
(1967) 08 AHC CK 0006

In the Allahabad High Court

Case No : Criminal Rev. No. 926 of 1965 and Cr. Rev. No. 2331 of 1965

Ram Dulare

APPELLANT

Vs

State of UP

RESPONDENT

Date of Decision : 08-08-1967

Acts Referred:

Uttar Pradesh Road Side Land Control Act, 1945 — Section 3(1)

Citation : (1968) 38 AWR 185

Hon'ble Judges : W. Broome, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

W. Broome, J.—These two criminal revisions filed by Ram Dulare and Abdul Hasan involve similar questions of fact and law and may be conveniently dealt with together. Both the Petitioners have been convicted for offences u/s 13 of the U.P. Roadside Land Control Act, 1945 and the findings arrived at by the courts below show, that both of them have constructed houses within the controlled area of the Grand Trunk East Road with in the district of Allahabad.

2. The argument advanced on behalf of the Petitioners is that since this road has been declared a national highway and vests in the Union, the State Government has ceased to have any concern with it and the notification issued by the State Government declaring a "controlled area" on either side of this road under the provisions of the UP Roadside Land Control Act is without jurisdiction.

3. "National Highway" has been defined in Section 4 of the National Highways Act, 1956 to include all lands appurtenant to such highways. But under the U.P. Roadside Land Control Act, 1945 the State Government is empowered to declare all land within 440 yards from the centre line of any road to be a controlled area, whether that land is appurtenant to the road in question or not. The plots on which the Petitioners in the present cases have built their houses cannot be said to be appurtenant to the Grand Trunk Road and do not therefore, form part of

the national highway. Thus even if it be accepted that the State Government could not issue notifications regarding the national highway (i.e. the road itself and the land appurtenant thereto), there was nothing to prevent the State Government from issuing a notification that would affect land other than that appurtenant to the road, including the land on which the Petitioners have built.

4. The legal position has been made clear by the Amending Act, 1965, whereby the U.P. Roadside Land Control Act has been amended. "Road" has been defined as including national highway; but the proviso to Clause (1) of Section 3 shows that in the case of a national highway, the highway itself, shall not be deemed to be a controlled area. This means that the State Government can lawfully issue a notification under the U.P. Roadside Land Control Act, declaring land on either side of the road upto a distance of 440 yards to be a controlled area, but the declaration will take effect only with regard to that portion of the area which is not included in the actual highway itself and the land appurtenant thereto. The land built upon by the Petitioners in the present case did not form part of the actual highway or of the land appurtenant thereto and consequently the State Government's declaration of the controlled area remained in full force in respect of their land.

5. An attempt has been made to argue that the State Government is entirely precluded from passing any law in the nature of the Roadside Land Control Act that would affect the land abutting on national highways, because national highways are exclusively a union subject, vide Item No. 23 of List I of the Seventh Schedule of the Constitution. I do not see, however, how the mere fact that the State Government is precluded from making laws regarding national highways will prevent the State Government from making laws about land within its own jurisdiction and control that happens to be near or adjacent to public highways but not forming part of the highways. Laws affecting such land cannot be deemed to be laws on the subject of national highways, but would clearly lie within the State jurisdiction.

6. Accordingly I see no reason to hold that the notification under the UP Roadside Land Control Act does, not apply to the land on which the Petitioners have built their houses. They have been rightly convicted for building in that part of the controlled area which lies outside the national highway itself and its appurtenant land.

7. To other point has been pressed.

8. These petitions are without force and are accordingly dismissed.