

(1960) 08 AHC CK 0030
In the Allahabad High Court
Case No : Sp. A. No. 30 of 1957

District Magistrate

APPELLANT

Vs

Hari Narain Mehrotra and Others

RESPONDENT

Date of Decision : 10-08-1960

Acts Referred:

Citation : (1960) 30 AWR 563

Hon'ble Judges : Srivastava, J; Beg, J

Bench : Division Bench

Advocate : S.P. Kumar and S.C. Khare, for the Respondent

Final Decision : Allowed

Judgement

Beg, J.—This appeal has been filed by the District Magistrate, Faizabad. It arises out of a writ petition filed in this Court by Sri Hari Narain Mehrotra Respondent No. 1. The Petitioner had made an application to the District Magistrate for sale to him of form No. 54 prescribed under paragraph 183 Sub-Clause II of the Police Regulations. In this application the Petitioner had also prayed for grant of permission to hold a cattle market on a portion of plot No. 288. This application was rejected. Later on the Petitioner made another application to the District Magistrate containing similar prayers. This application was granted on 1-5-56. Subsequently, however, on the objections filed by one Satgur Prasad, the District Magistrate passed an order cancelling his previous order granting permission and directed that the book containing Form No. 54 be not sold to him. Aggrieved by this order of the District Magistrate, the Petitioner filed the present Writ petition in this Court, praying for the issue of a Writ of Certiorari quashing the order of the District Magistrate refusing to grant permission to hold market and for the issue of a Writ of Mandamus compelling him to sell the book containing Form No. 54 to him.

2. This Writ petition was allowed by a learned Judge of this Court on the ground that the District Magistrate had no power to grant or to withhold permission to

hold a market on any plots of land in any area. The learned Judge further held that the District Magistrate had no power to refuse the sale of forms for the purchase of which the application had been made. He, therefore, directed that the District Magistrate should sell the forms to the Petitioner on payment of the requisite fee. In the result the learned Judge issued both the Writ of Certiorari as well as the Writ of Mandamus. This order is the subject-matter of the present appeal by the District Magistrate Faizabad. Learned counsel for the Appellant has been unable to invite our attention to any provision of law under which the District Magistrate possesses power to grant or to refuse permission to hold a market, or to interfere with the holding of the market in any area under circumstances similar to the present. Learned Counsel for the State has referred to certain provisions of the Code of Criminal Procedure which empower the District Magistrate to take action in cases of apprehension of breach of peace. In the present case, the District Magistrate admittedly did not purport to act under any of the aforesaid provisions of law, hence they are irrelevant for the purpose of deciding the question at issue and cannot be invoked to sustain the impugned order. No other provision of law warranting the action of the District Magistrate in the present case was cited before us. The refusal of the District Magistrate by the impugned order to permit the Appellant to hold a market thus amounted to an unwarranted interference with his right to use his own land. Under the circumstances, the order of the learned Judge so far as it relates to the issue of a Writ of Certiorari quashing the order of the District Magistrate refusing to grant permission must be maintained.

3. Learned Counsel for the Appellant has, however, put forward a further argument before us. He has argued that, in any case the issue of a Writ of Mandamus to the District Magistrate directing that he should sell form No. 54 to the Petitioner on payment of the price is not justified. He has invited our attention to paragraph 183, Sub-clause (II) of the Police Regulations which lays down as follows:

The District Magistrate keeps a stock of books each containing 100 pages in Police form No. 54 for registering the sale of cattle. He issues these books on payment, only to the persons selected (who in the case of markets on private land should be the proprietor of the land), for selected sites and on any conditions expressed or implied (e.g. that the market is to be held on particular days of the week)....

4. Under this rule it is obvious that the District Magistrate cannot be compelled to sell the books containing form No. 54 to any party, nor can any party claim an unqualified right to obtain these forms from the District Magistrate. In case a party wants to buy the books containing form no 54, the rule lays down that the said party should fulfil three conditions; firstly, he should pay the price, secondly, he should submit to or under take to comply with the conditions imposed by the District Magistrate as contemplated in the said rule and lastly, he should be a selected person who is going to hold a market in the selected site. In this view of

the matter, we are of opinion that the issue of a Writ of Mandamus ordering the District Magistrate to sell the said books to the Respondent was not justified by the above rule.

5. The appeal is, therefore, allowed in part. The order of the learned Judge issuing a Writ of Certiorari quashing the order of the District Magistrate refusing permission to hold market on the area, is upheld, but the order of the learned Judge in so far as it relates to the issue of a Writ of Mandamus directing the District Magistrate to sell the books containing form No. 54 to the Petitioner is set aside. In view of the circumstances of the case, we direct that the parties shall bear their own costs in the appeal as well as in the Writ petition.