

(1976) 01 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 11302 of 1975

Anugarh Narain Ningh

APPELLANT

Vs

The Commissioner, Allahabad Division and Others

RESPONDENT

Date of Decision : 21-01-1976

Acts Referred:

Uttar Pradesh Control of Goondas Act, 1970 — Section 2, 3, 3(1), 3(3), 4

Citation : (1976) AWC 193

Hon'ble Judges : C.S.P. Singh, J

Bench : Single Bench

Advocate : V.N. Khare, for the Appellant;

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—The Petitioner is a student of Allahabad University and holds a Degree of Law, and at the time the petition was filed studying in M.A. (Previous). A notice u/s 3(1) of the U.P. Control of Goondas Act, 1970 was sent to the Petitioner calling upon to appear before the Additional District Magistrate and to submit his explanation to the notice. The Petitioner did not put in appearance. Petitioner's case is that the show cause notice was not served on him. On the contrary, from the final order passed by the Additional District Magistrate dated 30th June, 1975, it appears that repeated attempt was made to serve the show cause notice on the Petitioner, but he avoided its service. As a result, service was effected by affixation. The Additional District Magistrate on a consideration of the report confirmed the notice u/s 3, and directed the Petitioner to remove himself outside Allahabad district for a period of six months. The Petitioner was also directed to intimate the next place of his residence to the nearest police station where he chose to reside, and also to the Sub-Inspector, Colonelganj. A copy of the order was directed to be published in one of the newspapers for information. An appeal was preferred by the Petitioner to the Commissioner u/s 6 of the Act. The appeal was dismissed by an order dated August 21, 1975.

2. Counsel for the Petitioner has contended that the order passed by the

Additional District Magistrate suffers from an infirmity as it does not record the satisfaction of the Magistrate to the effect that the witnesses were not willing to come forward to give evidence against the Petitioner by reason of apprehension on their part as regards the safety of their person or property. Support for this contention is sought in the provisions of Section 3(1)(c)" and Section 3(3) of the Act. It will be convenient to extract the relevant provisions of Section 3(1) and Section 3(3) of the Act:

Section 3(1):- Where it appears to the District Magistrate-

- (a) that any person is a Goonda ; and
- (b) (i) that his movements or acts in the district or any part thereof are causing, or are calculated to cause alarm, danger or harm to persons or property; or
- (ii)....
- (c) that witnesses are not willing to come forward to give evidence against him by reason of apprehension on their part as regards the safety of their person or property-

the Magistrate shall by notice in writing inform him of the general nature of the material allegations against him in respect of Clauses (a), (b) and tendering an explanation regarding them.

(2)....

Section 3(3):- Thereupon the District Magistrate on being satisfied that the conditions specified in Clauses (a), (b) and (c) of Sub-section (1) exist may by order in writing-

- (a) direct him to remove himself outside the district, or part, as the case may, by such route, if any, and within such time as may be specified in the order, and to desist from entering the district or the specified part thereof until the expiry of such period not exceeding six months as may be specified in the order;
- (b)(i) require such person to notify his movements, or to report himself or to do both, in such manner, at such time and to such authority or person as may be specified in the order;
- (ii) prohibit or restrict possession or use by him of any such article as may be specified in the order ;
- (iii) direct him otherwise to conduct himself in such manner as may be specified in the order until the expiry of such period, not exceeding six months as may be specified in the order.

It will be seen that before an order u/s 3 can be passed, a person has to be a Goonda as defined in Section 2(b) of the Act. Apart from being a Goonda, he must satisfy the requirements of Section 3(1)(b) also, that is, his movements or acts in the district or any part thereof should cause or be calculated to cause

alarm, danger or harm to persons or property. Apart from these, Section 3(c) also requires that the witnesses should not be willing to come forward to give evidence against him by reason of apprehension I on their part as regards the safety of their person or property. Section 3(3), which has already been extracted above, insists that the District Magistrate should be satisfied that the conditions specified in Clauses (a), (b) and (c) of Sub-section (1) exist. It is only in case all these conditions exist that the District Magistrate can proceed to pass an order of the nature specified in Clauses (a) and (b) of that sub-section.

