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Court : Mumbai Aurangabad

Decided On : Oct-28-2014

Judge : R.M. Borde & V.K. Jadhav

Appeal No. : Writ Petition No. 8166 of 2013

Appellant : Anusayabai

Respondent : State of Maharashtra, through the Secretary, Department of Rural Development, Mumbai and Others

Judgement :

R.M.Borde, J.:

1. Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.
2. Instant petition is presented by Sarpanch of Village Panchayat Walki, Tq. Hadgaon, District Nanded, on behalf of village panchayat, requesting for issuance of appropriate orders to the Respondents prohibiting holding of cattle bazar on every Thursday at Lyahari/Walki phata, Tq.Hadgaon, District Nanded, without issuance of prior license by Zilla Parishad, Nanded.

3. It is not a matter of dispute that cattle bazar is being held at village Walki, Tq. Hadgaon, since last more than 100 years. Petitioner has grievance in respect of holding of parallel cattle bazar at Lyahari/Walki Phata, which is at a distance of about 6 Kms on every Thursday. It is informed that cattle bazar is being held illegally in the land belonging to Respondent No.6 and at the instance of village panchayat Lyahari, represented by Respondent No.7 Sarpanch.

4. The petitioner has tendered an application to the Chief Executive Officer, Zilla Parishad, in the year 2008, for passing prohibitory orders. A representation was also tendered to the Rural Development Minister, Union of India, on 28.03.2008. An inquiry was conducted at the instance of Zilla Parishad by the Block Development Officer, who has reported that cattle bazar is being conducted in illegal manner in the absence of any license issued by Zilla Parishad, in that behalf. It also does transpire that penal action was also taken, as contemplated by Section 213 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, and penalty of Rs.100/- was directed to be recovered from private traders on account of their participation in the illegal bazar.

5. The petitioner contends that although penal provisions under Section 213 of the Act of 1961 were invoked, amount of fine has not yet been recovered. The petitioner contends that there is no provision contained in the Act of 1961 empowering the Chief Executive Officer, Zilla Parishad to prohibit holding of a private bazar and in such circumstances, the Collector and District Magistrate is required to invoke powers conferred under the Code of Criminal Procedure and take appropriate preventive action.

6. The Collector, Nanded, in communication dated 18.08.2008, transmitted to the Chief Executive Officer, Zilla Parishad, Nanded, issued instructions to ensure that the bazar is not held at the disputed location without issuance of prior permission by the competent authority. It was also directed to ensure that considering the distance between two villages, the villagers at Lyahari be persuaded to conduct cattle bazar on any day except Thursday. It is further instructed that in the event of failure to observe the instructions, necessary proposal be forwarded to the Collector for taking appropriate preventive action under the provisions of Criminal

Procedure Code.

7. The Chief Executive Officer, Zilla Parishad, issued instructions to the Village Panchayat to ensure compliance of the directions issued by the Collector. On noticing that in spite of issuance of instructions, illegal cattle bazar is being conducted at Lyahari/Walki phata, the Block Development Officer was directed to take appropriate steps, as contemplated by Section 213 of the Act of 1961. The Block Development Officer directed imposition of penalty of Rs.100/- against participants of the cattle bazar. A proposal was also forwarded to the Collector by the Chief Executive Officer on 03.10.2008 to take appropriate action under the provisions of Code of Criminal Procedure for preventing holding of illegal cattle bazar. The Collector, instead of taking preventive action, instructed the Chief Executive Officer, to take appropriate measures for preventing holding of cattle bazar on every Thursday. Referring to the communications between the Collector and Chief Executive Officer, Zilla Parishad, the petitioner has pointed out that both the authorities are avoiding their responsibility of initiating any action for preventing holding of illegal weekly cattle bazar.

8. An affidavit in reply has been presented by the Chief Executive Officer, Zilla Parishad, pointing out therein that a proposal has been forwarded to the Collector/District Magistrate for initiation of criminal proceedings as contemplated under the Code of Criminal Procedure for preventing holding of illegal weekly cattle bazar and it is the responsibility of the District Magistrate to take penal action. So far as powers of Chief Executive Officer are concerned, the Act of 1961 authorizes imposition of penalty of Rs.100/- which action has been taken. However, it is insufficient to redress grievance of the petitioner. It is the contention of the Chief Executive Officer that he has not failed to perform his statutory duties and proper authority to initiate proceedings is District Magistrate.

9. An affidavit in reply has been presented on behalf of Sarpanch of Lyahari Village Panchayat controverting contentions raised in the petition. It is contended on behalf of the Village Panchayat that a Resolution has been adopted in the meeting of village panchayat on 14.02.2008 for making an application to the Zilla Parishad, seeking permission to hold a cattle bazar at village Lyahari. Accordingly, a

proposal has been forwarded to the Collector, which is still pending. It is the contention of the Village Panchayat that the cattle bazar being conducted at Lyahari/Walkli phata is not at the instance of village panchayat, but same is being conducted in a private land and the village panchayat has no concern with holding of said bazar.

