

Tika Ram Vs. Emperor

Tika Ram Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/463477

Court : Allahabad

Decided On : May-18-1928

Reported in : AIR1928All687; 110Ind.Cas.675

Appellant : Tika Ram

Respondent : Emperor

Judgement :

Dalal, J.

1. This is a revision, so the findings of fact of the Subordinate Courts must be accepted. The applicant Tika Ram has been convicted under Section 36, Works of Defence Act (7 of 1903). It has been held by the Subordinate Courts that three thatched constructions of Tika Ram exist within a zone which is marked out under the Act and over which a declaration has been made under Section 3 of the Act. The lower Courts have unfortunately made use of a word 'maintain' which has a peculiar meaning defined in the Act in Section 2 (h). The evidence, however, on the record and the finding of the trial Court are to the effect that these thatches were put up two or three years ago and subsequent to the declaration and, therefore, the proper word applicable So them is 'erection' of the structures. It was argued that Tika Ram himself made their purchase on 6th May 1924, so the constructions could not have been erected or put up two or three years ago. It appears, however, from the testimony of the defence witnesses also that these

thatches are constantly renewed and do not remain in the same condition for long. They crumble down after a year or two, and are put up again. These three thatches were put up without permission two or three years ago, that is, after this declaration of the zone; such is the finding of the Subordinate Courts. There seems to be great negligence of supervision, and the defence witnesses are probably telling the truth when they say that thatches are put up without permission, and that permission is sought; only when a building of a permanent character is constructed. However negligent the supervision may be, once a man is prosecuted for a breach of statutory rule, his conviction cannot be revised. The fine, therefore, of Rs. 25 is maintained. The applicant has further been directed to pay a daily fine of Rs. 5 after three months in case he fails to obtain permission for the continuance of these thatches at the end of that time. What the Court is authorized under Section 36 to do is to impose an additional fine which may extend to Rs. 5 for every day after the first in regard to which he is convicted of having persisted in the offence. It is obvious, therefore, that there must be a definite conviction of his persistence in the offence before a continuing fine can be imposed. So far there is no conviction that subsequent to 1st March 1927, that is three months after the pronouncement of the judgment of the trial Court, the applicant persisted in his offence. The order, therefore, for the payment of continuing fine is set aside. If the trial Court desires to take action, that Magistrate must first record a conviction of the applicant's persistence in the offence and then impose a fine for every day after the first in regard to which the conviction has been recorded.

2. In the result the fine of Rs. 25 is maintained, and the other fine is set aside.