

Smt. Sumaria Vs. State

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Court : Allahabad

Decided On : May-18-1973

Reported in : 1974CriLJ435

Judge : P.N. Bakshi, J.

Appellant : Smt. Sumaria

Respondent : State

Judgement :

ORDER

P.N. Bakshi, J.

1. This application in revision arises out of the conviction of the accused-applicant for an offence under Section 13(1) of the Roadside Land Control Act. The Sub-divisional Magistrate, Phulpur by his order dated 9-6-1970 convicted Smt. Sumaria under the aforesaid Act and sentenced her to pay a fine of Rs. 150/- or in default to undergo two months R. I. A further direction was given that she shall remove construction illegally made by her within three months from the date of the order.

2. Aggrieved thereby Smt. Sumaria filed an appeal before the I Temporary Sessions Judge, Allahabad. The appeal was dismissed on 29-1-1971. Hence this revision.

3. It appears that a complaint was made by the Assistant Engineer P. W. D. containing allegations that Smt. Sumaria had built a pakka house without the sanction of the District Magistrate on the Allahabad Gorakhpur road within the limits of village Sahson between mile 12. furlons 7, about 31 feet from the centre of the road towards the right side, and thereby committed a breach of the provisions of the Boardside Land Control Act. It was prayed that the accused be tried under Section 13 of the U. P. Roadside Land Control Act and punished accordingly.

4. Both the courts below after considering the entire evidence on the record came to the conclusion that Smt. Sumaria had made these unauthorised constructions on controlled area as declared by Notification No. 1041 LC/ XXIII P. W. D. - 3 LC/59 dated 24-3-4960.

5. It was contended that the said notification has not been published in the official gazette and two non-English papers as required under Section 3 (2) of the Act. It appears that in this Court an opportunity was given to the State to reply to this objection. An affidavit has been filed along with the annexure which clearly proves compliance of Section 3(2) of the said Act. As such I do not find any force in this contention of learned Counsel for the applicant that the impugned order should fail on this ground.

6. Learned Counsel also raised another point of law before this Court He contends that the direction given by the Sub-divisional Magistrate to the effect that the constructions made illegally shall be removed within three weeks from the date of the order is not warranted in law. Learned Counsel has referred me to Section 13 of the U. P. Roadside Land Control Act which runs thus:

13. Offences and penalties : - (1) Any person who-

(a) erects or re-erects any building or makes or extends any excavation or lays out any means of access to a road in contravention of the provisions imposed by an order under Section 7. or

(b) uses any lands in contravention of the provisions of Sub-section 12, shall be punishable with fine which may extend to five hundred rupees and, in case of a continuing contravention, with a further fine which may extend to fifty rupees for every day after the date of the first conviction during which he proved to have persisted in the contravention.

(2) Without prejudice to the provisions of Sub-section (1) the Collector may order any person who has committed a breach of the provisions of the said subsection to restore to its original state or to bring into conformity with the conditions which have been violated, as the case may be, any building or land in respect of which a contravention such as is described in the said sub-section has been committed and if such person fails to do so within three months of the order, may himself take such measures as may appear to him to be necessary to give effect to the order, and the cost of such measures shall be recoverable from such persons as arrears of land revenue.

7. A perusal of Section 13 clearly indicates that there are two remedies provided by law. One such remedy is a judicial remedy to which Section 13 (1)(a)(b) is applicable. The present complaint had been filed by the Assistant Engineer P. W. D. for taking action under Section 13 (1) and for punishing accused under Section 13 of the said Act. A prayer has been made that he be tried under Section 13 of the said Act and be punished accordingly. This clearly shows that the jurisdiction which is sought to be invoked by this complaint refers to the judicial remedy with the aid of which under Section 13 (1) the trespasser is sought to be punished. Sub-section (2) of Section 13 provides the other remedy. It authorises the Collector to Pass an order against a person who has committed a breach of the provisions of the Act and to give a direction to him to restore the land in question to its original state in other words if an encroachment is made upon a land which is a controlled area, it is open to the Public Works Department to apply to the Collector and to obtain his order for effecting the removal of the encroachment that may be made on such controlled area. Of course, It cannot be denied that the Collector, when he embarks upon this enquiry has to keep in view the principles of natural justice and he has to provide an opportunity to the parties concerned before passing his final order directing the removal of the construction. This

jurisdiction of the Collector has not been invoked in this particular a case.

8. To my mind, the Sub-divisional Magistrate, phulpur had no jurisdiction while trying the accused for an offence under Section 13 (1) of the Act to Pass an order for the removal of the construction which in his view were encroachments made on controlled area. All that he was authorised to do in law if he found the accused guilty of the breach of the provisions of the Act was to punish 'him with fine which may extend to Rs. 500/- and in the case of continuing contravention a further fine which may extend to Rs. 50/- every day after the first conviction if he persisted in the contravention. He had no jurisdiction to order the removal of the encroachment For this purpose, the party should have approached the Collector under Section 13 (2) of the Act and obtained an appropriate order. I may however, point out that it is still open to the P. W. D. if it is so advised to apply under Section 13 (2) and to obtain whatever orders may be considered necessary from the Collector. This observations should not be taken as an indication to the department to make such an application.

9. Thus it is obvious that the two remedies that have been provided under Section 13 (1) and 13 (2) are exclusive of each other. In the one case, the judicial remedy of punishment of the accused for an offence committed for the breach of the provisions of the Act has been provided and in the other case under Section 13 (2), the Collector has been authorised to direct the removal of the encroachment. I am supported in my view by a decision of this Court of Lokur J. reported in (1971) 34 All Cr. R. 427 Smt. Krishna Devi v. State of U.P. I am in respectful agreement with the view ex-pressed in that case.

10. In the result, therefore, this application in revision is partly allowed to his extent that the order of the courts below directing the removal of the encroachment from the controlled area made by Smt Sumaria is set aside. The order with regard to the imposition of fine is maintained.