

Khurkhur Vs. State Through the Asst. Engineer, P.W.D.

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Court : Allahabad

Decided On : Dec-14-1969

Reported in : AIR1970All198; 1970CriLJ433

Judge : W. Broome, ;B.D. Gupta and ;G.C. Mathur, JJ.

Acts : Uttar Pradesh Roadside Land Control Act, 1945 - Sections 3, 3(1), 3(2) to 3(6), 3(7) and 13(1)

Appeal No. : Criminal Revn. No. 1492 of 1966

Appellant : Khurkhur

Respondent : State Through the Asst. Engineer, P.W.D.

Advocate for Def. : Sushil Kumar, D.G.A.

Advocate for Pet/Ap. : Sankatha Rai, Adv.

Judgement :

Broome, J.

1. Khurkhur, the petitioner in this criminal revision, has been convicted by the S.D.M. of Varanasi under Section 13 (1) of the U.P. Roadside Land Control Act, 1945, and has been sentenced to pay a fine of Rs. 200, with a further recurring fine of Rs. 20 per day in case of continuing contravention. He filed a revision in the

Court of the A.D.M. (J.) Varanasi, and there for the first time raised the plea that the Gazette notification dated 29-12-1951, relied upon by the prosecution for the purpose of showing that the area in question was a 'controlled area', had not been made in accordance with law, because the State Government had not published a preliminary declaration in two vernacular newspapers, as required by Sub-section (2) of Section 3 of the Act. The learned A.D.M. (J) repelled this argument on the ground that under Sub-section (7) of Section 3 the notification was conclusive evidence that the area was a 'controlled area' and that the prosecution was under no obligation to produce evidence to show that the procedure prescribed in Sub-section (2) had been complied with before the notification was issued. Thereafter the present revision was filed in this Court and came up for hearing before S. D. Singh J., who being of opinion that it was desirable to obtain an authoritative interpretation of the scope of Sub-section (7) of Section 3 of the Act, referred the following two questions to a larger Bench for decision:--

'(1) Whether it is open to an accused person to question the validity of a declaration made under Sub-section (1) of Section 3 of the U.P. Roadside Land Control Act, 1945 on the ground that procedure prescribed under Sub-sections (2) to (6) of Section 3 of the Act was not gone through at all or in some material respect, even though the aforesaid declaration is made conclusive evidence under Sub-section (7) of the same section of the fact that the area to which it relates is a controlled area.

(2) In case this question is answered in the affirmative, will it be for the prosecution to establish in every case that the procedure prescribed under Sub-sections (2) to (6) of Section 3 of the Act was gone through before a declaration was made under Sub-section (1) of Section 3 of the Act or the necessary onus to establish the want of compliance will lie on the accused.'

The questions propounded by S. D. Singh, J. came up before a Division Bench of this Court; but that Bench, having discussed various rulings bearing on question of whether the provisions of Sub-section (2) of Section 3 regarding publication in two vernacular newspapers were directory or mandatory, felt that consideration by a still larger Bench was required and that is how this revision has come before us.

2. As a matter of fact this whole controversy is totally unnecessary and pointless. On the face of it, it seemed to us highly unlikely that the State Government would have deliberately omitted to follow the procedure laid down in a section of the Act itself and accordingly we inquired from the learned Government Advocate what the factual position was; and the affidavit that was filed on 17-12-1968 in response to this query shows that in actual fact Sub-section (2) of Section 3 of the Act has been fully complied with, inasmuch as the required notification was duly published in two vernacular newspapers, the 'Aaj' and the 'Qaumi Awaz', on 24-2-1950 and 23-2-1950 respectively. Copies of the newspapers in question, showing the publication of the notification, are appended to the affidavit.

3. However, as the questions have been referred to us for decision, we proceed to give our answers thereto. The first question relates to the scope of Sub-sections (1) and (7) of Section 3 of the U.P. Roadside Land Control Act, which run as follows:--

3. Declaration of Controlled Area-- (1) The State Government may, by notification in the official Gazette, declare any land within a distance of four hundred and forty yards from the centre line of any road to be a controlled area for the purposes of this Act:

(Provided that in the case of a national highway, the highway itself shall not be deemed to be a controlled area).

.....

(7) A declaration made under Sub-section (1) shall, unless and until it is withdrawn, be conclusive evidence of the fact that the area to which it relates is a controlled area.

