

(1955) 02 AHC CK 0037

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ No. 544 of 1954

Debi Sahai Tewari

APPELLANT

Vs

Gram Sabha Khamaila and Others

RESPONDENT

Date of Decision : 08-02-1955

Acts Referred:

Penal Code, 1860 (IPC) — Section 290
Uttar Pradesh Panchayat Raj Act, 1947 — Section 100

Citation : (1955) 25 AWR 269

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : M.N. Shukla, for the Appellant; G.P. Varshney, for the Respondent

Final Decision : Allowed

Judgement

Mehrotra, J.—This is a petition under Article 226 of the Constitution praying that a writ of certiorari be issued quashing the order dated 27th July, 1953 passed by the opposite-party No. 2, and the order dated the 24th April, 1954 passed by the S.D. M. The facts given in the affidavit are that the opposite-party No. 1, Gaon Sabha village Khamila, issued a notice on the 29th of September, 1952, to the applicant directing him to demolish certain constructions made by him on the land in dispute and to clear certain passage alleged to have been blocked by the construction made by the Petitioner. The constructions were not removed by the Petitioner as he contended that they were not made on a public road. Thereafter, a complaint was filed by Suraj Prasad, Sabhapati of the Gram Samaj, against the Petitioner under Sections 290 and 426, I.P.C. in the Panchayati Adalat. Before the adalat it was contended by the Petitioner that the disputed land was not a public passage and he had made the constructions on his own land. The adalat without examining the witnesses convicted the Petitioner under Sections 426 and 290, I.P.C. and sentenced the Petitioner to pay a fine of Rs. 50.

2. In the present petition it is contended that there is a special procedure provided under Sections 99 and 100 of the U.P. Panchayat Raj Act under which

steps could be taken by the Gram Sabha to get certain obstructions, made on the land belonging to the Gram Samaj, removed and the Petitioner could not be convicted under the general provisions of the Indian Penal Code without having recourse to the special procedure provided under Sections 99 and 100 of the U.P. Panchayat Raj Act. Section 99 of the Act provides that--

Whoever removes, displaces or makes an alteration in or otherwise interferes with any pavement, gutter or other material of a public street, or any fence wall or post thereof, or a lamp post or bracket, direction post, stand-post, hydrant, or other such property of the Gaon Sabha without the written sanction of the Gaon Panchayat or other lawful authority shall be punishable with fine which may extend to ten rupees.

3. Section 100 provides that--

If a notice has been given to a person under the provisions of this Act or of any rule or by-law made thereunder to a person requiring him to execute a work in respect of any property, movable or immovable, public or private, or to provide or do or refrain from doing anything within a time specified in the notice and such person fails to comply with the notice, then

(a) the Gaon Panchayat may cause such work to be executed or such tiling to be provided or done, and may recover all expenses incurred by it on such account from the said person in the prescribed manner;

(b) such person shall also be liable on conviction before a magistrate, to a fine which may extend to ten rupees and in case of continuing breach, of a further fine which may extend to one rupee for each day after the date of the first conviction during which the offender is proved to have persisted in the offence.

4. Section 100 provides a special procedure for the removal of any obstruction in cases where the Gram Samaj has issued a notice to any person to remove the obstruction and he fails to carry out the directions given in the notice and also lays down that the person could be convicted by a magistrate.

5. Section 290 of the Indian Penal Code provides that any person could be convicted for public nuisance and punished with a fine which may extend to two hundred rupees. "Public nuisance" has been defined u/s 268 of the I.P.C. and reads as follows:

A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, abstractions, danger or annoyance to persons who may have occasion to use any public right.

6. From the definition of the "public nuisance", it will appear that acts done by a person on his own land may amount to a public nuisance when it causes any common injury, danger or annoyance to the public or to the people in general

who dwell or occupy property in the vicinity. It is not necessary that the nuisance must have been committed on the land belonging to the public or to the Gaon Sabha. Section 100 on the contrary specifically provides the procedure where the Gaon Sabha desires that certain constructions made by a person on the land belonging to the Gaon Sabha should be removed. A person can be convicted for continued breach if he fails to remove the constructions on the notice issued by the Sabha. Section 52 no doubt empowers the Panchayati Adalat to try a case u/s 290, I.P.C. but Section 100 provides for a special procedure for the removal of the constructions made on the land belonging to the Gaon Sabha. In the present case notice was given by the Gaon Sabha u/s 100 of the Act and the Sabha could have taken action for the prosecution of the Petitioner before a magistrate. The Panchayati Adalat could not try the Petitioner u/s 290, I.P.C.

7. I, therefore, allow this petition, set aside the conviction of the applicants and quash the jurisdiction of the Panchayati Adalat. It is open to the Gaon Sabha to take action u/s 100 of the Act. I make no orders as to costs.