

Krishna Ballabh Misra and ors. Vs. State

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Court : Allahabad

Decided On : Oct-09-1973

Reported in : 1974CriLJ434

Judge : B.N. Katju, J.

Appellant : Krishna Ballabh Misra and ors.

Respondent : State

Judgement :

ORDER

B.N. Katju, J.

1. Krishna Ballabh Misra, Ram Pal, Noni alias Nanhey, Mohar Singh. Sobhi, Bhoopal, Jai Narain and Sohan applicants were convicted under Section 447 I. P. C. and were sentenced to the month's rigorous imprisonment by the judgment of the Judicial Magistrate, 1st class. Bareilly, dated 12-1-1970. passed In case No. 525 of 1967, They filed criminal appeal No. 49 of 1970 in the court of the Sessions Judge, Bareilly against their conviction and sentences which was dismissed by the judgment of the learned Judge dated 5-2-1971. They have now come UP in revision to this Court

2. The case of the prosecution is that the applicants are tenure-holders of various plots in village Chitouli and village Sirsa Jasir. Under an agreement entered into

between the applicants and the Synthetic and Chemicals Factory, Bareilly a pipe line was laid in their plots in 1962 by the Factory for the discharge of the waste products (effluent) in river Dolora. This pipe line was laid three feet below the ground surface and did not disturb the possession of the applicants over their plots. Subsequently, in 1963 the State Government acquired a strip of land 30 feet wide running through the aforesaid plots of the applicants and others for the Rubber Factory by notification published in extra-ordinary U. P. Gazette on May 29, 1963. Thereafter the possession over the acquired land was delivered by Sri R. N. Verma. Tehasildar (P. W. 5) to Sri F. F. Moss Factory Manager on 5-7-1963. It is alleged that the applicants took possession of this land Illegally on 22-7-1965 and continued their Illegal possession over it in spite of notice being served on them in 1966 by Captain Mahendra Singh (P. W. 1) on behalf of the Factory.

3. The defence of the applicants is that they were never dispossessed from any portion of their plots by the Land Acquisition Authorities.

4. The evidence of R. N. Verma (P. W. 5) clearly indicates that he did not demarcate any area in the plots of the applicants and no demarcation had taken place earlier. I am of the opinion that it was necessary to demarcate the 30 feet wide strip of land acquired by the State running through the plots of the applicants in order to deliver physical possession of the said strip to the factory. As this was never done, it must be held that the applicants continued in possession over their entire plots. It may be pointed out that under Sections 4 and 8 of the Land Acquisition Act it is also necessary for the Land Acquisition Authorities to demarcate the land which is proposed to be acquired. I am, therefore, in agreement with the finding of the trial court that the applicants were never dispossessed from any portion of their plots. The lower appellate court clearly erred in presuming that after notifications under Sections 4 and 6 of the Land Acquisition Act all necessary steps must have been taken by the Land Acquisition Officer for measuring and demarcating the land to be acquired in view of the positive evidence of Sri R. N. Verma, Tahsildar. that no demarcation of the acquired land ever took place.

5. Once it is held that the applicants were never dispossessed from any portion of their plots, they cannot be held guilty under Section 447 I. P. C. as one of the necessary ingredients of criminal trespass, as defined in Section 441 I. P. C. is the entry of a person into or upon property in possession of another.

6. The result, therefore, is that the prosecution has failed to prove guilt of the applicants under Section 447 I. P. C.

7. The application in revision is, accordingly, allowed. The conviction and sentences of the applicants are set asides, They are on bail. They need not surrender. Their bail bonds are discharged.

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