been moved on behalf of the applicant with a prayer to quash the order dated 16.05.2023 passed by Learned Additional Civil Judge (C.D.) Fast/ACJM. Ambedkar Nagar in Criminal Misc. Case No. 1223/2023 vide Crime No. 12/2020, U/s 2/3 of Prevention of Damage to Public Property Act, Police Station Maharuwa, District- Ambedkar Nagar, on the application of applicant under Section 239 Cr.P.C and further be pleased to discharge the applicant.

2. Heard Sri Neeranjan Singh, learned counsel for the applicant and Sri Ashok Kumar Singh, learned A.G.A.-1 for the State.

3. Learned counsel for the applicant submitted that the complainant-Lekhpal of the village concerned had lodged an F.I.R. dated 02.02.2020 bearing No. 12/2020 U/s 3/4 of Prevention of Damage to Public Property Act, Police Station Maharuwa against the applicant and 6 other persons stating therein that the alleged accused persons with the intention of grasping the public property kept the "puaal" straw on Gata No. 625 which is recorded as "chak marg" in Revenue record.

4. Learned counsel for the applicants further submitted that the applicant was minor at the time of lodging of F.I.R. and the alleged allegation leveled against the applicant by the Complainant is false and fabricated. The true fact is that the applicant did not intend to

grasp any public utility land but had kept the straw (Puaal) over the said Gata on temporary basis as the other co-accused has also put the same and all the (Puaal) Straw has been removed and the said Gata was being used by the villagers and other people since long year back.

5. Learned counsel for the applicant further submitted that the Investigating Officer conducted the investigation in a very mechanical and arbitrary manner and filed the charge-sheet on 04.10.2020 against the applicant under Section 2/3 of Prevention of Damage to Public Property Act and struck off the Section 3/4 of Prevention of Damage to Public Property Act.

6. Learned counsel for the applicant further submitted that the applicant had earlier filed an application under Section 482 Cr.P.C. in which this Hon'ble Court and vide order dated 23.02.2023 the applicant to move discharge application through counsel.

7. Learned counsel for the applicant further submitted that the thereafter the applicant moved discharge application before the court of learned Additional Civil judge (C.D) Fast/ACJM. Ambedkar Nagar and the concerned court vide order dated 16.05.2023 rejected the discharge application without considering the material evidence on record.

8. Learned counsel for the applicant further submitted that the applicant was selected in the Indian Army under Agniveer scheme vide selection list year 2023 but he was not allowed to join due to very fact of FIR being lodged against him without any case of criminal nature made out against him.

9. learned A.G.A. for the State controverts the submissions of learned counsel for applicant on the ground that this is not a stage where minute and meticulous exercise with regard to the appreciation

of evidence may be done and truthfulness of the allegations could only be tested in a criminal trial and, therefore, the application is misconceived and liable to be dismissed.

10. After considering the argument advance by learned counsel for the parties, this Court is of the view that the relevant provision of the Act be dealt with, which are quoted here as under:

Prevention of Damage to Public Property Act, 1984

Section 2. Definitions.--In this Act, unless the context otherwise requires,--

(a) "mischief" shall have the same meaning as in section 425 of the Indian Penal Code (45 of 1860);

(b) "public property" means any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of--

(i) the Central Government; or

(ii) any State Government; or

(iii) any local authority; or

(iv) any corporation established by, or under, a Central, Provincial or State Act; or

(v) any company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or

(vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that the Central Government shall not specify any institution, concern or undertaking under this sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the Central Government or by one or more State Governments, or partly by the Central

Government and partly by one or more State Governments.

Section 3. Mischief causing damage to public property

S 3. Mischief causing damage to public property.—(1)

Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being—

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c) any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of tele-communications, or any building, installation or other property used in connection therewith, shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine:

Provided that the court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

The "Prevention of Damage to Public Property Act, 1984" is legislation aimed at preventing vandalism and damage to public property in India. It defines key terms like "mischief" and "public property" and outlines

penalties for those who commit acts of mischief causing damage to such property.

The "Prevention of Damage to Public Property Act, 1984" is legislation aimed at preventing vandalism and damage to public property in India. It defines key terms like "mischief" and "public property" and outlines penalties for those who commit acts of mischief causing damage to such property.

According to the Act, "mischief" is defined in alignment with Section 425 of the Indian Penal Code (IPC), which generally refers to intentionally causing damage to property. "Public property" encompasses various forms of property owned or controlled by governmental bodies, corporations, or specified institutions, and includes both immovable and movable assets.

Section 3 of the Act specifies the offense related to mischief causing damage to public property. It delineates two categories of public property: general public property and specific types of property critical to infrastructure such as water, power, telecommunications, and transportation systems. The punishment for these offenses varies based on the type of property damaged, with more severe penalties for damage to critical infrastructure."

11. 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. 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 the P.D.P.P. 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 subsection (1) and sub-section (2) of Section 3 of the P.D.P.P. Act, 1984. The P.D.P.P. Act, 1984 .

12. The Act was enacted to empower authorities to effectively address cases of damage to public property, especially during riots or public disturbances. Its aim is to deter acts of vandalism and protect public assets essential for the functioning of society.

The court is explaining that the Prevention of Damage to Public Property (PDPP) Act, 1984, only applies to situations where public property is damaged or destroyed during riots or public demonstrations. This means if there's damage to things like government buildings or infrastructure during these events, the PDPP Act can be used to address it.