3. In the present case, the order passed by the District Magistrate runs thus:

I have applied my judicious mind to the contents of this case as discussed in the above paras. The case recited and discussed collectively and coherently are potential enough to prove that the O.P. is a Goonda in the true sense of terms as defined in the U.P. Control of Goondas Act, 1970. His movements and acts are causing and could cause harm, danger to the persons and property of the district. In the interest of public peace, safety and security his presence within the jurisdiction of the district of Allahabad could not be allowed. His conduct and mode of behaviour as reflected through the cases registered against the O.P. poses positive danger to the persons and property. Their collective and joint coherence has convicted me beyond any shadow of doubt that the O.P. Anugarh Narain Singh fulfils all the conditions and definition of a Goonda within the meaning of the said Act. I accordingly pass the following orders.

It is apparent that the Additional District Magistrate has not recorded his satisfaction that witnesses were not willing to come forward to give evidence against the Petitioner by reason of apprehension on their part as regards the safety of their person or property. The Standing Counsel, however, urged that in substance such a satisfaction has been recorded in the order. He has taken me through the show cause notice issued u/s 3 which is Annexure "I" to the counter-affidavit. A perusal of this notice undoubtedly shows that in the show cause notice after setting out the various cases in which the Petitioner was involved, a recital was made that the witnesses were not willing to come forward on account of fear. The recital in the notice of the conditions set out in Section 3(1)(c) cannot, however, be a substitute for the satisfaction required by the statute to be incorporated in the final order. The present order cannot be read as containing any such satisfaction. I am fortified in the view that I take by a decision of Gulati, J. in the case of Ejaz Ahmad alias Munnoo v. District Magistrate (1973 AWR 670). The learned Counsel then contended that such a satisfaction has been recorded by the Commissioner in his appellate order. In particular, he relies upon the following passage in the appellate order:

...he is also of a desperate nature with the result that it is not possible for witnesses to depose against him....

Provisions for appeal against an order passed u/s 3(3) of the Act is contained in Section 6 of the Act. Any person aggrieved by an order made u/s 3, Section 4 or

Section 5 can appeal to the Commissioner. The powers, which the Commissioner has on appeal, are set out in Section 6(3). Section 6(3) runs thus:

The Commissioner may either confirm the order, with or without modification, or set it aside, and may, pending disposal of the appeal, stay the operation of the order subject to such terms, if any, as he thinks fit.

Standing Counsel urged that as the Commissioner has the power to confirm the order of the District Magistrate with or without modification, he could in the appeal record a finding that the witnesses were not willing to come forward to depose against a particular person on account of fear. I am unable to accept this contention. Section 6(3) only empowers the Commissioner to confirm the order with or without modification. The order which the District Magistrate passes is one which is delineated in Section 3(3), (a) and (b) of the Act. This provision has already been set out above. The order passed under that subsection will be of the nature set out in Clauses (a) and (b) of that Sub-section. The power of modification which the Commissioner has on appeal will be in respect of the conditions and restrictions which are set out in Clauses (a) and (b) of Section 3(3) of the Act. It cannot extend to recording satisfaction in respect of the existence of conditions set out in Section 3(1)(c), as that has to be recorded by the District Magistrate, and none else. The fact that the Commissioner cannot record his own satisfaction and pass an order u/s 3(3) in case no such order has been passed by the District Magistrate, is apparent from the fact that in cases where he sets aside an order u/s 3(3), no further power, thereafter, is given to him u/s 6(3) to pass a substantive order u/s 3(3) of the Act. A perusal of the Sections 3 and 6 of the Act indicates that It, is the District Magistrate alone, who has to record the satisfaction contemplated by Section 3(3) of the Act. The Commissioner on appeal can modify the restrictions set out in Clauses (a) and (b) of Section 3(3) of the Act. Modification in the context of Section 6(3) would mean limiting or restricting the conditions set out in Section 3(3)(a)(b) of the Act. It cannot possibly confer power on the Commissioner to add to the restrictions imposed by the District Magistrate, on appeal by a person, who has been treated as a Goonda and adverse order have been passed.

4. The petition is accordingly allowed. The order dated 30th June, 1975 passed by Respondent No. 3, and the order dated 21st August, 1975, passed by Respondent No. 1 (Annexures "2" and "3" to the writ petition) are quashed. The Petitioner is entitled to his costs.