
(1994) 11 AHC CK 0097

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 25665 of 1994

Mahboob Hasan and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 22-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 107, 111, 116

Citation : (1994) 11 AHC CK 0097

Hon'ble Judges : K.L.Sharma, J

Final Decision : Allowed

Judgement

K.L. Sharma, J.—This is a Criminal Miscellaneous Writ Petition under Article 226 of the Constitution of India for the issuance of a writ of certiorari quashing the notice/order, dated 5.4.1994 issued/passed by the S.D.M., Kairana, Muzaifarnagar under Section 107/116, Cr. P.C. whereby the nine persons including the four petitioners were directed to appear and show cause on 6.4.1994 as to why they may not be required to keep peace for a period of one year by executing a personal bond with two sureties each in the amount of Rs. 5,000. Another prayer for issuance of a writ of mandamus has been made for commanding the respondents, their agents and employees not to interfere with the petitioner in holding their cattle markets in plot Nos. 102 and 103 etc. at village. But are District Muzaifarnagar on every Wednesday and Thursday by arresting and detaining the petitioners, their relations and partners. This Writ Petition has been contested on behalf of the respondent No. 2.

2. After hearing the learned Counsel for the petitioners on several dates and the learned Counsel appearing for the Zila Parishad now Zila Panchayat, Muzaifarnagar, it has come to the notice of the Court that the impugned order, dated 5.4.1994 passed by the S.D.M., Kairana (as contained in Annexure 8 to the Writ Petition) has been withdrawn on account of the expiry of the limitation of one year as prescribed by the Code of Criminal Procedure. In view of this position learned Counsel appearing on behalf of the contesting respondent has

submitted that this Writ Petition has become infructuous and no relief as prayed by the petitioners, can be granted in this Writ Petition. He has further submitted that this Writ Petition was also not maintainable in view of the pending judicial proceedings of civil and criminal nature in the subordinate Courts.

3. Learned Counsel for the petitioner has submitted that the Writ Petition is still maintainable for providing necessary relief to the petitioners against whom there is an abuse of the process of law resorted to by the respondent No. 3 through the agency of the S.D.M. Kairana in order to explain his submission, he has narrated the facts of the prolonged litigations between the parties in respect of the holding of the cattle market in village Banat and in village Batarra.

4. I also deem it proper for the appreciation of the facts and circumstances leading to this criminal Writ Petition to give a following resume of the relevant facts and circumstances.

5. According to the petitioners, Late Israil father of the petitioner No. 1 Mahboob Hasan and the respondent Nos. 8 to 10 had been holding private cattle market in old No. 178, 178M and 180 (new plot Nos. 102 and 103) of village Butrara District Muzaifarnagar on every Wednesday and Thursday since the year 1951. Learned Counsel for the petitioners orally pointed out that the petitioners had been holding cattle market in Plot Nos. 1397 to 1405) (new plot Nos. 1272 to 1281) of village Banat District Muzaifarnagar on every Wednesday and Thursday. Since the year 1947 in the village Banat situated at a distance of more than 8 kms. away from village Butrara in Pargana Kairana, District Muzaifarnagar. However, a dispute arose between the partners and a civil suit No. 127 of 1960 was filed by Shabbir Hasan and another (Shabbir Hasan v. Mahboob Hasan), for injunction, rendition of account and for dissolution of partnership, which was dismissed on 30.9.1963 by the Additional Civil Judge after recording a finding that the petitioner alone has been holding the cattle market on the aforesaid plots on Wednesday and Thursday. An appeal filed against the judgment and order of dismissal of the suit No. 127 of 1960 was dismissed on 20.10.1964 by the District Judge, Muzaifarnagar. A second appeal filed against the judgment and decree, dated 20.10.1964 in the first appeal by the District Judge was also dismissed by the High Court on 26.8.1971. The byelaws of the District Board Muzaifarnagar prohibiting the cattle markets by any person were held to be illegal by the Hon'ble Supreme Court in the case of Tahir Husain v. District Board, Muzaffarnagar, AIR 1954 SC 630. The District Board Act, 1922 was repealed and replaced by U.P. Kshetra Samiti and Zila Parishad Adhiniyam, 1961. In exercise of the powers conferred by Section 239 of U.P. Kshetra Samiti and Zila Parishad Adhiniyam, 1961 the Zila Parishad Muzaffarnagar being successor of District Board, Muzaffarnagar framed fresh byelaws in 1966 for regulating cattle markets. Byelaw No. 34 and Government Order, dated 11.6.1968 however provide that within the radius of 4 kms. of existing cattle market, no other cattle market could be established. On the basis of this byelaw and Government Order the Zila Parishad, Muzaffarnagar threatened to establish a cattle market at

