
(1983) 05 AHC CK 0030
In the Allahabad High Court
Case No : Writ Petition No. 6044 of 1981

Babu Lal & Others

APPELLANT

Vs

State of U.P.& Others

RESPONDENT

Date of Decision : 20-05-1983

Acts Referred:

Uttar Pradesh Town Areas Act, 1914 — Section 27(i), 27(j)

Citation : (1983) 05 AHC CK 0030

Hon'ble Judges : K.N.Goyal, J and R.C.Deo Sharma, J

Final Decision : Allowed

Judgement

R.C. Deo Sharma J.

1. Through this petition under Article 226 of the Constitution, the petitioners who claim to be Bhumidhar of plots no. 139 and 37/1 in village Babhanpur, have prayed that the order of the District Magistrate dated 9.12.81 contained in annexure 5, communicated through the Prabhari Adhikari of the Town Area Committee, Manikpur, may be quashed. The petitioners' contention is that being Bhumidhar of the aforesaid three plots, they have a right to hold a market on the land or utilize the land in any manner, so long as they do not contravene any provision of law or any rights of a party. According to them, they had been holding the market on this land even prior to the abolition of zamindari but by the impugned order the District Magistrate has directed that the market in Loharonwali Bagh may be held only on Thursdays and Saturdays. By the same order the petitioners have been prohibited from holding the market on Tuesdays and Fridays. The opposite parties 5 and 6 also appear to be holding a market and by the same impugned order it has been provided that the opposite party no. 5 should hold his market on Tuesdays and Fridays, while opposite party no. 6, on Mondays, Wednesdays and Sundays.

2. Counter affidavit has been filed on behalf of opposite party no. 4. Another counter affidavit has been filed by opposite party no. 5 Azhar Alam, but his contention is that he has no concern with the holding of the market and that

others who are actually concerned, should have been made parties.

3. We have heard learned counsel for the parties at some length. It has not been disputed that the petitioners are Bhumidhars of the aforesaid three plots on which they claim to be entitled to hold a market. The only contention raised on behalf of opposite party no. 4 is that the power to regulate the holding of markets is available to the Town Area Committee and if it is superseded, then to the District Magistrate u/s 27 of the Town Areas Act. Attention has" been drawn to clauses (i) and (j) of Sec. 27 of the aforesaid Act. These clauses, however, give power to the committee to provide by general or special order for regulating the holding of market for fish, fruit, vegetables and the like, by issue of a licence. This also gives power to fix conditions subject to which the licence may be granted or refused. We are unable to accept the contention that the order of the nature contained in annexure 5 could have been passed in exercise of the powers u/s 27 (i) and (j). Moreover, any such order passed u/s 27 is appealable u/s 29. The order in question is a nonspeaking order and does not give any reasons in support thereof. Reliance has also been placed by the learned counsel on section 39A of the Town Areas Act but there is no relevancy of this provision in the context. Under the provision the District Magistrate has the power to prohibit the execution of any decision or resolution or order passed by the committee. In the instant case, no such resolution or order has been passed by the committee. We have not been shown any byelaws under which either the committee or the District Magistrate could exercise the power for prohibiting the holding of market on any Bhumidhari land or regulating it by prescribing days on which alone it would be held. In this view of the matter, the impugned order cannot be sustained and is liable to be quashed.

4. The petition is accordingly allowed and the order dated 9.12.81 contained in annexure 5 including the order of the District Magistrate on the basis of which the aforesaid order has been passed by the Prabhari Adhikari is hereby quashed. The petitioners shall be entitled to costs against opposite party no. 4.

(Petition allowed)