

(1966) 09 AHC CK 0036

In the Allahabad High Court

Case No : Criminal Rev. No. 230 of 1965

Raghubir Sahai Srivastava

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-09-1966

Acts Referred:

Uttar Pradesh Road Side Land Control Act, 1945 — Section 13
Uttar Pradesh Roadside Land Control (Sanshodhan) Adhiniyam, 1965 — Section 4
Uttar Pradesh Road Side Land Control Act, 1945 — Section 13
Uttar Pradesh Roadside Land Control (Sanshodhan) Adhiniyam, 1965 — Section 4
Uttar Pradesh Road Side Land Control Act, 1945 — Section 13
Uttar Pradesh Roadside Land Control (Sanshodhan) Adhiniyam, 1965 — Section 4

Citation : (1967) 37 AWR 351

Hon'ble Judges : D.P. Uniyal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Uniyal, J.—The Applicant has been sentenced to a fine of Rs. 200/- in default to 2 months" S.I. u/s 13 of the UP Roadside Land Control Act, 1945 (UP Act No. X of 1945) for contravening Section 5 of that Act, to wit, raising a building within the controlled area as defined in Section 4.

2. The State Government by notification dated 3-10-1959 declared the Grand Trunk Road as a controlled area u/s 3. That section lays down that on the making of a notification by the State Government any land within a distance of 440 yards from the centre line of any road shall be a controlled area. Sub-section (6) of Section 2 defines "road" to mean a metalled road maintained by the State Government or by a local authority. In the year 1956 the Central Government passed an Act known as National Highways Act (Act No. 48 of 1956). By Section 2 of this Act certain highways specified in the schedule were declared to be national highways. The Grand Trunk Road, the road under consideration in the present case, was included in the schedule as a national highway. Section 4 declared that all national highways shall vest in the Union and for purposes of

the Act "highway" shall include all land appurtenant thereto whether demarcated or not, all bridges, culverts, etc. and all fences, trees, posts and boundary, furlong and mile stones of such highways. After the coming into force of the (sic) Act on 15-4-1957 the definition of "road" as given in Section 3 of the UP Act of 1945 became inconsistent with Section 2 of the Central Act. The State Government, therefore, passed an amending Act (Act No. VI of 1965). By the said Amending Act Clause (6) of Section 2 which defined "road" was drastically altered and reads thus:

"Road" means a metalled road maintained by the State Government, the Government of India or a local authority, or a route demarcated by the State Government, the Government of India or a local authority, with a view to constructing along it a metalled road and includes a national highway.

3. By Section 4 of the Amending Act it was declared that every notification issued and every order or declaration made under the old Act shall be deemed to be considered as if made under the Amending Act.

4. The question arises whether the Applicant can be held to have committed an offence u/s 13 of the UP Act. It is conceded that it would have been perfectly lawful to make a construction on the disputed land before 3-10-1959 when the Grand Trunk Road was declared to be a controlled area by the State Government. It is further conceded and indeed cannot be disputed, that from the date of the commencement of the Central Act, 1956 till the passing of the UP Amending Act, 1965 it was not an offence to raise a construction merely on the ground that it fell within 440 yards from the centre line of a road controlled or managed by the State. It is, however, contended that by virtue of Section 4 of the Amending Act which makes the provisions of the unamended Act retrospective, the Applicant is liable to be convicted. This contention, in my opinion is against the principles of natural justice for a person cannot be convicted in respect of an act or omission which did not constitute an offence when it was alleged to have been done. Inasmuch as the constructions were made in February 1964 before the Amending Act came to be passed, the Applicant was not liable to be convicted as it did not constitute an offence to make a construction on one's land even if the same was in proximity of the national highway.

5. This revision must, therefore, succeed. It is accordingly allowed and the conviction and sentence of the Applicant is set aside. The fine if already paid shall be refunded to the Applicant.