

Baldeo Krishen Nagar Vs. State

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Court : Allahabad

Decided On : Apr-25-1968

Reported in : 1969CriLJ1154

Judge : S.D. Singh, J.

Appellant : Baldeo Krishen Nagar

Respondent : State

Judgement :

ORDER

S.D. Singh, J.

1. This is an application under Section 561A of the Criminal P.C., for certain proceedings under 3. 147 of the Code pending in the Court of the City Magistrate, Varanasi, to be quashed.

2. There is a tank known as Krukraehetra tank which has land adjoining or appurtenant to it. The tank along with the adjoining land is claimed by the applicant to be his personal property and probably the contention of the Hindu public is that this is a public-trust in which the Hindu public at large have some interest, their main interest being to take a dip in the tank on the occasions of solar eclipse. Bival claims for this property haven come up before the Courts on occasions more than once and reference is made to it in the? affidavit filed by the

applicant and there has been no serious challenge to this allegation on behalf of the opposite parties. In 1962 proceedings were taken in respect of this property under Section 187 of the Code, but the applicant went up in revision to the Sessions Judge. Varanasi, who made a reference to the High. Court recommending the order of the City Magistrate being quashed. The referring order by the Additional Sessions Judge of Varanasi is annexure B to the affidavit and the order passed by the High Court in this reference is annexure 'C' to the affidavit. The order passed by the High Court is a short one and may be quoted in full:

For the reasons contained in the referring, order the reference is hereby accepted and the order dated 18-2.1962 of the Magistrate is set aside,

The Magistrate is further directed to stay further proceedings till the question of the existence of the alleged public right has been, decided by a competent Civil Court.

The sum and substance of this order was that further proceedings in the matter by the Magistrate were to be stayed till the question of the existence of the alleged public right was decided by the competent Civil Court. That alleged public right has not been adjudicated upon by the Civil Court so far, obviously because no member of the Hindu public has gone to the Civil Court to establish this right of the Hindu public. The order of the High Court is dated Both November, 1962. Although a suit by the members of the Hindu public to establish their right may not be barred by time even now (on which question I am not expressing any opinion) the fact remains that during these last five years or so this question has not been agitated in Civil Courts.

3. In the meantime, however, the applicant secured the permission of the Municipal Board for constructing a wall and closing the entire disputed area and has now secured permission for constructing as many as 40 shops on a part of this land. It is this intention of constructing the shops that has awakened some of the otherwise sleeping members of the Hindu public to raise the question before the Magistrate again though they had not the courage to go to the Civil Courts for the purpose. The Magistrate, anxious perhaps to atop the constructions for reasons which strictly speaking, were not quite judicial, asked for a police report in the matter; but the police found that there was no apprehension of the breach of

peace. The police also reported that the matter had been agitated earlier before the City Magistrate and that the High Court had Ordered that unless the question of the existence of the public right was decided by the competent Civil Court, the Magistrate should stay further proceedings. In spite of this report by the Sub-Inspector, the City Magistrate felt inclined to pass some sort of an order or the other and he consequently asked for the Tahsildar's report. An enquiry was made by the Naib Tahsildar who submitted a report on 9th December, 1966 but even in this report there is no mention that there is any likelihood of the breach of peace. All the same the Magistrate passed the order on 2nd June, 1967 under Section 147 of the Code. Even this order is a very short one and may, therefore, be quoted in full:

Register a case under Section 147, Criminal P.C. and issue notice to the parties to appear in the Court on the 19th June, 1967. Mean, while the construction shall be stopped.

It is the validity of this order which is questioned in this petition. Having heard the parties including some members of the public who were at their own instance made parties to these proceedings, I find that this application must be allowed and the proceedings under Section 147 of the Criminal P.C., quashed.

4. A bare reading of Sub-section (1) of Section 147, indicates that before a Magistrate assumes jurisdiction under that section, he must be 'satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists regarding any alleged right to any land or water as explained in Section 146, Sub-section (2).' And this satisfaction of the Magistrate has not merely to be a sort of mental satisfaction. The Magistrate has to state in making an order in writing under Section 147(1) the grounds of his being so satisfied.' Sub-section (1) refers to only one satisfaction and that is that a dispute likely to cause a breach of peace exists and it is only in respect of this satisfaction that the sub-section requires the Magistrate to state the grounds for his satisfaction. It is surprising that the Magistrate has shown complete ignorance of the provisions of law in dealing with this matter. There is no reference whatsoever in the order, which the Magistrate passed on 2nd June, 1967 to the existence of any

apprehension of the breach of peace, or his satisfaction to that effect and when there is no reference even to such satisfaction, the question of his stating the grounds for that satisfaction could not arise.

