
(1932) 06 PAT CK 0003
In the Patna High Court

Abdul Rauf

APPELLANT

Vs

Banarsi Lal

RESPONDENT

Date of Decision : 13-06-1932

Acts Referred:

Bihar and Orissa Mining Settlements Act, 1920 — Section 19(1), 26(3)

Citation : AIR 1932 Patna 281 : 139 Ind. Cas. 493

Hon'ble Judges : Courtney Terrell, C.J

Bench : Single Bench

Judgement

Courtney Terrell, C.J.—The petitioner was convicted by the Senior Deputy Magistrate at Dhanbad of an offence u/s 26(3) of the Bihar and Orissa Mining Settlements Act, 1920, and was fined Rs. 50 with one month's simple imprisonment in default. An application was made to the Additional District Magistrate by the petitioner to refer the case to the High Court and upon his refusal to do so this petition for revision of the original order was filed.

2. The Bihar and Orissa Mining Settlements Act, applies to specified areas in Dhanbad, the object of the Act being to make better provision for preventing the outbreak and spread in the prescribed area of epidemic disease. Section 26(3) enacts:

Whoever--

(a) fails to comply with any requisition or order made under any provision of this Act or of any rule, by-law or order made thereunder; or

(b) contravenes any provision of this Act or any rule, by-law or order thereunder, for the breach of which no penalty is otherwise provided, shall be punishable with fine....

3. The petitioner is a temporary thiccadar under the Jharia Raj who are the owners of the soil and in particular of a set of pucca buildings in which is held periodically the Jharia hat bazar. The precise terms of the thicca have not been

proved but it is perfectly clear from the evidence in the case that the thiccadar manages the hat and has the right of collecting rents from the person who use the buildings and any supplementary buildings which may be erected and sell their goods on the occasions when the hat is held. It would appear from the evidence that the Board created under the Act on the recommendation of their medical officer on the 22th January 1931 issued a notice to the petitioner in the following terms:

Whereas it has been brought to the notice of this Board by its Chief Medical Officer that you permit erection of insanitary structures and there by allow congestion in the Jharia Hat Bazar, notice is hereby given you u/s 19(2) of the Bihar and Orissa Mining Settlements Act, 1920, and you are ordered not to permit in future construction of any new structure in the said Bazar without first submitting a site plan and details of construction and obtaining the written approval of each plan by the Chief Medical Officer.

4. The Board on the 30th October, 1931, sanctioned the prosecution of the petitioner and summoned him to appear to answer a charge of having committed an offence u/s 26(3) of the Act. Evidence was then called before the Magistrate first proving the service of the notice to which have referred above upon the petitioner and then proving that within six months of the summons the petitioner had allowed one Dalu Ram to extend his shop by making an additional structure and in view of the notice it was contended and held by the Magistrate that the petitioner had by permitting Dalu Ram, one of the shopkeeper, to extend the premises of his shop by erecting an additional structure in contravention of the terms of the said notice committed an offence u/s 26(3).

5. The Act must be examined for the purpose of ascertaining the powers of the Board created under it. By Section 18 the Board is empowered to undertake measures for water supply, sanitation, for providing housing for residents, to prevent the outbreak and spread of disease, for the treatment of the sick and the establishment of hospitals and generally to carry out the purposes of the Act. This is a general clause end with it we are not for the moment concerned. Section 19(1) deals with the case in which the owner of a mine has committed some act or omission in respect of his property which may necessitate measures by the Board and provides that in such circumstances the Board may, by a notice specifying the measures to be taken, require the owner at his own cost to execute works necessary for carrying such measures into effect and to carry on such continuous or periodical operations as the Board may direct for carrying out such measures. By Sub-section (2)

If the Board is satisfied that in order to prevent or abate a nuisance affecting the public health it is necessary that any landholder or owner of house-property in any part of the Mining Settlement should take certain order with any property belonging to him or in his possession or under his management, the Board may by notice require such person to take such order at his own costs.