Banat. Moreover byelaw No. 25 was challenged and struck down in W.P. No. 3504 of 1966 Bhullan v. Zila Parishad, Muzaffarnagar, and Special Appeal No. 15 of 1967 filed by Zila Parishad, Muzaffarnagar was also dismissed. The petitioner filed a Civil Suit No. 259 of 1977 for restraining the Zila Parishad from interfering in his right to hold the cattle market at village Banat and a prayer for licence to hold the cattle market was also made. This suit was decreed on 25.5.1990 by the learned Munsif, Muzaffarnagar. The Zila Parishad felt aggrieved and filed Civil Appeal No. 63 of 1990, but no stay order was granted by the District Judge. However, the Zila Parishad, Muzaffarnagar notified the cattle market at Banat for public auction for holding it on contract basis. In the civil appeal pending before the learned Additional District Judge, the petitioner as respondent filed an application for injunction to restrain the Zila Parishad from conducting public auction of the cattle market. On 8.2.1991 the learned Additional District Judge before whom the appeal came by transfer directed that in the event auction is held, the auction money recovered shall be deposited in the Court. The public auction was held on 9.2.1991 for Rs. 15 lacs for a period of three years, but the Zila Parishad has not deposited the auction money in the Court. The petitioner moved an application under Order XXXIX, Rule 2A, C.P.C. for taking action for noncompliance of the order, dated 8.2.1991. A notice of the application was issued, but the matter is still pending. However again the Zila Parishad, Muzaffarnagar notified the cattle market of Banat for public auction fixing 16.3.1994. This public auction was also held and contract was given to respondent Nos. 8 and 9 who paid the money to the Zila Parishad but the Zila Parishad, Muzaffarnagar did not deposit that amount also in the Court. The appeal as well as the proceedings are still pending before the Additional District Judge, Muzaffarnagar. The Zila Parishad, its officers with the help of district police and the district administration illegally initiated proceedings against the petitioners under Section 144, Cr. P.C. and under Section 107/116, Cr. P.C. the petitioners challenged these proceedings in this High Court and through Criminal Miscellaneous Application No. 3577 of 75 this Court allowed Criminal Miscellaneous Application No. 3577 of 75 on 8.10.1976 and the proceedings under Section 144, Cr. P.C. were quashed. Late Sri Israil had also filed a civil suit No. 84 of 1975 for a permanent prohibitory injunction restraining the Zila Parishad and its employees from interfering in his right to hold the cattle market. The interim injunction was also granted on 3.3.1975 against which a Miscellaneous Civil Appeal was filed by the Zila Parishad which was dismissed. The Civil Judge, Muzaffarnagar confirmed the interim injunction. The Zila Parishad filed an appeal No. 92 of 1975 before the District Judge, Muzaffarnagar which was dismissed by the Additional District Judge, Muzaffarnagar on 10.10.1978, but the petitioner was directed to deposit a licence fee for holding the cattle market at the rate of Rs. 500 per annum in the office of the Zila Parishad.

