

(1987) 08 AHC CK 0013
In the Allahabad High Court
Case No : Writ Petition No. 2591 of 1985

Om Prakash Gupta

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 31-08-1987

Acts Referred:

Constitution of India, 1950 — Article 19, 226
Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (1988) 1 AWC 273

Hon'ble Judges : Brijesh Kumar, J; B.L. Loomba, J

Bench : Division Bench

Advocate : R.N. Gupta and Hargur Charan, for the Appellant; Mohd. Arif Khan, for O.P. No. 3 S.P. Shukla and U.P. Srivastava, for the Respondent

Judgement

B.L. Loomba, J.—This writ petition under Article 226 of the Constitution of India is directed against the order dated 29-5-1985 contained in Annexure 8 whereby the District Magistrate, Hardoi permitted opposite parties Nos. 3 to 5 to hold cattle market on their Bhumidhari plot No. 295 situate in village Kakrari, Tahsil Sandila District Hardoi every year during the period from 1st to 15th in the month of Asarh. Opposite parties 3 to 5 were further permitted to obtain and use receipt book for recording transactions of sale and purchase of the cattle at the cattle market in Form 54 prescribed under the Police Regulations. The permission was granted subject to the observance of conditions provided in Paragraph 183 of the Police Regulations.

2. Petitioner's father had obtained permission from the District Magistrate, Hardoi by order dated 4-5-1981, contained in Annexure 1, for holding cattle market on 11 Bhumidhari plots of his own for the period Aghan Sadi 10 to Poos Badi 9 during winter and for the period Jeth Sudi 10 to Asarh Badi 9 every year. He was likewise permitted to get issued and use receipt book in Form 54 under the Police Regulations. It appears that after, the death of his father, the petitioner made an application dated 8-1-1985 before the District Magistrate, Hardoi

seeking change of the period during summer and through order dated 14-2-1985 contained in Annexure 2, the petitioner was permitted to hold cattle market for the period from 1st to 15th of Asarh in the Krishna Paksh. The petitioner's case is that opposite parties Nos. 3 to 5 had obtained the impugned order dated 29-5-1985 contained in Annexure 8 by exercising political pressure on the District Magistrate and under the law no permission could be granted by the District Magistrate for holding cattle market on an area situate at a distance upto 5 Kilometers from the plots on which similar permission had earlier been granted. According to the petitioner the plot over which permission has been granted to opposite parties to hold cattle market on the same date for which the permission had been granted in favour of the petitioner lies at a distance shorter than 5 Kilometers. It is pleaded that opposite parties Nos. 3 to 5 had never before been holding cattle market on plot No. 295 specified in the impugned order with the permission of the District Magistrate nor the receipts recording transaction of sale and purchase of cattle were issued in the Form No. 54 as prescribed in the Police Regulations.

3. On behalf of the District Magistrate opposite party No. 1, learned Standing Counsel has put in appearance but no counter affidavit was filed. Opposite party No. 2 Smt. Kudsia Begum, M.L.A. who is said to have exercised influence in obtaining permission contained in Annexure 8 for opposite parties 3 to 5, has not put in, appearance to contest the writ petition. On behalf of opposite parties 3 to 5 counter affidavit was filed and the matter of interim stay order was hotly contested in regard to the cattle fair held in the year 1985 as well as in 1986. However, at the stage of hearing of the writ petition, there was no one present on behalf of opposite parties Nos. 3 to 5.

4. We have heard the learned Counsel for the petitioner and the learned Standing Counsel appearing on behalf of opposite party No. 1. In so far as the facts are concerned the parties do not appear to be at variance. So far as the petitioner and, for that purpose his late father are concerned, it was for the first time in the year 1981 that permission to hold cattle market was applied for and was granted. Initially, the permission was granted for one month during winter and for one month during summer but the period for which the permission was granted was from 10th of Jeth to Asarh Badi 9. This period during summer did not clash with the period for which permission was granted in favour of opposite parties Nos. 3 to 5 by the impugned order. This period, however, clashed with the period for which sanction was modified under order dated 14-2-1985 contained in Annexure 2. Accordingly, it was for the first time in the year 1985 that permission was granted in favour of the petitioner to hold market during the month of Asarh for 15 days from 1st to 15th in the Krishna Paksh. It further appears that opposite parties Nos. 3 to 5 never applied for and were granted permission to hold the cattle fair during this period prior to the year 1985 when permission to do so was granted under the impugned order. This is also uncontroverted that the area on which the two rival parties were granted permission, the petitioner under order dated 14-2-1985 Annexure 2 and opposite

parties 3 to 5 by order dated 29-5-1985 Annexure 8, lies within a radius less than 5 Kilometres. The petitioner came with the allegations that opposite parties had never before held their cattle fair during the relevant period prior to 1985 but there is sufficient material on record to show that the predecessor of opposite parties 3 to 5 and thereafter the opposite parties have been holding the cattle market on plot No. 295 for the last over 85 years though this was done without obtaining any formal permission from the District Magistrate and receipts recording the transactions of sale in the cattle market were issued on the private receipt book and not on the receipt book prescribed in Form No. 54 under the Police Regulations. For arriving at this conclusion, we have taken into consideration the counter-affidavit of one Abdul Rab filed on behalf of opposite parties 3 to 5 alongwith its Annexures 1 to 15. No rejoinder affidavit has been filed against this counter-affidavit. Even in the impugned order Annexure 8, there is mention of the fact that opposite parties 3 to 5 are holding their Mela for the last about 85-90 years.

