
(1960) 08 AHC CK 0001

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 1366 of 1960

Basudeo Singh and Others

APPELLANT

Vs

District Magistrate

RESPONDENT

Date of Decision : 11-08-1960

Acts Referred:

Police Act, 1861 — Section 30

Citation : (1960) 30 AWR 653

Hon'ble Judges : J.K. Tandon, J

Bench : Single Bench

Advocate : J. Swarup and V.K.S. Chowdhary, for the Appellant; Shambhu Pd., Senior Standing Counsel, for the Respondent

Judgement

J.K. Tandon, J.—The District Magistrate of Azamgarh has made an order dated 30-1-1960 declaring the route of Tazia procession and directing that it shall be recorded in the Teohar register also. As a consequence of this order, a portion of the route travels over a piece of land which according to the Petitioners has been in their use from time immemorial and is also their sahan. As a matter of fact, the Petitioners claim that the land over which the disputed portion of the route lay was used by the Hindu residents of the locality for purpose of Janma Ashtami celebrations. By the present petition the Petitioners are impugning the said order of the District Magistrate which according to them is without jurisdiction and without any authority of law. It also, as has been claimed by them, infringed their fundamental right to the use of the property over which the route had been demarcated.

2. It appears that for some time past disputes have been occurring between Hindu and Muslim residents of the village concerning the use of the land over a portion of which the route has been demarcated. There was earlier a civil suit by the Muslim residents commenced Under Order 1, Rule 8, CPC claiming that the said land was used by them for Taziadari and other connected ceremonies. The suit was opposed by the Hindu residents including the Petitioners who in turn set

up that this land was always used by them for Janma Ashtami celebrations and was also intended for that purpose etc. This suit was dismissed by the Munsif, a fact not disputed by the Respondents. The result was that the claim of the Muslim residents that they used this land for purposes of Taziadari etc., was rejected.

3. Some further facts which also are necessary to be mentioned are that the portion of the land over which the route has been demarcated is situate in front of the Petitioners shop and is a narrow strip of land 4 feet or about wide. The Petitioners have claimed in their affidavit that the above land has been in their possession from time immemorial and they have been using it as their sahan. The Respondents in their counter affidavit have simply said in reply that they had no information about it. In the absence of any denial of the rights claimed by the Petitioners over this land, also having regard to its situation, there is no reason to reject their claim to it as their sahan.

4. Basing their grievance on the fact, therefore that the route has been demarcated through land which is their sahan, the Petitioners have asked that, the order of the District Magistrate demarcating the route, might be quashed. They have also pointed out that Section 30 of the Police Act under which the impugned order is purported to have been made, gave no authority to the District Magistrate to pass it. For this reason alone the legality of the order is challenged. On merits also the District Magistrate's order is said to be erroneous, but it may not be necessary in this case to examine it from that stand point. I am therefore refraining from mentioning the remaining facts.

5. I do not see any force in the Respondents' objection that the Petitioners had no right to maintain the petition. The Petitioners, as already noticed, claimed that the disputed piece of land was their sahan and had been in their use as such from time immemorial. This allegation has not been denied. At the same time no facts have been alleged which might displace the claim laid by the Petitioners. The mere fact that members of the public can use this land is not sufficient to show that it ceased to be the sahan of the Petitioners. As a matter of fact the Petitioners themselves state that the land lies in front of their shop where cloth and other articles are exposed for sale. It is in this connection that they and their customers use the land in suit. I think the Petitioners have successfully shown that they have an interest in the land sufficient also to entitle them to maintain the present petition.

6. Now the question remains whether the District Magistrate had any authority under the law to make the order which, it is needless to point out does amount to a threat on the rights of the Petitioners; in any case has endangered the rights to some extent. The learned Standing Counsel conceded that the order was made u/s 30 of the Police Act. This section authorised the District Superintendent of Police or the Assistant District Superintendent of Police to prescribe the route by which and the times at which processions may pass over certain lands. The power to prescribe the routes thus vests in the District Superintendent of Police

or the Assistant Superintendent of Police. The District Magistrate is nowhere authorised by this section to make an order prescribing the route of a procession. Under Sub-section (2) the District Magistrate can direct if he is of the opinion that any procession, if uncontrolled, is likely to cause a breach of (sic) by general or special notice that the persons convening or promoting a procession shall apply for a licence. No such order has been made in this case. On the other hand, the order has prescribed the route alone through which the Tazia procession can pass. Such an order is possible u/s 30 of the Police Act by the District Superintendent of Police or the Assistant Superintendent of Police only. I have not been shown any law including any rule or direction made under the Police Act wherefore the above power of the District Superintendent of Police or the Assistant Superintendent of Police is exercisable by the District Magistrate also.

7. The order of the District Magistrate is thus without authority and lacks jurisdiction. It is also illegal. Let therefore, a mandamus issue to the Respondent District Magistrate to refrain from giving effect to it by entering it in the Teohar register. The Petitioners will get their costs from the Respondents.