The petitioners had been regularly paying the licence fee and also paid licence fee for the year 1994-95. However their application for grant of formal licence has been rejected. The order of Additional District Judge, dated 10.10.1978 has not

been challenged by the Zila Parishad before the High Court. In Writ Petition No, 5296 of 1982 certain directions were issued to the Zila Parishad to consider the application for grant of licence but the Zila Parishad dismissed the application for the licence. The Zila Parishad also notified public auction of the cattle market in village Butrara and gave the contract by public auction to one Sri Vijaipal and Abbas Ali and it entered into collusion with the police authorities to get the cattle market of the petitioners at Butrara closed down. On 5.4.1994 a police report under Section 107/116, Cr. P.C. was procured with concocted false allegations and thereupon the same day the S.D.M., Kairana respondent No. 4 issued notices against the petitioners and the respondents Nos. 8 to 10 and a few others under Section 111, Cr. P.C. Sri Irshad, Akhtar and Rasheed challenged the validity of the notices and the proceedings by filing Criminal Revision No. 85 of 1994 before the Sessions Judge, Muzaffarnagar, which was admitted but it has since been pending on 6/7.4.1994 the respondents Nos. 5 to 7 reached the cattle market of the petitioners and uprooted the tents and arrested the petitioners and other persons. There up on the petitioners filed the present Criminal Misc. Writ Petition on 4.8.1994 in which notice were issued and interim prohibitory order was passed. Special Appeal No. 590 of 1994 against the interim order, dated 5.8.1994 passed in the present writ Petition was dismissed by a Division Bench of this Court on 18.8.1994. A special Writ Petition No. 228() of 1994 against the order, dated 5.8.1994 has also been dismissed by the Hon"ble Supreme Court against the interim orders passed by this Court. However the proceedings under Section 107/116, Cr. P.C. were illegally continued by the respondent Nos. 1 to 7 until they have been dropped as late as 17.10.1994 by the S.D.M., Kairana.

6. Learned Counsel for the petitioners submitted in the background of the facts and circumstances mentioned above that the impugned against the petitioners and the respondent Nos. 8 to 10 under Section 107/116, Cr. P.C. d criminal proceedings initiated were not only illegal but on abuse of the process of law with a malicious and mischievous object to prevent the petitioners from holding the cattle market in village Butrara in the lawful exercise of their fundamental right to hold the cattle market and to illegally permit the Contractors of the Zila Parishad to hold the market in the adjoining places on the same days i.e. Wednesday and Thursdays. As regards the illegality in the proceedings initiated under Section 107/116, Cr. P.C., the facts and circumstances make it explicit that the Zila Parishad has been adopting an illegal approach to prevent the petitioners from exercise of their fundamental right to hold the cattle markets which has been in existence long prior to the framing of the byelaws by the Zila Parishad. Learned Counsel for the petitioners invited my attention to the decision of the Hon"ble Supreme Court in the case of Tahir Husain v. District Board, Muzaffarnagar, AIR 1954 SC 630. The Supreme Court held that the power to make byelaws is to be exercised for the purpose of promoting of health, safety and for the convenience of the inhabitants of the area within the jurisdiction and that this power includes the power to regulate markets. If the byelaw as well as the order under it interfere with the fundamental rights of the petitioners by

preventing them from carrying on the business of holding the cattle market it comes in conflict with Article 19(1)(g) of the Constitution of India and is therefore void. The right to hold the cattle market by the petitioners in village Butrara and Banat has been adjudicated upon by the competent Civil Court and the appeals filed by the Zila Parishad are still pending, but there is an injunction order of the competent Civil Court prohibiting the Zila Parishad from interfering with the right of the petitioners to hold the cattle market. The Zila Parishad has been clearly acting contrary to and in violation of the interim prohibitory injunction orders and decrees passed by the Civil Courts and has been auctioning the contract to hold the market in the adjoining places to private parties and has failed to deposit the auction money in the Court of the IInd Additional District Judge, Muzaffarnagar. Instead of complying with the judicial orders passed by the High Court in Writ Petition No. 9296 of 1982 and decree passed by the learned Munsif and Civil Judge, Muzaffarnagar and the interim order passed by the IInd Additional District Judge, they are continuing with their illegal activities by exercising their influence of the civil and police administration and they are resorting to criminal proceedings under Section 144, Cr. PC. and under Section 107/116, Cr. PC. Apparently, the dispute even if still subsisting is of civil nature and is pending in civil appeals filed by the Zila Parishad.