5. The factual position being clear, the only point arising for consideration is whether the petitioner's claim of his having obtained the permission for holding the Mela on his Bhumidhari plots earlier in the year 1985 will confer on him any preferential legal right against opposite parties 3 to 5. In support of his contention learned Counsel for the petitioner has placed reliance on paragraph 183 of the Police Regulations which also provides for issue of receipt books in Police Form No. 54 for registering the sale of cattle at the cattle markets. A perusal of opening lines of paragraph 183 would clearly indicate that the provision contained in this paragraph deals with the voluntary registration of sales of cattle at cattle markets outside Municipal and Cantonment limits at police station and in outlying tracts distant from a police station. Nowhere it is laid down in this paragraph that it is essential for a Bhumidhar who holds a cattle fair at his Bhumidhari land to obtain receipt book in Police Form No. 54. Accordingly, legally speaking it would be open to such a Bhumidhar to issue receipts about the sale and purchase of cattle otherwise than the receipts in Police Form No. 54 though in practice a person holding a cattle fair would prefer to secure the receipt book in Police Form No. 54 in order to provide sanctity and dependable proof in relation to the transactions of sale and purchase of a cattle.

6. As regards obligation to obtain permission from the District Magistrate concerned for holding a cattle market, learned Counsel for the petitioner was unable, to refer to any of the provisions of the Police Regulations or of any other law and as such he was unable to support his contention that a cattle market held by a Bhumidhar on his land shall be illegal without obtaining permission from the District Magistrate. In paragraph 19 of the petition a reference has been made to a decision of the Allahabad High Court in Ram Ballabh Tiwari v. Sunder Singh C. M. Writ No. 4678 of 1978 and the SLP Civil No. 5072 of 1980 having been filed against that judgment. An observation from the judgment of the Hon'ble Supreme Court has been quoted in this paragraph, which is as under:

We do not think that the Respondent No. 1 (Sunder Singh) can be absolutely prevented from holding cattle market in his Bhumidhari plot. The Licensing authority, however, in order to avoid any breach of peace while granting the licence may take into consideration as to whether he should grant a licence to hold the cattle market on the same days on which the petitioner is holding cattle market on his plot. As far as possible such a thing should be avoided in order to avoid various types of complications.

7. In District Magistrate, Faizabad v. Hari Narain Mehrotra 1960 AWR 563, this Court while dealing with the question observed that the learned Counsel for the Appellant has been unable to invite our attention to any provision of law in which the District Magistrate possessed power to accord or to refuse permission to hold a market or to interfere with the holding of the market in any area in the circumstances similar to the present. In Baij Nath v. The Nagar Palika, Chitrakut Dham, Karwi, District Banda 1983 U.P. L.B. E.C. 355, it was held that the right to hold the fair on one's own land has been regarded as a fundamental right. The holding of a cattle market is an occupation or business within the meaning of Article 19(1)(g) of the Constitution. Decision in Damba Singh v. Adhyaksha Zilaadhikari, Zila Parishad, Aligarh 1985 ALJ 100, refers to a case where licence for holding a cattle market is granted in accordance with the bye laws framed by Zila Parishad under the provisions of U.P. Kshettra Samities and Zila Parishads Adhiniyam. It was held that the Licensing Officer cannot prohibit the holding of a cattle market by the licensee on his own land. Licensing officer has merely to fix the day, time and place of the cattle markets which are to be held by the petitioner and the Gaon Sabha. For that purpose the bye laws provide sufficient guidelines. The officer concerned has to merely apply his mind to the facts of the case of the petitioner as well as the Gaon Sabha and then determine as to which of them commenced holding cattle market on their individual land first in point of time before the enforcement of the bye laws. It was found that the relevant bye laws contained sufficient guidelines to the Licensing Officer to determine the matter.

8. The legal position as following clearly is that it is not necessary for a Bhumidhar to obtain permission of the District Magistrate for holding cattle market on his Bhumidhari Land and that necessity for permission arises when a provision to that effect is made in the bye-laws framed by the concerned Zila Parishad in pursuance of the provisions in the U.P. Kshettra Samitis and Zila Parishads Adhiniyam about the regulation of cattle markets. The second situation in which such a permission may be sought, or granted, is for purposes of regulations of markets from practical point of view in the interest of maintenance of law and order. If more than one person proceeds to hold market on his land on same dates on area situate at a short distance, disputes and complications are likely to arise which may disturb the maintenance of law and order and it is in this context that the District Magistrate may come into picture to prohibit the holding of a cattle market on the same days within a specified distance. The need for the police force for maintenance of law and order at places like this is

obvious. As such the justification and need for seeking and granting permission to hold a cattle market is relateable to public interest, namely, the interest of maintenance of law and order.