6. This sub-section is ejusdem generis with the first sub section and the words "take such order" clearly refer to positive acts of construction or destruction in relation to the property concerned which may be required in furtherance of the measures of the Board. Section 20 provides that any person required by a notice under sub-ss. (1) and (2) of Section 19 to do anything may object and the Board must hear his objections and by Section 21 if the work required by the notice under Sub-sections (1) and (2) of Section 19 is not taken to the satisfaction of the Board within a fixed period, the Board can then carry out the operations required at the expense of the defaulter. Section 24 provides that the Local Government may make rules for carrying out the purposes and objects of the Act and specifies the matters to which such rules may relate. With this section we are not concerned. Section 25 enables the Board itself to make bylaws consistent with the Act but we are not concerned with any by-laws so made. Then by Section 26(3) a fine is leviable upon any person who either fails to comply with the requisition or order under any provision of the Act or of any rule, by law or order made thereunder or contravenes any rule by-law or order thereunder for which no penalty is otherwise provided.

7. Now it was not contended on behalf of the prosecution that the petitioner had infringed any rule or by law but it was urged that he had committed a breach of an "order" under the Act and the order referred to is the notice addressed to him personally directing him not to permit the erection of any new building without first lodging and obtaining sanction in respect; of the plans of that building. It is also urged that u/s 19(2) the Board was satisfied that it was necessary "in order to prevent or abate a nuisance" to direct the petitioner "to take certain order" with regard to the property under his management.

18. In my opinion neither of these contentions can be supported. To deal first with the argument based on Section 19(2) the phrase "take certain order" refers to a positive act which the Board has directed and the words "prevent or abate a nuisance" refer to a specific nuisance which the act required will prevent or abate. If he fails to perform the act required the Board on the one hand may carry out the work at his expense and, on the other hand, u/s 26(3) the person concerned may be fined, but I cannot find any justification under the Act for the claim on the part of the Board to issue an order to a specific individual that he shall not in future erect a building without the consent of the Board and then to treat the erection of a building which otherwise does not infringe any rule or bylaw as an offence under Sub-section (3) of Section 26. It is, however, open to the Board if any person shall infringe a by-law or rule or if he shall fail to comply with a requisition u/s 19 to take appropriate proceedings. In this case there has been no requisition u/s 19 and consequently there has been no offence under Section 26(3). It is on this ground that the petition for revision must succeed and the conviction be set aside and it is not a ground which has been argued in support of the petition.

9. The main ground urged in support of the petition, in my opinion, fails

completely and in case it should be again raised it is necessary to deal with it. It has been urged that the petitioner being the mere owner of the hat does not come within the phrase in Section 19(2) "land-holder or owner of house-property." I may first dispose of what I consider to be an ineffective answer to this contention. It has been urged that under Sub-section (3) the word "owner" is defined by reference to Section 3 of the Indian Mines Act, 1901, but a reference to that Act shews that the word "owner" is there defined only in its peculiar relation to ownership of mines. The property we are here concerned with is not a mine and the definition in the Indian Mines Act does not apply. In nearly all legislation which provides for public control of privately owned property for municipal and sanitary purposes the word "owner" receives a definition in the enactment itself appropriate to the purposes of the particular enactment; otherwise the meaning of the word as used in the enactment must be sought from an examination of the general objects of the Act provided it is not inconsistent with the specific terms used. In Section 19(2) the words:

any landholder or owner of house-property in any part of the Mining Settlement should take certain order with any property belonging to him or in his possession or under his management

indicate to my mind that the meaning of the Act was not to confine the terms "landholder or owner of house property" to any rigid legal conception of ownership but to make right of control the real test of liability. It cannot be effectively denied that the thiccadar of the hat is in a position to control and manage the buildings in which the stall holders sit and who pay their rents to him and he is rightly made responsible for insanitary conditions existing on the property over which he has such control and management. The proper course for the Board would have been to make a by-law u/s 25 requiring all persons erecting or permitting to be erected on property in their possession or under their management new buildings to submit plans for such buildings to the Board. These by-laws will not take effect until confirmed by the Local Government and published in the Gazette under Sub-section (2) of Section 25; if so confirmed they are broken, proceedings would be possible against a person committing a breach u/s 26(3).

10. I may sum up my conclusions by stating that the word; "order" in paras, (a) and (b) of Sub-section (3) of Section 26 does not refer to such a notice as was issued by the Board to the petitioner in this case. I regret my decision because, in my opinion, the case of the petitioner is without any moral merit but a penal section must be strictly construed and it is not open to the Board to escape the provisions of Section 25(2) requiring the consent of the Local Government to its by-laws by framing what is in effect a by-law and addressing it to a single individual out of many and so to bring it within the scope of the word "order" in Section 26(3).