

Baldeo Vs. State

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Court : Allahabad

Decided On : Mar-25-1975

Reported in : 1975CriLJ1569

Judge : P.N. Bakshi, J.

Appellant : Baldeo

Respondent : State

Judgement :

ORDER

P.N. Bakshi, J.

1. In village Bhathat, Police Station Gulariha, district Gorakhpur a bazar is held on every Sunday on certain plots of land. Syed Sajjad Ali and Syed Jawwad Ali had granted an annual Theka of the bazar to one Gobri for the year 1972-73. Mewa was the Kithanadar on behalf of Gobri during this period. This Theka came to an end on September 30, 1973. Thereafter Syed Sajjad Ali and Syed Jawwad Ali gave the Theka to Baldeo and others for the year 1973-74 for a consideration of Rs. 20,000 which was paid by the Thekedars. Gobri attempted to realise dues and fees from the traders. A civil suit was, therefore, filed and an injunction order obtained which restrained Gobri from realising fee from the traders. Thereafter Gobri filed a complaint in the court of the Sub-Divisional Magistrate, Sadar under Section 145, Cr. P. C. A copy of Gobri's application was sent to the Station Officer,

Police Station Gularilha. It appears that a report was also lodged by Mewa at the Police Station and along with it a medical report was also filed. The Sub-Divisional Magistrate perused these papers and being satisfied that there was an apprehension of the breach of peace regarding Tehbazari rights of the Bhathat Bazar, he passed a preliminary order on 12th October, 1973 and also directed the Station Officer to attach the Tahbazari and give it in the Supardgi of an independent person who shall keep proper accounts of each Bazar held on Sundays and submit the same to the court when required.

2. Aggrieved thereby Baldeo and other preferred a revision before the Sessions Judge who has made a reference to this Court for setting aside the impugned order. The Sessions Judge was of the view that the dispute in question related to the rights of rival Thekedara to collect fee from the traders who held a bazar on the land in question. There is no dispute with regard to the possession of the land itself. As such in the opinion of the Sessions Judge, Section 145, Cr. P. C. was not attracted, as this section concerns itself with disputes leading to an apprehension of the breach of peace with regard to immovable property only.

3. I have heard learned Counsel for the parties and have also perused the impugned orders. In this connection it would be pertinent to quote the relevant portion of Section 145(1), Cr. P. C. which runs as follows:

(1) Whenever a District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof.... he shall make an order in writing, stating the grounds of his being satisfied, and requiring the parties concerned in such dispute to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute...

Sub-section (2) of Section 145 runs as follows:

For the purposes of this section the expression 'land or water' includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

4. The question for consideration is whether the dispute in the present case is covered by the aforesaid provisions.

5. I shall now deal with the various cases that have been cited in this connection. In ILR (1909) 36 Cal 986 : 11 Cri LJ 28, Akaloo Chandra Das v. Mohesh Lal it was held that

Section 145 of the Criminal Procedure Code does not apply to a dispute relating to the rights of co-sharers to collect tolls in proportion to their respective shares in a hat, and not to the possession of the hat itself.

The facts of that case reveal that one of the two sets of the co-sharers was entitled under an Ikramama to collect the tolls of the whole market and to divide the profits with the other co-sharers at the end of the year. The lessee of the latter co-sharer attempted to collect his lessor's share independently. In this case possession over the land in question of the co-sharers was undisputed. The written statement of the first party fully admitted Kristo Mohan, to be actually in possession of the land. In those circumstances it was held that Section 145, Cr. P. C. would not apply. It is noticeable that in this case Sub-section (2) of Section 145, Cr. P. C. was not considered. Under Section 145(2), Cr. P. C. it has very clearly been laid down that the expression 'land or water' includes markets and rents or profits of any such property. In my opinion, therefore, the Calcutta case does not lay down the correct law.

6. The facts of the case reported in AIR 1914 All 62 : 15 Cri LJ 27 Ram Loohan v. Emperor were also different . In that case certain Banias and other dealers who attended a market to sell their goods appointed one 'A' as Chaudhary of the market to regulate its business. They agreed to remunerate him for his service by allowing him to collect two pice per head of cattle brought into the market laden with articles for sale. The payment to the Chaudhary was purely voluntary and was in no way connected with the ordinary rents and profits of the market and was not the perquisite of the Zamindar but was a personal matter between the Banias and the Chaudhary. A dispute arose as regards the collection of the dues between A and the servants of the Zamindar on whose land the market was held. In these circumstances it was held that the dispute did not relate to the profits of the market

within the meaning of Section 145(2), Cr. P. C. and as such no action could be taken under the section.

7. In AIR 1958 Tripura 47 : 1958 Cri LJ 1554 Kala Meah v. Bai Mohan Saha a dispute arose with respect to the rights of the parties to collect toll in a Bazar. This dispute had been raging for sometime and proceedings under Section 144, Cr. P. C. had also been resorted to previously. It was held in this case that the proper course to adopt was to have recourse to Section 145 or 147, Cr. P. C as the circumstances may demand. I am in respectful agreement with the view expressed in that case, the facts of which are akin to the present case.

8. The question whether rules relating to realisation of Tahbazari dues was immovable property and stipulation in respect of the same requires registration of an agreement the value of which exceeds Rs. 100 under the provisions of Section 2(vi) of the Registration Act, 1908, was considered by a Division Bench of our Court reported in Chandra Bhan Datt Ram Pandey v. Jagdish Datt Bam Bandey 1962 All LJ 404. It was held in this case that where an agreement relates to the rights of the parties to manage the market and the collection of Tahbazari dues and its sharing on realization, such an agreement was not merely one to share the money realised, but an agreement to own the rights in respect of the market and the right to share the said dues was only a consequence and not a collateral purpose for which the document was sought to be relied upon. In this case it was held that the rights relating to realisation of Tahbazari dues was definitely immovable property within the meaning of the Registration Act. While considering the definition of immovable property under Clause (vi) of Section 2 of the Registration Act, it was held that the benefits which arise out of the land would be included in the expression immovable property. Section 145(1), Cr. P. C. covers disputes relating to apprehension of breach of peace concerning any land or water or the boundaries thereof, Sub-section (2) of the aforesaid Section, which, though not exhaustive in its definition of the expression 'land or water', does clearly lay down that it shall include markets and the rents and profits of such property, meaning thereby the rents and profits accruing from the market

9. As I have mentioned above, in the present case the dispute between the parties centres round the right to collect the Tahbazari dues in the weekly market of Bhathat Bazar which is held every Sunday on the plots in dispute. The attempt of both the rival claimants to realise the Tahbazari dues from the traders who come to the market in question every week to sell their goods in the fair, has resulted in an apprehension of a breach of peace, concerning the land in dispute, which necessitated the passing of the preliminary order by the Sub-Divisional Magistrate.

10. While sitting in Lucknow Bench of the Allahabad High Court, I had expressed a similar view in Criminal Revn. No. 431 of 1868, Ibrahim v. Shailendra Misra. I see no reason to differ from that view.

11. For the reasons given above, I am not inclined to accept this reference which has been made by the Sessions Judge, Gorakhpur for quashing the impugned order of the Sub-Divisional Magistrate, Sadar, Gorakhpur dated 12th October, 1973. The impugned order passed by the Sub-Divisional Magistrate, Sadar is an order in accordance with law and is hereby upheld. I, therefore, direct that the Sub-Divisional Magistrate Sadar, Gorakhpur should now proceed to decide the case as expeditiously as possible. Let the record of the case be transmitted to the court below at once.

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