7. The intendment of the byelaws framed by the Zila Parishad could not be prohibitory so as to prevent the petitioners from holding the cattle market on specified days as they were doing in the long past prior to the framing of the byelaws. These byelaws are purely regulatory and directory for the purposes of promoting health, safety and convenience of the inhabitants of the areas within its jurisdiction. These regulatory byelaws are equally binding on the Zila Parishad which cannot violate it. Therefore, it is most desirable on the part of the Zila Parishad to abide by the byelaws as expected of any other citizen in the area and to abide by the decrees and orders of the competent Courts and the High Court. The Zila Parishad can never be allowed to taken law in its own hand to violate its own regulations and to disobey the decrees and the injunction orders of the Civil Courts and the High Court. But in fact the Zila Parishad, its officers and employees appear to have colluded with the respondent Nos. 3 to 7 and in order to safeguard their illegal public auctions to private persons for holding the cattle market on the adjoining place on the same days of Wednesdays and Thursdays, they are resorting to get the criminal proceedings initiated against the petitioners on the self assumed ground of apprehension of breach of law and order. It is unfair and unreasonable for a public body like Zila Parishad or its public officers to behave in such illegal, malicious and revengeful manner. Such an abuse of the process of criminal law in willful disregard of the orders of the High Court and competent Civil Courts shocks the judicial conscience of the Court. If a public body and public officers do not obey Court verdicts, how can a citizen be expected to obey? In their sound wisdom and sincerity, the Zila Parishad and its officers could have and still can have fixed their cattle markets on some other days except Wednesdays and Thursdays and on other such plots, as may be

situated at a distance of more than 4 kms. away from the plots 102 and 103 of Village Butrara, Pargana Kairana, District Muzaffarnagar as prescribed by their regulations and to put such cattle market to public auction on contract basis. Had the Zila Parishad acted in this manner, there could not have been any conflict with the petitioners in holding the cattle market on plot Nos. 102 and 103 in village Butrara or on plot Nos. 1272 to 1281 of village Banat on every Wednesday and Thursday, and no disobedience to the judicial orders of the High Court and the Civil Courts would have arisen and the assumed apprehension of breach of law and order either by the petitioners and the respondent Nos. 8 to 10 or by the auction purchases would have been nonexistent. Therefore, their Court finds substance in the submissions of the learned Counsel for the petitioners that the proceedings initiated against them by the SubDivisional Magistrate Kairana, District Muzaffarnagar under Section 107/116, Cr. P.C. are not justified and appear to be an abuse of the process of law at the instance of Zila Parishad and its officers by the Civil and police officers with a mischievous object to by pass, ignore and disobey wilfully the judicial orders of this Court and the Civil Courts.

8. Learned Counsel for the petitioners has further assailed the impugned order dated 5.4.1994 passed by the SubDivisional Magistrate, Kairana issuing notice under Section 111, Cr. P.C. learned Standing Counsel for the Zila Parishad has replied that since this impugned order has now been withdrawn and the proceedings have been dropped on 17.10.1994 the Court need not go into this question. Learned Counsel for the petitioners has submitted that the illegality in the impugned order is so apparent that it would speak volume for the malicious activity of Zila Parishad in collusion of the civil and police officers of the area. Even if these proceedings have now been dropped and the impugned order has been withdrawn on the ground of mere expiry of one year's limitation, the Respondent Nos. 2 to 7 are most likely to initiate fresh proceedings under Section 107/116, Cr. P.C. or under Section 144, Cr. P.C. to get the petitioners arrested and detained every time whenever they try to hold their market on Wednesdays and Thursdays in the plots of the two village because the Contractors who have deposited huge amount in the Zila Parishad will create such a situation every time unless the cattle market of the Zila Parishad is shifted to a place at a distance of more than 4 kms and different days of holding market other than Wednesdays and Thursdays are fixed by the Zila Parishad. Therefore he has insisted upon this Court to see the illegality of the impugned proceedings and the order and to prohibit the respondent Nos. 2 to 7 from repeating such illegal proceedings in future so that in fact peace disturbed by the Zila Parishad and its officers may be restored.

