

(1994) 02 AHC CK 0032

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 7249 of 1994

Nar Singh Narayan Mishra and Another

APPELLANT

Vs

Chairman/District Magistrate and Others

RESPONDENT

Date of Decision : 25-02-1994

Acts Referred:

Citation : (1994) 3 AWC 1616

Hon'ble Judges : R.R.K. Trivedi, J; R.A. Sharma, J

Bench : Division Bench

Advocate : Ajit Kumar Singh, for the Appellant;

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Petitioners claim to have been granted a licence on 14-9-1993 by Zila Parishad for holding cattle market on plot No. 324 of village Sihari Tappa Kedar Pargana Basti Pooran Tahsil & District Basti, This licence has been cancelled by the Zila Parishad vide order dated 21-10-1993 on the complaint of co owners of the above plot. Against this order Petitioners filed appeal which has been dismissed by the Collector on 27-1-1994 It is against these two orders that this writ petition has been filed.

2. Petitioners obtained licence for holding cattle market on the above plot, although they were not its sole owners. In Para 1 of the writ petition it has been admitted that the Petitioners were in possession of one half share of the said plot. Other co-owners have raised objection against grant of licence, on the basis of which Zila Parishad passed order cancelling their licence. Collector, while rejecting the appeal of the Petitioners, has observed that he tried to persuade them to get the plot in question partitioned, so that licence may be given to them for holding cattle market on that portion of the plot which falls in their share. The Petitioners, instead of accepting the suggestion of the Collector, have filed this writ petition challenging both the orders mentioned above.

3. If the Petitioners are net sole owners of the plot they are not entitled to get

licence for holding cattle market thereon unless the other co-owners agree, because it is not open to any person to hold any marker over other's property without their consent, Unless the Petitioners get consent of other co-owners or get the plot partitioned and apply for licence for holding cattle market over that portion of the plot which has been assigned to them wider the Partition, no licence can be granted.

4. Submission of the learned Counsel for the Petitioners to the effect that grant of licence cannot be objected to by other co-owners and further that by virtue of they being co-owners of the plot they should be entitled to obtain a licence for holding the market on the whole plot, cannot be accepted. Unless a partition is effected no co-owner can lay claim to the plot exclusively. The co-owners have equal rights and they can prevent user of the joint property by some of the co-owners only, unless there is partition or family Settlement permitting some of the co-owners to have exclusive possession on a particular property.

5. The other submission of learned Counsel for the Petitioners, relating to violation of natural justice is also devoid of merit. The court is not bound to adjourn the case unless plausible ground is made out. In the Instant case the Collector did not agree for adjournment due to absence of their counsel and Petitioners have themselves appeared and argued the case before the appellate authority. It is not the case of the Petitioners that they could not argue effectively.

6. For the reasons given above, this writ petition is dismissed. It will be open to the Petitioners to apply for licence for holding cattle market over the plot in question or part thereof as the case may be, after the partition, and if such an application is made, the same shall be considered in accordance with law.