At first sight it might seem that Sub-section (7) was meant to endow the Gazette notification under Sub-section (1) with special sanctity, preventing it from being challenged on any ground whatsoever. We are satisfied, however, that the presumption under Sub-section (7) can only arise when the 'declaration made under Sub-section (1)' referred to therein is a valid declaration made in

accordance with law. Sub-section (2) of Section 3 provides:

'3 (2)-- Not less than three months before making a declaration under Section (1) the State Government shall cause to be published in the official Gazette and In at least two newspapers printed in a language other than English a notification stating that they propose to make such a declaration and specifying therein the boundaries of the land in respect of which the declaration is proposed to be made and copies of every such notification or of the substance thereof shall be published by the Collector in such manner as he thinks fit at his office and at such, other places as he considers necessary within the said boundaries.'

Sub-section (3) provides for the filing of objections by a person interested. Sub-sections (4) to (6) provide for the disposal of objections. The Act empowers the State Government to make the declaration under Sub-section (1) of Section 3 only after Complying with the procedure prescribed by Sub-sections (2) to (6). A declaration made without following the procedure laid down in these sub-sections will not be a legally or duly made declaration; and only a declaration duly made will attract the application of Sub-section (7).

4. Sub-section (7) does not make the declaration under Sub-section (1) conclusive evidence of the fact that it has been made in accordance with the provisions of Sub-sections (2) to (6), nor does it shut out enquiry by the Courts into the legality of the declaration. In this respect the language of Sub-section (7) may be contrasted with the language used in Sub-section (3) of Section 135 of the U.P. Municipalities Act, which says:--

135 (3) -- A notification of the imposition of a tax under Sub-section (2) shall be conclusive proof that the tax has been imposed in accordance with the provisions of this Act.'

Section 135 (3) purports to shut out a challenge to the legality of the imposition on the ground that it has not been made in accordance with the provisions of the Act. Even in respect of this provision the Supreme Court has held in *Municipal Board, Hapur v. Raghuvendra Kripal*, AIR 1966 SC 693 that the rule of conclusive evidence in this section does not shut out all enquiries by Courts into the validity of

the notification under Section 135 (2), though defects in respect of directory provisions may have its protection. However, since the language of the two provisions is different, the decisions in respect of Section 135 (3) of the U.P. Municipalities Act are not particularly helpful in interpreting Section 3 (7) of the U.P. Roadside Land Control Act. Provisions analogous to those of Section 3 (7) are to be found in Section 6(3) of the Land Acquisition Act, which provides, in respect of a declaration under Section 6(1), that

'the said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be,'

It has never been contended, nor has it been held by any Court that Section 6(3) bars the declaration under Section 6(1) from being challenged on the ground that it was made without following the procedure laid down in the Land Acquisition Act for making it. The rule of conclusive evidence in such cases applies only if the declaration has been legally and duly made. Since Section 3 (7) of the U.P. Roadside Land Control Act does not state that the publication of the declaration under Sub-section (1) shall be conclusive evidence of; the fact that the declaration has been made in accordance with the provisions of the Act. It cannot be held to shut out enquiry into the question whether the provisions of Sub-sections (2) to (6) were complied with or not before making the declaration.

5. This conclusion will clearly be a sufficient answer to the first question referred to us for decision and we see no necessity to embark on a discussion of whether any of the provisions of Sub-sections (2) to (6) of Section 3 of the Act are mandatory or directory since in our opinion that would be outside the scope of the question in the form in which it has been framed.

6. Having answered the first question in the affirmative, we have now to deal with the second. Learned Counsel for the petitioner has attempted to argue that in each and every case, whether or not the accused challenges the validity of the declaration made under Sub-section (1), the prosecution is bound to place all the necessary material before the Court to show that the procedural requirements of Sub-sections (2) to (6) have been complied with and that the declaration has been validly made in accordance with law. But we are unable to accept this sweeping

proposition. Once a Gazette notification embodying the declaration is produced before the Court, the presumption can legitimately be drawn that all the procedure required by law to be followed with regard to the said notification has in fact been followed--vide illustration (e) to Section 114 of the Evidence Act. It is only in two classes of cases that the prosecution is called upon to produce evidence to prove that Sub-sections (2) to (6) have been complied with: (1) cases in which the accused challenges the validity of the declaration, specifying the alleged non-compliance; and (2) cases in which for some special reason the Court refuses to draw the presumption permitted by Section 114 of the Evidence Act.

7. Our answers to the questions propounded by the learned Single Judge therefore, are:--

1. It is open to an accused person to question the validity of the declaration under Sub-section (1) to Section 3 of the U.P. Roadside Land Control Act on the ground that the procedure prescribed by Sub-sections (2) to (6) has not been followed, even though Sub-section (7) makes the declaration conclusive evidence of the fact that the area to which it relates is a controlled area.

2. Where the declaration under Sub-section (1) of Section 3 has been made and the accused person does not raise the question that the procedure prescribed by Sub-sections (2) to (6) was not followed before making the declaration, it is not necessary for the prosecution to establish that the provisions of these sub-sections have been complied with.

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