9. Learned Counsel for the petitioners firstly pointed out that the learned S.D.M., Kairana has not followed the mandatory procedure before passing the impugned order under Section 111, Cr. P.C. Therefore he submits that this order does not give a sufficient notice about the allegations pertaining to apprehension of breach of the peace or disturbance of public tranquility in as much as no understandable

substance of allegation has been given and term of bond, number of sureties and details of the amount have not been determined by the S.D.M. himself in the order sheet and it is only the Office which has filled in the blanks in the printed/cyclostyled form captioned as notice under Section 111, Cr. P.C. These infirmities in the impugned notice under Section 111, Cr. P.C. are apparent on its face. Learned Counsel for the petitioners has referred to several decisions of this Court and of the Honble Supreme Court in the case of Madhulimya, AIR 1971 SC 2486. I do not consider necessary to cite these cases when the legal position is clear that the provisions are mandatory and the noncompliance of these mandatory provisions makes the impugned order void and liable to be quashed. Since the impugned order has been withdrawn and the proceedings have been dropped the question of setting aside the impugned order and quashing the proceedings initiated against the petitioners under Section 107/116, Cr. PC. does not arise.

10. Learned Standing Counsel for the Zila" Parishad has raised a preliminary objection about the maintainability of this Writ Petition on the ground that a Criminal Revision No. 85 of 1994 is still pending before the Sessions Judge, Muzaffarnagar. The learned Counsel for the petitioners in reply submitted that the Criminal Revision No. 85 of 1994 was not filed by the petitioners but it was filed by three other persons Akhtar, Irshad and Rasheed and therefore, the petitioners had their independent right to file this criminal Writ Petition in this Court. I do not find any infirmity in the filing of this Writ Petition. The petitioners have not filed the Criminal Revision before the Sessions Judge. However, even the person accused or apprehended has got an independent legal right to challenge the order before a Court of law. The petitioners are, therefore, within their right to maintain this Writ Petition subject to the discretion of the High Court either to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India or to refuse to do so, when the petitioners have failed to avail the remedy of Criminal Revision either before the Sessions Court or before the High Court. After keeping this Writ Petition pending for a long time and after hearing learned Counsel for the contesting parties for several days at length, it is not desirable to throw the Writ Petition on this ground.

11. Learned Counsel for the Zila Parishad further submitted that the Writ Petition contains a relief which cannot be granted by a Single Judge of this Court and therefore, as such this Writ Petition should have been heard and decided by a Division Bench. Learned Counsel for the petitioners has replied that the second relief is only by way of consequential relief in as much as the first relief was sufficient in view of the facts and circumstances of the case and as a consequential relief arising from the main relief, the Single Judge continues to have jurisdiction to grant the same. In support of this contention he relied upon the decision of Division Bench of this Court in the case of Dinesh Singh v. District Judge, Deoria, 1994(24) ALR 215. This Court has clearly held that the bench of a Single Judge does not cease to have jurisdiction to grant the consequential relief of the main prayer. Moreover, in view of the impugned order having been withdrawn and the proceedings having been dropped, no such relief is required

to be granted. Therefore the objection raised by the learned Standing Counsel for Zila Parishad is not sustainable.

12. Learned Counsel for the petitioners pointed out that the petitioners moved an application for amendment of the relevant paras and the prayer made in the Writ Petition as a consequence of the withdrawal of the impugned order and the dropping of the proceedings, but this application has not been allowed by this Court.

13. For the aforesaid reasons and in the result, no relief as prayed is now required to be granted to the petitioners. The Writ Petition has become infructuous on the impugned order having been withdrawn and criminal proceedings having been dropped on expiry of one year's limitation by order dated 17.10.1994. However, in view of the apprehension of the petitioners that the respondent Nos. 2 to 7 are most likely to initiate fresh proceedings under Section 107/116 or under Section 144, Cr. P.C. against the petitioners with a view to prevent them from holding their rightful cattle market in villages Butrara and Banat, Pargana Kairana, Muzaffarnagar, it becomes absolutely necessary, just and proper for this Court to direct and it is hereby directed that the respondent No. 2 shall consider and determine the shifting of its official cattle market to another place at a distance of more than 4 kms from the old existing cattle markets run by the petitioners and fix days other than Wednesdays and Thursdays for holding official cattle market by the auction purchasers so that this continued litigation and initiation of criminal proceedings may come to an end finally.

14. With the aforesaid directions and observations this Writ Petition is finally disposed of.