

(1952) 12 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Miscellaneous Writ No. 32 of 1952

Ranjeet Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 08-12-1952

Acts Referred:

Constitution of India, 1950 — Article 226
Marwar Police Act, 1948 — Section 15(1), 16

Citation : AIR 1953 Raj 170 : (1953) RLW 15

Hon'ble Judges : Wanchoo, C.J.;Bapna, J

Bench : Division Bench

Advocate : Thanchand, for the Appellant; Kansingh, for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an application under Article 226 of the Constitution for the issue of a writ, direction or order in the nature of prohibition forbidding the opposite parties, namely the State of Rajasthan, and the Inspector General of Police, Rajasthan, from recovering from the applicant the cost of maintenance of additional police force at Nanani, and from taking possession of the applicant's jagir for that purpose.

2. The case put forward by the applicant is this: He is the jagirdar of village Nanani in Tahsil Bilara. In 1948, the Dhani of one Prabhudayal was ransacked by dacoits. Thereafter punitive police force was quartered in village Nanani under the orders of the Chief Secretary to the Administrator Jodhpur, dated 28-4-1949, on the ground that Nanani was in a disturbed state. This police force remained in the village from May, 1949 to January, 1950, and the cost of maintaining this additional force for nine months came to Rs. 4,761/147-. The Tahsildar of Bilara was ordered to recover this amount from the applicant, who, however, refused to comply with this illegal order. Thereupon, the Government of Rajasthan passed orders in September, 1951, that half share of the petitioner in village Nanani be placed under State management till such time as the entire amount was

recovered. Consequently, in February, 1952, the Tahsildar ordered that possession be taken over and 21-5-1952 was fixed for carrying out the order of the Tahsildar,

The applicant filed this application on the 12th May, and his contention is that the order in question is illegal and the amount cannot be recovered from him. The main submission of the applicant is that Section 15, Marwar Police Act, 1948, requires that there should be a notification in the official gazette declaring a place to be-disturbed or dangerous, and that it is only then that the Government is entitled to quarter additional police force in the area. As this notification was never issued, all subsequent proceedings for realization of the cost of the additional police, which amounts really to a punitive tax upon the applicant, were illegal, and this Court should prohibit the opposite parties from realizing the amount from the applicant. It is also urged that, in any case the money can only be realized as provided u/s 16, Marwar Police Act, and that it was not open to the Government to attach half the applicant's jagir, and realize the amount by such attachment.

3. The application was opposed by the opposite parties. It was riot denied that no notification was issued u/s 15, Marwar Police Act. It was urged, however, that the provision regarding the issue of notification in the official gazette u/s 15 was only directory and not mandatory, and that non-observance of that provision did not, in any way, invalidate the State's authority to realize the cost of the additional police from the applicant. It was alleged that the applicant had due notice of the order of Government posting additional police at Nanani. As to the mode of realization, it was urged that the cost could be realized u/s 16, Marwar Police Act; but that was not the only method of realizing the money, and that it could be realized in any other manner provided by law. But the reply did not point out what was the other provision of law under which realization was being made. Lastly, it was urged that there was an alternative remedy for the applicant, namely to file a civil suit, which would have been equally effective and efficacious, and therefore no writ should be issued in his favour.

4. The main question, that falls for consideration in this case, is the interpretation of Section 15, Marwar Police Act which reads as follows:

"15. (1) It shall be lawful for the Government by proclamation to be notified in the official gazette and in such other manner as the Government shall direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or, that, from the conduct of the inhabitants of such area, or of any class or section of them, it is expedient to increase the number of police.

(2) It shall thereupon be lawful for the Inspector General of Police, or other officer authorised by the Government in this behalf, with the sanction of the Government, to employ any police force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid:

(3) Subject to the provisions of Sub-section (5) of this section, the cost of such additional police force shall be borne-

(a) by the landlord or landlords of the area; or

(b) by all the inhabitants of the area; as the Government may determine.

(4) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost-

(a) among the landlords; if there is more than one landlord, or

(b) among the inhabitants, as the case may be, who are, as aforesaid liable to bear the same, and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such landlords or inhabitants, as the case may be.

(5) It shall be lawful for the Government, by order, to exempt any persons or class or section of such landlords or inhabitants, from liability to bear any portion of such cost.

(6) Every proclamation issued under Sub-section (1) of this section shall state the period for which it is to remain in force but it may be withdrawn at any time or continued from time to time for a further period or periods as the Government may in each case think fit to direct. Explanation: For the purposes of this section, "inhabitants" shall include persons who themselves, or by their agents or servants, occupy or hold land or other Immovable property within such area, and landlords who themselves, or by their agents or servants collect rents direct from ryots or occupiers in such area, notwithstanding that they do not actually reside therein".