10. Section 45 of the Bombay Village Panchayats Act, 1958, deals with administrative powers and duties of the Panchayats. It is the duty of the Panchayat, so far as village funds and its disposal is concerned, to make a reasonable provision within the village with respect to all or any of the subjects enumerated in Schedule I. Item 70 of Schedule I provides for establishment and maintenance of markets, provided no market shall be established without prior permission of the Zilla Parishad. It is, thus, clear that holding of market is permissible only with prior permission of the Zilla Parishad. Section 203 of Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, provides that the State Government may, upon a representation made by Zilla Parishad by notification published in the Official Gazette and in such other manner as may be prescribed by rules made by the State Government, declare that any place within the District shall be a public market. It is not a matter of dispute that the cattle bazar being conducted at village Walki is in accordance with Section 203 of Act of 1961. Section 205 of the Act deals with private markets and it provides that no person shall establish or maintain private market except under a license granted by the Zilla Parishad. Subsection (2) provides that the Zilla Parishad as respects markets lawfully in existence in any village on the date on which the provisions herein relating to private markets apply to that village shall, and as respects other markets may, grant a license under subsection (1), subject to such conditions as to sanitation, drainage, water supply, width of paths and ways, weights and measures to be used, and rents and fees to be charged in such markets, as the Zilla Parishad may think fit. It is also not a matter of dispute that the cattle bazar at Lyahari/Walki phata is being conducted without obtaining a license, as required by Section 205 of the Act of 1961. Levy of fees at the market, if any, is also in contravention of provisions of Act of 1961. Section 213 of the Act provides for penalty for unlicensed markets. It is provided that if any person establishing or maintaining a market, for which license has not been granted under subsection (2)

of Section 205 or opening or keeping open a market for which license has been cancelled under Section 210 of the Act; or opening or keeping open a market during the period of suspension under section 210, shall be punishable with fine which may extend to one hundred rupees, and if the breach is continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach is proved to have been persisted in.

11. It is, thus, contended that holding of cattle market on every Thursday at the disputed location is in breach of provisions of Act of 1961. It is also not a matter of dispute that the Chief Executive Officer has invoked penal provision under Section 213 and directed imposition of penalty of Rs.100/- against the traders who participated at the bazar. The Act of 1961 does not provide for a provision authorising the Chief Executive Officer to take steps for prohibiting holding of illegal bazar. It is, thus, for the Collector and District Magistrate to take preventive action, as contemplated by provisions of Code of Criminal Procedure. It is also not a matter of dispute that the Collector has been approached by the Chief Executive Officer with a request to invoke provisions of Code of Criminal Procedure and take appropriate preventive action. The Collector, however, has not initiated any action and prevented illegalities.

12. Our attention has been invited to the provisions of the Markets and Fairs Act, 1862. The Act been adapted and modified by Bombay Adaptation of Laws (State and Concurrent Subjects) Order, 1956; and has been amended by Bombay Act No.84 of 1958. Section 5B of the Act of 1862 prohibits holding of a market or fair within distance of 5 miles from the place where it is proposed that the new market or fair shall be established and the Magistrate is mandated to refuse permission to establish such new market or fair. It is, thus, contended by the petitioner that holding of a market, at a distance of 6 KMs from the existing market, is not permissible in accordance with Act of 1862.

13. It would be for the Chief Executive Officer, Zilla Parishad, to take into consideration provisions of the Act of 1862 while considering the application tendered by Lyahari village Panchayat, seeking permission to conduct cattle bazar. The Chief Executive Officer, while considering the application tendered by

Lyahari Village Panchayat, shall have due regard to the objection raised by petitioner Village Panchayat.

14. In the facts and circumstances of this case, it would be appropriate to direct Respondent No.4 District Collector and District Magistrate to take appropriate steps, as provided under the provisions of Code of Criminal Procedure, for preventing holding of illegal weekly cattle bazar at Lyahari/Walki phata. The Collector and District Magistrate, Nanded, in observance of the procedure prescribed under Criminal Procedure Code, 1973, shall take appropriate action and prevent continuance of illegalities in holding of weekly cattle bazar at disputed location. It would be permissible for the concerned to hold weekly market only after securing appropriate license, as required under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961. The Collector and District Magistrate, Nanded, is directed to take proper steps, as expeditiously as possible, preferably within a period of four months from today.

15. Rule is accordingly made absolute to the extent specified above. In the facts and circumstances of this case, there shall be no order as to costs.

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