

(1979) 08 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5045 of 1976

Ajab Singh and Others

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 23-08-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Police Regulations, 1948 — Regulation 183

Citation : (1979) AWC 678

Hon'ble Judges : K.N. Singh, J;B.D. Agarwala, J

Bench : Division Bench

Advocate : J.C. Bharadwaj, for the Appellant; S.S. Tyagi, for the Respondent

Final Decision : Allowed

Judgement

B.D. Agarwala, J.—The Petitioners have filed the present petition under Article 226 of the Constitution challenging the order of the District Magistrate, Meerut, dated 30th November, 1976 by which the day for holding the cattle-market by the Petitioners in their own land was changed from Friday to Sunday; and, by the same order Sri Mool Chand, Respondent No. 3, was permitted to hold cattle market in his land, on any day of the week.

2. It is the Petitioners' case that they are the Bhumidhars of plots Nos. 3559, 3560, 2875 and 3562 situate in village Daha Pargana Barnawa, Tehsil Sardhana district Meerut. By an order dated 27th of April, 1973, of the Additional District Magistrate they were permitted to hold cattle-market on every Friday of the week, on the plots aforementioned. The Respondent No. 3 who had been refused permission by the District Magistrate, Meerut to hold cattle-market on his land, approached the Commissioner, Meerut Division, Meerut. The claim of Sri Mool Chand was allowed by the Commissioner by his order dated 6th of April, 1974. In pursuance to this order the District Magistrate, Meerut, issued orders dated 22nd of May, 1974, allowing Sri Mool Chand to hold cattle market on his land. The Petitioners challenged the order of the Commissioner dated 16th April, 1974, and

of the District Magistrate dated 27th April, 1973, in Civil Misc. Writ Petition No. 3358 of 1974. It was asserted in the writ petition on behalf of the Petitioners that on the basis of the Commissioner's order, the district authorities prevented the Petitioners from holding their cattle-market. A learned single Judge of this Court by his judgment, dated 22nd of March, 1975, allowed the writ petition. The orders were quashed and the district authorities were directed not to interfere with the Petitioners from holding the cattle-market on their land. The Petitioners, thereafter, continued to hold their market on every Friday of the week. Later, by an order dated 5th of May, 1976, the District Magistrate changed this day from Friday to Sunday. The Petitioners objected to this change whereupon the District Magistrate by his order dated 9th of September, 1976, vacated the order dated 5th of May, 1976 and directed that the Petitioners may hold their cattle-market on every Friday of the week and Sri Mool Chand to hold cattle-market on any day in the week other than Friday. The Petitioners hence continued to hold their cattle-market on every Friday of the week.

3. Subsequently, by a communication dated 6th of December, 1976, the Petitioners were informed that by an order of the District Magistrate, Meerut, dated 30th of November, 1976, the Petitioners were permitted to hold cattle-market only on Sunday of each week and Sri Mool Chand was permitted to hold the market on any day of the week. It was also stated that all earlier orders on the subject stood cancelled. This order has been impugned in the present petition.

4. Learned Counsel for the Petitioners has submitted before us that the change of the day of holding cattle-market from Friday to Sunday, has resulted in a situation almost amounting to closure of the business. It has been asserted that since several years past the cattle-market was being held on Fridays only ; and the fact of the holding of the cattle-market on this day had become well known amongst all those interested, as such, the result of any change in the day would obviously adversely affect their business. It has, further, been asserted that it was for this reason that Mool Chand was making all attempts to persuade the District Authorities to prohibit the market being held on the Petitioners' land on Fridays. The Learned Counsel submitted that the District Magistrate has no jurisdiction to pass the impugned order dated 30th November, 1976. He has, further, submitted that the order has been passed in violation of the principles of natural justice, inasmuch as no notice of hearing was given to the Petitioners.

5. The Learned Counsel for the Respondents in reply has asserted that in the field adjoining the Petitioners' land where the cattle market is held, there is Government Girls Intermediate College and the students of Girls College pass through the land of the Petitioners on their way while going to and coming back from school and since Friday was a school-day and Sunday was a holiday, it was considered safe that the Petitioners be permitted to hold the cattle-market only on Sunday, so that there may be no danger for the girls students passing through the land on any school working day. It has, further, been asserted that

Sri Mool Chand was permitted to hold cattle-market on any day including Friday since the land of Sri Mooi Chand, where the cattle-market was to be held, was far away from the aforesaid Girls College. The enquiry report of the Tahsildar submitted in this connection to the District Magistrate has also been referred to. The case of the Respondents is that this change of the day was made in public interest, keeping in view the law and order situation, and also with a view to ensure smooth functioning of the girls institution. As regards giving of opportunity to the Petitioners before passing of the impugned orders is concerned, the Respondents case is that both the parties, including the Petitioners, were informed, and they were present, and it was only after hearing them that the District Magistrate had passed an order directing the Tahsildar to make an inquiry. Both the parties were present at the time of inquiry. The parties were informed about the report of the Tahsildar and were informed to attend the Court of the District Magistrate. No one filed objection and it was only thereafter that the District Magistrate passed the impugned order.