9. Learned Counsel for the petitioner has referred to two Government Orders, the first being of the Home Department (Police B) G.O. No. UO 2043/8B dated 21-2-1961 issued by Anu Sachiv, U.P. Shasan, Lucknow addressed to all the District Magistrates of U.P. and the second Nagar Palika, Kha Vibhag G.O. No. 28543/XII-Kha-2(D)/68 dated August 8, 1968 addressed to all the Commissioners in Uttar Pradesh except the Commissioner, Rohilkhand Division Bareilly. Copies of these Government Orders have been filed as Annexures 9 and 10. In the first Government Order with reference to a decision of the High Court, it was mentioned that the District Magistrate had no power in law to grant or refuse permission to hold a cattle market as the petitioner's right to hold a market was guaranteed under Article 19 of the Constitution and no restriction could be placed on that right except in cases where it is necessary to do so for security purposes or the cases can be brought within the four corners of the Police Act or the Code of Criminal Procedure. The attention of the District Magistrate was invited to this decision and they were advised to keep in view the decision of the High Court. It was, however, added that in case where it is apprehended that the holding of cattle market is likely to lead to breach of peace, it will be possible to maintain law and order by promulgating orders u/s 144 of the Code of Criminal Procedure. It was mentioned that for the smooth running of the cattle markets and fairs it will be in the interest of the District administration that only one market should be allowed to be held in a particular locality on specified days. Permission for holding a similar market on other week days should be generally avoided and if granted, should be more than four Kilometers away from the place where the market is already being held.

10. The position of law and the policy guidelines as laid down in the aforesaid Government Orders appear to be correctly stated and the matter of grant of permission for holding cattle markets requires to be regulated accordingly. The District Magistrate, as it appears, was aware of the factual position when he passed the impugned order granting permission in favour of the opposite parties to hold the cattle market during the same period for which permission had been granted in favour of the petitioner and also as to the proximity of distance between the two places. This is indicative of the fact that the District Magistrate perhaps did not consider that the holding of the cattle market at two different places situate at a distance of less than four or five Kilometres could create breach of peace and become a law and order problem.

11. In the writ petition it was pleaded that the Zila Parishad framed certain bye laws which were, admittedly, published in the U.P. Gazette dated 19-11-75 and that these bye laws were confined exclusively to the cattle markets and cattle fairs which were to be held within the jurisdiction of the Zila Parishad. At the stage of the arguments, however, learned Counsel for the petitioner stated that

no bye laws on the subject were ever framed by the Zila Parishad and a copy of the order of the Additional Chief Executive Officer of the Zila Parishad, Hardoi, dated 3-8-1987 has been filed which indicates that no bye laws were framed by Zila Parishad, Hardoi on the subject of the cattle markets.

12. In the absence of a provision anywhere including the bye laws regarding permission to be obtained for holding cattle market by a Bhumidhar on his own land, it was obviously not necessary for a Bhumidhar to obtain such permission. In this situation, opposite parties Nos. 3 to 5 cannot be said to have acted against law in holding cattle market on their land without obtaining permission of the District Magistrate or without using the receipt book in Police Form No. 54. They will be taken to be holding market on their land during the relevant period earlier when compared with the petitioner. The clash of dates was occasioned when the petitioner applied for and was granted permission to hold cattle market during the same period when the opposite parties were holding their market. The petitioner cannot derive any advantage from out of the fact that he had obtained permission from the District Magistrate in February, 1985 while opposite parties 3 to 5 obtained permission by the impugned order dated May 29, 1985. Out of the two contenders if any one had and has a preferential right, it is the opposite parties 3 to 5 and not the petitioner.

13. Now when the opposite parties had also realized the need and necessity to obtain permission of the District Magistrate for holding the cattle market and to use the receipt book in Police Form No. 54 and disputes have arisen between the parties at least asserting their rival claims for holding cattle market on their respective land during the same period every year, it may be necessary for the District Magistrate to intervene and consider the matter in the light of the judicial pronouncements and the two Government Orders referred to above and pass appropriate orders keeping in view the guidelines under the said Government Orders. The relevant period for holding the cattle markets has also expired so far as the current year is concerned. This period falls sometime in the month of June and as such it is necessary that the District Magistrate acts sufficiently in advance so as to pass necessary orders before the relevant period of the year 1988. We think any other direction or order is hardly called for in disposal of the writ petition.

14. In view of the above, the writ petition is disposed of with the order that the matter shall be considered and appropriate orders passed by the District Magistrate, Hardoi in the light of what has been observed above. Parties shall bear their own costs.