

Devsingh and ors. Vs. S.D.M. and ors.

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SooperKanoon Citation : sooperkanoon.com/505211

Court : Madhya Pradesh

Decided On : Apr-29-1986

Reported in : 1987CriLJ458

Judge : K.L. Shrivastava, J.

Appellant : Devsingh and ors.

Respondent : S.D.M. and ors.

Judgement :

ORDER

K.L. Shrivastava, J.

1. This revision petition is directed against the order dated 4-2-1986 passed by the learned Sub-Divisional Magistrate, Tarana, District Ujjain, whereby the petitioners' three applications respectively for cross-examination, for analysis of the water and for challenging the jurisdiction to pass repetitive orders Under Section 144 of the Code of Criminal Procedure 1973 (for short 'the Code') have been dismissed.

2. The circumstances giving rise to this petition are these. The learned Sub-Divisional Magistrate, Tarana on 6-12-1985 passed an ex parte order Under Section 144(1) of the Code preventing inhabitants of the villages on the banks of river Kalisindh from fetching or taking water for the purpose of irrigation, from the reservoir at Birgod. The petitioners challenged that order in this Court in Criminal

Revn. No. 351 of 1985. This Court found that the learned Sub-Divisional Magistrate without affording any opportunity of hearing to the persons concerned had passed the impugned order. Therefore, setting aside the impugned order of the learned Sub-Divisional Magistrate, it was directed that in view of the public importance of the matter, the parties shall appear before the learned Sub-Divisional Magistrate positively at 11.00 a.m. on 9-1-1986.

3. The Court also directed the Sub-Divisional Magistrate, Tarana to cause notices to be served by any mode to the inhabitants of the connected villages to appear before him on that date and make their submissions with regard to passing of any lawful order regarding irrigation from Birgod lift irrigation scheme water supply.

4. The contentions of the petitioners are that the learned Sub-Divisional Magistrate has dismissed their applications and they are being deprived of a proper hearing. The learned Counsel for the petitioners has invited my attention to the decisions in Jagdishwaranand's case, : 1983 CriLJ1872 and Chief Executive Officer Janapad Sabha, Sihora v. J.D. Dixit 1966 Jab LJ 377

5. On,behalf of the-non-applicants it is contended that the S.D.M. is proceeding as directed by this Court and the applicants are attempting to delay passing of the order Under Section 144 of the Code. It is further urged that the impugned order being interlocutory in nature, the revision against it is barred Under Section 397(2) of the Code.

6. Inviting my attention to Section 26 of the M.P. Irrigation Act 1931 (for short 'the Act') it was also urged on behalf of the N. As. That all rights in the river water vest in the Government and that Under Section 27 of the Act no right Under Section 15 or 16 of the Easements Act 1883 can be acquired after notification thereunder.

7. The point for determination is whether the impugned order deserves to be interfered with in revision.

8. It may be pointed out that the Code does not contemplate revision against interlocutory orders so that proceedings in the Courts do not become protracted. The impugned order is clearly of the nature of an interlocutory order and is,

therefore, not amenable to interference in revision.

9. Before parting with the case it would be proper to advert to the scheme and the scope of Section 144 of the Code. It is only in urgent cases of nuisance or apprehended danger where immediate prevention or early remedy is necessary that in the general interests of the society, the legislature vests the Magistrate with jurisdiction to pass temporary orders Under Section 144(1). Sub-section (2) of the section provides for passing of ex parte order in certain circumstances but it is subject to subsequent hearing to the aggrieved person. This provision implies that ordinarily an order Under Section 144(1) of the Code should not be passed without an opportunity being afforded to the person against whom it is purported to make it. According to Sub-section (4) the life of a Magisterial order Under Section 144 is of two months. The sub-section has a proviso according to which State Government may extend its life for another six months. Sub-section (5) of the section provides that an order passed Under Section 144(1) may be rescinded or altered. It is in these terms.

Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor-in-office.

It is also pertinent to reproduce Sub-section (7) which pertains to an opportunity to the applicant to show cause. It runs thus :

Where an application under Sub-section (5) or Sub-section (6) is received, the Magistrate, or the State Government, as the case may be shall afford to the applicant an early opportunity of appearing before him or it either in person or by pleader and showing cause against the order : and if the Magistrate or the State Government as the case may be, rejects the application wholly or in part, he or it shall record in writing the reasons for so doing.

10. What would constitute an opportunity to show cause must differ from case to case. It would not necessarily include elaborate recording of evidence in each and every case. It has to be remembered that Section 144 of the Code deals with urgent cases of nuisance or apprehended danger and in this context it is only

proper to hold that opportunity of showing cause contemplated thereunder has of necessity to be of a summary nature. Proceedings Under Section 145 Criminal Procedure Code stand on a different footing. In respect thereof express provision for evidence stands embodied in Sub-section (4) of the section. In my view in respect of Section 144 of the Code it would be sufficient compliance if the aggrieved person is reasonably allowed to support his say and his submissions are duly considered and a reasoned order as required under Sub-section (7) is passed in case the application of the aggrieved person is rejected. The opportunity of showing cause preceding the order Under Section 144(1) of the Code, in the context of the provision cannot be of any different nature.

11. In the instant case according to the order sheet dated 4-2-1986 the learned Sub-Divisional Magistrate has yet to hear arguments of the parties and the contentions regarding the jurisdiction to pass repetitive order must be duly considered in the light of the observations in the decisions referred to above.

12. In the decision in Jagdishwaranand's case (supra) it has been pointed out that order Under Section 144 of the Code is intended to meet emergency and the scheme of section does not contemplate repetitive order and in case the situation so arises steps have to be taken under other provisions of law Under Section 107 and Section 145 of the Code when individual disputes are raised.

13. In the decision in Chief Executive Officer Janpad Sabha Sihora's case (supra) it has been held that subordinate judiciary or executive officers are not justified in airing their personal views in respect of points decided by the High Court and doubting correctness or propriety of such decisions. The decisions of the High Court are binding on them.

14. In the circumstances of the case with this observation that the learned Sub-Divisional Magistrate before passing order Under Section 144 of the Code shall also hear the applicants on the question of its jurisdiction to pass repetitive order, the revision petition is dismissed.