6. The first question which falls for our decision is as to whether the District Magistrate is empowered under any provision of law to pass the impugned order. Learned Counsel for the Respondents have attempted to justify the impugned order of the District Magistrate under Regulation 183 of the U.P. Police Regulations. We have perused these regulations and we are of the view that these Regulations are not Regulations for regulating the fairs and markets. They are only meant for preventing theft of bovine cattle. This Regulation only empowers the District Magistrate to keep Cattle Registration Books and to sell them to persons who apply for them. The District Magistrate cannot, under the guise of these Regulations, affect the rights of the landholders to use their land as they deem fit. It is well accepted that a person is entitled to use his property in the manner he likes, except where and, in so far, any law, or anything having the force of law, lays down any restriction or regulates such exercise.

7. Regulation 183 has come up for consideration more than once before this Court. A Division Bench of this Court in D.M. v. Hari Narain Mehrotra 1960 AWR 563, had occasion to consider it, it was again considered in CMW No. 5261 of 1963, Sarnam Singh v. D.M. D/-on 30th April, 1964; as also in CMW No. 1931 of 1969 D/-12th of August, 1969. A view similar to the view, taken by us, has been taken in these cases.

8. We are, therefore, of the opinion that the District Magistrate had no jurisdiction to pass the impugned order, in purported exercise of powers under Regulation 183 of the U.P. Police Regulations. No other provision of any law having been pointed out to us, under which his order could be sustained, it must be held that the impugned order of the District Magistrate is an order, passed without jurisdiction.

9. Coming to the second submission of the Learned Counsel for the Petitioners that the impugned order was passed without any opportunity having been given to the Petitioners to have their say, we find that the averments made in the

petition in this regard have been controverted in clear terms in the counter affidavits, filed on behalf of the Respondents. It has been stated in these counter affidavits that both the parties including the Petitioners appeared before the District Magistrate and were heard before an inquiry was directed to be made by the Tahsildar. It may be further stated that inquiry was made by the Tahsildar in the presence of the parties after due notice. Parties were, thereafter, informed of the report, submitted by the Tahsildar to the District Magistrate and they were also informed to attend the Court of the District Magistrate. No party filed any objection to the report of the Tahsildar and the District Magistrate on the basis thereof passed the impugned order. We find no reason to disbelieve these averments, made in the counter affidavits, filed by the Respondents. We are, hence of the opinion that the Petitioners had full opportunity to have their say. We, therefore, find no merit in this submission of the Learned Counsel for the Petitioners.

10. It has already been noticed above that the impugned order was passed in public interest keeping in view the law and order situation and also with a view to ensure smooth functioning of the Government Girls Intermediate College which adjoins the land of the Petitioners where cattle market is held. By an interim order passed on 20th December, 1976, this Court stayed the operation of the impugned order of the District Magistrate. On 26th April, 1977, when the interim matter again came up for consideration after parties had put in their appearance, this Court confirmed the earlier order dated 20th December, 1976, and made it further clear that the Petitioners shall not use any loudspeakers. The counsel for the Petitioners, Sri J.C. Bharadwaj, had today stated before us that even if the submission that the impugned order was without jurisdiction is accepted, he undertakes on behalf of his clients that no loudspeakers would be used for the purpose of or in relation to holding of cattle-market. We, in the circumstances . accept this undertaking given by the Learned Counsel for the Petitioners.

11. The impugned order of the District Magistrate having held by us to be without jurisdiction, the writ petition is liable to be allowed.

12. Before parting with the case we may make it clear that by our holding that the order of the District Magistrate is without jurisdiction, it would not mean that the District Magistrate or other competent authority is prevented from taking such other action as may be permissible in accordance with law, for maintenance of law and public order, for maintenance of public peace, or for removal of any unlawful obstruction, nuisance, etc. if any such necessity arises.

13. We, therefore, allow the writ petition subject to the undertaking given on behalf of the Petitioners that they will not use any loudspeakers for the purpose of or in relation to holding of cattle-market. The impugned order, dated 30th of November, 1976, of the District Magistrate, Meerut, is hereby quashed. The Respondents are restrained from interfering with the Petitioners' holding the cattle-market on any day of the week, except in accordance with law. In the circumstances of the case we direct that parties will bear their own costs.