So, if there's no actual damage or loss related to Gram Sabha land or any other village land due to illegal encroachment by someone living in the village or holding land there temporarily and remove encroachment after the notice, without causing damage or decreasing the land's value of the property, then the PDPP Act wouldn't be applicable.

In essence, if someone occupies land unlawfully temporarily but doesn't cause any harm or decrease in value to the land, the PDPP Act doesn't come into play. This means that the Act is primarily concerned with instances where there is actual damage to public property or

where the value of the property is diminished due to unlawful Occupation.

13. 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.

14. In a recent decision 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 “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.

15. It was acknowledged 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 to both the Central and the State Government to do the same at the earliest.

16. From the aforesaid it is clear that the underline purpose and idea of enacting the Prevention of Damages to Public Property Act, 1984 is to provide benefits to those persons or to take a suitable remedial action to prevent the destruction of public and private properties in mass protest, demonstration, hartal, agitation and in this damage to the public and private properties, pursuant to the ratio laid down by Hon'ble Apex Court in the case of **Kodungallur Film Society (supra)** the State Governments were granted liberty to form a committee to carry out and implement the recommendations made by the Hon'ble Apex Court in the above decision. 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.

17. The judgment in the case of **Munshi Lal and Another (supra)**, relied upon after noticing the provisions of the PDPP Act, has taken the view that as far as criminal proceedings 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. In so far as the observation made in the decision that the Act covers the specific area relating to 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, is concerned, reference may be had to a recent decision by a Division Bench of this Court in **Devnath Yadav vs. State of U.P.** and three Others⁷, which was a case where an FIR under Section 2/3/5 of the PDPP Act, in respect of encroachment over the Gaon Sabha land, had been sought to be challenged. The Division Bench upon considering the legal position held that the judgment in the case of **Munshi Lal and Another** was distinguishable and made the following observations :-

*"in the case of **Munshi Lal (supra)**, we find that, proceeded on the premise that Prevention of Damage to Public Property Act, 1984 was enacted to curb vandalism and damage to public property.*

Statement of Objects and Reasons reads as follows-

"With a view to curb acts of vandalism and damage 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 effectively with cases of damage to public property."

18. Now coming to yet another aspect of the issue, learned counsel for the applicants in order to buttress their contention have 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."

19. Further, under Rule 67(1) of U.P. Revenue Code, 2016, 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."*

20. Thus, from the above it is 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. 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) 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 itself contained the amount of compensation of damage or misappropriation of the property or for wrongful occupation, as the case may be and 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.

21. 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.

22. Thus, this Court comes to the conclusion that if a person is using public property for a temporary period without causing damage or altering its nature or structure or and remove after the notice serve, the temporary nature of the occupation may suggest that there was no intention to unlawfully grab public property related to the prevention of damage to public property Act. Such laws typically aim to prevent intentional or negligent harm to public assets or resources. As long as the use is temporary, non-destructive, and does not pose any risk to the property or public safety, it may not be considered a violation of law related to the prevention of damage to public property.

23. The court is explaining that the Prevention of Damage to Public Property (PDPP) Act, 1984, only applies to situations where public property is damaged or destroyed during riots or public demonstrations. This means if there's damage to things like government buildings or infrastructure during these events, the PDPP Act can be used to address it. So, if there's no actual damage or loss related to Gram Sabha land or any other village land due to illegal encroachment by someone living in the village or holding land there temporarily, without causing damage or decreasing the land's value, then the PDPP Act wouldn't be applicable. In essence, if someone occupies land unlawfully but doesn't cause any harm or decrease in value to the land, the PDPP Act doesn't come into play. This means that the Act is primarily concerned with instances where there is actual damage to public property or where the value of the property is diminished due to unlawful activities.

24. Thus, prima facie it appears that the learned trial court has failed to appreciate the materials available on record and has committed manifest illegality while passing the impugned order while rejecting the discharge application and the same is passed without considering the evidence produced by the applicants, which is unsustainable in the eyes of law. Thus, this Court allow this application under Section 482 Cr.P.C. and quash the order dated 16.05.2023 passed by Learned Additional Civil Judge (C.D.) Fast/ACJM. Ambedkar Nagar in Criminal Mise. Case No. 1223/2023 vide Crime No. 12/2020, U/s 2/3 of Prevention of Damage to Public Property Act, Police Station Maharuwa, District- Ambedkar Nagar as well as further proceeding is also quashed.

25. Accordingly, this application under Section 482 Cr.P.C. is **allowed** and the impugned order dated 16.05.2023 passed by Learned Additional Civil Judge (C.D.) Fast/ACJM. Ambedkar Nagar in Criminal Mise. Case No. 1223/2023 vide Crime No. 12/2020, U/s 2/3 of Prevention of Damage to Public Property Act, Police Station Maharuwa, District- Ambedkar Nagar as well as entire criminal proceedings of Criminal Mise. Case No. 1223/2023 vide Crime No. 12/2020, U/s 2/3 of Prevention of Damage to Public Property Act, Police Station Maharuwa, District- Ambedkar Nagar, pending before the court of Additional Civil Judge (C.D.) Fast/ACJM. Ambedkar Nagar are hereby **quashed**.

26. Let a copy of this judgment and order be sent to the trial court for necessary compliance.

Order Date :- 10.05.2024

Arvind

(Shamim Ahmed,J.)