5. But the Magistrate has tried to do now what he failed to do when he passed the order. Although the Magistrate's position in respect of this matter was of a presiding officer of a court and he was not expected or required to file an affidavit in this case, he did file his own affidavit. The opposite party in this case is the State and now, of course, even some members of the Hindu public. It was the State which should have filed an affidavit in the case; may be of some police or other executive officer. But the State should not have employed the agency of the presiding officer of the Court in contesting this application and filing his affidavit, as if the City Magistrate was a party to the proceeding. The personality of the City Magistrate was above that of the proceedings pending in his Court and the parties who had to appear before him. The City Magistrate should not have been relegated to the position of an opposite party who was interested in opposing the application which has been moved in this Court. The presiding officer of a Court, may have gone wrong in deciding a case or shown ignorance of the provisions of the law in so doing; but even his personality remains detached from the cause itself. It is, and should be, a matter of little or no concern to him whether the order passed by him is upheld by a superior Court or quashed or set aside. By filing his own affidavit in this case, the Magistrate has indicated that he has some sort of a personal interest in the matter and that he is prepared to go to the length of arraying himself as an opposite party and filing an affidavit to support the order. Unless this Court itself desires or demands the affidavit of the presiding officer in any particular case or there is some allegation of a very personal nature against him, I see no justification for the State filing the affidavit of the presiding officer of the Court.

6. Having filed the affidavit, the Magistrate has simply strengthened the conclusion, which was otherwise obvious, that he was keenly interested in defending his order, however absurd or wrong it might be. In paragraph 4 of his affidavit he alleges:

4. That contents of para. 17 are admitted and it is submitted that I was satisfied on the report of the Naib Tahsildar dated 8-12.66 that a dispute likely to cause breach of the peace existed, hence the order to register a case under Section 147, Criminal P.C. was ordered. The copy of the report of the Naib Tahsildar and SC attached. Annexures A and B.

This allegation in the affidavit might give an impression that it was the Naib Tahsildar who reported in his report dated 8-12-1966 that a dispute likely to cause breach of the peace existed, but perhaps that is not what the Magistrate meant. What he probably meant was that it was on the basis of the report of the Naib Tahsildar that he was satisfied that a dispute likely to cause breach of the peace, existed. The date of the report of the Naib Tahsildar is mentioned as 8-12.1966 while in the copy it is mentioned as 9.12 1966, but I believe that it is the very same report which is referred to in paragraph 4 of the counter affidavit;. In any case it is this report which is annexure A to the counter affidavit. I have gone through this report twice. The learned Counsel on neither side was able to point out a word in the report indicating that the Naib Tahsildar found any apprehension or likelihood of breach of peace. The report is purely factual, in which the previous history of the dispute is narrated. The Naib Tahsildar has not said a word about there being possibility or likelihood of any breach of peace, nor has indicated any circumstance from which any such inference could be drawn by the Magistrate. It is really surprising that the Magistrate was satisfied on the basis of this report that a dispute likely to cause breach of the peace existed. If this was how the Magistrate satisfied himself about the existence of this likelihood of the breach of peace, the least that can be said is that his conclusions were not based on record or on judicial considerations. He travelled outside the record and took into consideration things which normally should not have been within his judicial mind.

7. There may be other matters subsequently brought to the notice of the Magistrate or even earlier which might have been relied upon by the Magistrate in coming to the conclusion that there was an apprehension of the breach of peace. The order passed by him does not refer to them, and the order passed by him shows that the question regarding the possibility of the breach of peace was not in his mind at all.

8. As the very facts which were necessary to give jurisdiction to the Magistrate to start proceedings under Section 147 of the Code of Criminal P.C. were missing, the entire proceedings which have been taken in this connection stand vitiated.

9. The application is allowed. The proceedings under Section 147 of the Criminal P.C. pending in the Court of the City Magistrate, Varanasi, against the applicant in respect of the property known as Krukehetra tank will stand quashed.

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