

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1390 OF 2022

Dr. Mangesh Laxman Unde

Petitioner

Versus

Sopanrao Dagdu Bhaskar & others

Respondents

Mr. M. A. Dond, Advocate for the petitioner.

Mr. S. S. Chapalgaonkar, Advocate for respondent No. 1.

Mr. V. S. Badakh, APP for respondent No. 2.

Mr. Sk. Mazhar Sk. A. Jahagirdar, Advocate for respondent No. 3.

CORAM : R. M. JOSHI, J.

DATE : 19th August, 2023.

ORDER

1. Article 19(1)(g) of Constitution of India guarantees freedom to carry out any trade or business. No doubt, such right can not be unbridled and reasonable restrictions can be imposed thereon. Even environmental threat or public nuisance could become ground for its prohibition. Any such restriction however must be imposed with objectivity. Any authority, having such power ought to exercise it free from bias. It would be duty of the court while taking such order to strike balance between the right to carry out lawful business and environmental threat or nuisance caused on account of such

activity. 2, This petition takes exception to the order passed by Sub-Divisional Officer under Section 133 of Code of Criminal Procedure directing the petitioner to shift his poultry farm. By consent of both sides, head finally at stage of admission.

3. According to petitioner, he is an agriculturist and he is having agricultural land admeasuring 1 H 93 R in Gat No. 282 of village Karegaon, Tq. Shrirampur, Dist. Ahmednagar. His father started poultry farm business in the said agricultural land in the year 2010 after obtaining requisite permission and no objection certificates from various government offices. Such no objection certificates along with resolution of Gram Panchayat were obtained from time to time since 2010 till date. It is his contention that he has disputes with other farmers and he succeeded in the said litigation. It is also stated that the petitioner is a Member of Gram Panchayat and respondent No. 1 was his opponent in the Gram Panchayat election. As respondent No. 1 lost the election and civil dispute, by making false complaint, he started harassing the petitioner. It is his contention that with ulterior motive and to settle the personal and political score, false complaint was made to Sub-Divisional Officer in respect of poultry farm and an enquiry was called upon. Sub-

Divisional Officer took cognizance of the said complaint and proceeding of enquiry being No. 1/2019 came to be initiated. It is alleged in the said application that the poultry farm is causing environmental harm and also it may result into spread of diseases. The Sub-Divisional Officer, after hearing both the sides, passed order dated 3rd September, 2019, directing the petitioner to shift the poultry farm within a period of three months from the date of the order. The said order was challenged by filing Criminal Revision No. 16/2020 before the Additional Sessions Judge, Shrirampur. Said revision came to be dismissed by order dated 17th November, 2021. It is the contention of petitioner that the impugned order passed by the Sub-Divisional Officer is not maintainable for want of justification, recording of reasons and for failure of taking into consideration the material placed before him.

4. Learned counsel for the petitioner submits that the Sub-Divisional Officer, without application of mind and only in order to please respondent No. 1, has passed order in question. It is his submission that rather than facts, extraneous circumstances are taken into consideration for the purpose of passing said order. According to him, since the poultry farm of the petitioner did not

have more than 5000 birds, question of obtaining certificate from Maharashtra Pollution Control Board does not arise. To support this submission, he placed reliance on order passed by National Green Tribunal on 16th September, 2020 in O.A. No. 681/2017 wherein it is held that the poultry farm above 5000 birds requires certificate from Maharashtra Pollution Control Board. It is further submitted that the said order is passed in ignorance of the no objection issued by the Gram Panchayat as well as the school situated in the vicinity. It is also contended that the findings recorded by the authority about the foul smell of the poultry farm being felt even at a distance of 2000 meters is contrary to the report placed of Gram Panchayat enquiry on record. With these amongst other contentions, the impugned orders are sought to be set aside. It is his submission that the Sub-Divisional Officer has exceeded his jurisdiction under Section 133 of Code of Criminal Procedure and without proof of causing of public nuisance, poultry farm is directed to be shifted. In support of his submission, reliance is placed on judgment of Hon'ble Apex Court in case of Suhelkhan Khudyarkhan & another vs. State of Maharashtra & others, AIR 2009 SC 1868.

5. Learned APP and learned counsel for respondent No. 1 supported the impugned order with contention that there is report of Primary Health Center which indicates that there is possibility of causing diseases due to existence of poultry farm. It is also stated that the school as well as the residential area is within 500 meters of the poultry farm and hence possibility of people as well as students attending the school becoming ill cannot be ruled out.

6. Learned counsel for Gram Panchayat also defended impugned orders by submitting that at no point of time, any no objection was given by the Gram Panchayat for establishment or running of the poultry farm.

7. There is no dispute about the fact that the poultry farm of the petitioner is in his agricultural field which admeasures 1 H and 93 R in Gat No. 282 situated in village Karegaon since 2010. The petitioner has placed on record no objection certificates issued by Gram Panchayat as well as the school which functions at a distance of about 500 meters from the poultry farm. Though it is sought to be argued on behalf of the Gram Panchayat that no objection was never issued however, the record indicates otherwise. Certificate dated 9th

February, 2010, issued by Gram Panchayat, Karegaon, specifically states that Gram Panchayat has no objection for conducting business of poultry farming by Laxman Unde. It is further specified therein that the said spot is away from habitation and school. There is also a resolution passed on 29th June, 2017, taking note of precautions taken by petitioner while conducting said business. Perusal of report dated 14th May, 2018 submitted by Animal Development Officer, Taluka Medical Officer and Assistant Block Development Officer, Panchayat Samiti, Shrirampur indicates that the said committee visited the poultry farm on 7th May, 2018. It was found by them that around 4000 to 5000 birds were kept there. It further records that there was a cement chamber beneath the ground for disposal of dead birds. Specific finding is recorded by the committee that foul smell comes within the radius of 100 ft of the poultry farm. The said committee has not suggested for closure of the said poultry farm. This report clearly proves that there is no environmental threat or likelihood of spreading foul smell or disease by conduct of poultry farming business from spot.

8. Perusal of record and proceeding before the Sub-Divisional Officer shows that report dated 14th June, 2018 is part of

record therein. Similarly, reports of Assistant Block Development Officer of year 2018 placed before him, indicates that there is no foul smell, disposal of the fertilizer from waste of poultry farm is done immediately. The Gram Panchayat held that no action is required against poultry farm. Though there is also report of the Medical Officer, Primary Health Centre, dated 26th April, 2017 to state that foul smell is felt at a distance of 2000 metres and there is likelihood of spreading disease, but to accept this report over report of Committee, no reason is recorded. Moreover, no single instance is pointed out to indicate that due to the poultry farm any disease was spread in the village. No objection certificates given by the school as well as the Gram Panchayat sufficiently show that there is no hazard or environmental threat due to conducting of business of poultry farming in the agricultural field which is at a distance of minimum 500 mtrs from the residential area. Pertinently, except for the grievance of Respondent No. 1, there is nothing on record to show that any other person has complained about causing of nuisance on account of this business.

9. The Sub-Divisional Officer however, in complete ignorance of no objection certificates as well as the report of the

officer of Panchayat Samiti and Medical Officer recorded that the foul smell of poultry farm is existing upto distance of 500 mtrs. It is also held that there is every likelihood of diseases being contacted on account of the same without there being any such instance or material placed on record to hold so. In the backdrop of political enmity between respondent No. 1 and petitioner, this Court finds substance in the contention of petitioner that without there being any reason or justification, the order in question came to be passed.

10. Perusal of Section 133 of Code of Criminal Procedure shows that the District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf, on receiving the report of a police officer or other information and on taking such evidence, if thinks fit may consider temporary discontinuation of the activity which is likely to cause nuisance. Unless there is clear cut finding about causing of nuisance which is supported by material evidence on record, no such order can be passed. At this stage, it would be relevant to take note of judgment of Hon'ble Apex Court in case of *Suhelkhan (supra)*, which while dealing with exercise of powers under Section 133 of Code of Criminal Procedure has observed thus :

“The provision of Chapter X of the Code should be so worked as not to become themselves a nuisance to the community at large. Although every person is bound to so use his property that it may not work legal damage or harm to his neighbour, yet on the other hand, no one has a right to interfere with the free and full enjoyment by such person of his property, except on clear and absolute proof that such use of it by him is producing such legal damage or harm. Therefore, a lawful and necessary trade ought not to be interfered with unless it is proved to be injurious to the health or physical comfort of the community. Proceedings under Section 133 are not intended to settle private disputes between different members of the public. They are in fact intended to protect the public as a whole against inconvenience. A comparison between the provisions of Section 133 and 144 of the Code shows that while the former is more specific the latter is more general. Therefore, nuisance specially provided in the former section is taken out of the general provisions of the latter section. The proceedings under Section 133 are more in the nature of civil proceedings than of criminal nature. Section 133(1)(b) relates to trade or occupation which is injurious to health or physical comfort. It itself deals with physical comfort to the community and not with those acts

which are not in themselves nuisance but in the course of which public nuisance is committed. In order to bring a trade or occupation within the operation of this Section, it must be shown that the interference with public comfort was considerable and a large section of the public was affected injuriously. The word 'community' in Clause (b) of Section 133(1) cannot be taken to mean residents of a particular house. It means something wider, that is, the public at large or the residents of an entire locality.

Here in this case, from application filed before Sub-Divisional Officer, it is clear that though it is couched in such a manner to appear it to be public nuisance but infact it is grievance of an individual. There is nothing from record to indicate that any other person/persons from vicinity claimed it to be a nuisance to public at large. Sub Divisional Magistrate was exercising public duty, which is towards members of public who are victims of such nuisance and not to help individual to settle his scores at the cost of compromise to the fundamental right to conduct any lawful business. In the instant case, material on record indicates otherwise than the finding recorded by the authority. The order impugned is one sided, bias and in complete ignorance of the material evidence on record. In

such circumstances, the impugned order of directing the petitioner to remove the poultry farm from its existing place cannot sustain. Learned Sessions Court committed error in not considering the absence of any evidence to pass order in question and has rejected revision which is not in accordance with law.

11. In view of above discussion, the petition is allowed. Orders dated 03rd September, 2009 passed by the Sub-Divisional Officer, Shrirampur, and order dated 17th November, 2021 passed by learned District and Sessions Judge, Shrirampur are quashed and set aside.

12. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

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