5, Section 15 (1) provides for declaring any area to be in a disturbed] or dangerous state requiring increase in the number of police. This declaration is to be by means of a proclamation to be notified in the official gazette, and in such other manner as the Government shall direct. Section 15 (2) says that it shall thereupon be lawful for the Inspector General of Police with the sanction of Government to employ any police force in addition to the ordinary fixed complement to be quartered in the area. The word "thereupon" clearly shows that the additional police can be employed only after the proclamation has been made in the manner provided by Sub-section (1). Sub-section (3) then provides that the cost of such additional police shall be borne by the landlord or landlords of the area, or by all the inhabitants as the Government may determine. Sub-section (4) provides for apportionment of the cost, and Sub-section (5) gives authority to Government to exempt persons. Sub-section (6) says that every such proclamation shall state the period for which it is to remain in force; but it may be withdrawn at any time or continued from time to time for a further period or periods as the Government may in each case think fit to direct.

6. Considering the scheme of the section, it is, in our opinion, quite obvious that the issue of the proclamation by notification in the official gazette and in such other manner as the Government shall direct is the basis of all further action by Government in connection with the quartering of additional police. We cannot accept the contention of the State that the issue of the proclamation in the official gazette and in some other manner is merely directory and that if an order in the terms of Section 15 (1) has been passed, though not published, it will suffice for the purpose of casting the responsibility on the landlords or inhabitants of the area concerned to pay for the additional police. The reason why the legislature considered it necessary that the proclamation should be notified in the official gazette and some other manner is also not far to seek. This section provided in a sense for a punitive police tax to be imposed on the landlords or inhabitants of a certain area which was declared to be in a disturbed or dangerous state. In order that the inhabitants of that area might know that they were to be saddled with the responsibility of paying for the additional police, it was necessary to provide for some method of publication.

The method provided in this section is by notification in the official Gazette and such other manner as the Government thought fit. If such publication is not made, the inhabitants of the area may never come to know that additional police had been quartered in their area, and that they would be liable to pay for it. If the inhabitants know of such a proclamation and their liability to pay for the additional police, they may take steps to see that the circumstances, which led the Government to make the proclamation, disappear as soon as possible so that their liability may be reduced to the minimum. Sub-section (6) provides that such proclamation shall mention the period for which it shall remain in force; but it is open to the Government to withdraw the force before the period is over. Unless the proclamation is issued in the manner provided in Section 15 (1), the inhabitants may not know for how long the additional police is quartered in their midst, and may not be able to make representations to the Government to withdraw the police as conditions change.

Further Sub-section (5) provides for exemption of persons, and unless the proclamation is published in the manner provided in Section 15 (1), persons may not be able to make representations to Government to exempt them. Then there is a provision for apportionment of the cost under Sub-section (4), and unless there is publication as provided in Section 15 (1), persons may not be able to make a representation to the Magistrate of the district as to their means to pay a part of the cost. These considerations, therefore, clearly lead to the conclusion that the publication of the proclamation in the official gazette and in such other manner as the Government deem fit is of the essence, and unless this is done no recovery can be made of the cost of the additional police. In this view of the matter, we are clearly of opinion that the scheme of Section 15 itself shows that the provision as to publication of the proclamation in the official gazette and in such other manner is mandatory and not directory, and that compliance with it is essential before liability can be cast on the landlords or inhabitants of the area.

7. Further, if we look to Section 15 A, we again see the necessity of publication of the proclamation. Section 15A provides for compensation to persons in the disturbed area. It begins by saying that

"if in any area in regard to which any proclamation notified under the last preceding section is in force."

This clearly means that before persons can take advantage of Section 15A, there must be a proclamation notified u/s 15(1). If the provision was merely directory and not mandatory, persons, for whose benefit Section 15A has been enacted, would not receive the benefit intended to be given to them. Further Section 15A provides for recovery of compensation, and here again the persons, who have to pay the amount, should, at any rate, know that their area has been declared a disturbed or dangerous area. This consideration, therefore, enforces the conclusion which arises on a consideration of Section 15.

8. Learned Assistant Government Advocate relied on two cases in support of his submission that the provision as to notification in the Gazette is directory and not mandatory. In --"Montreal Street Rly. Co. v. Normandin" AIR 1917 PC 142 (A), it was held by their Lordships that certain provisions in the Revised Statutes of Quebec as to the revising of list of Jurors were directory and not mandatory. Dealing with the principles applicable to such cases, their Lordships observed as follows at page 144 -

"When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

9. The facts of that case were that certain jury lists, which should have been revised, were not revised for a number of years, and juries were chosen by courts from unrevised lists. It was in those circumstances that their Lordships held that the provision must be construed as directory, as it would otherwise work great injustice to parties who had litigation in courts, since they had no control over the revision of the lists. Maxwell on Interpretation of Statutes, Ninth Edition, at page 374, says as follows -

"It may, perhaps, be found generally correct to say that nullification is the natural and usual consequence of disobedience, but the question is in the main governed by considerations of convenience and justice, and, when that result would involve general inconvenience or injustice to innocent persons, or advantage to those guilty of the neglect, without promoting the real aim and object of the enactment, such an intention is not to be attributed to the Legislature

A strong line of distinction may be drawn between cases where the prescriptions of the Act affect the performance of a duty & where they relate to a privilege or power. Where powers, rights or immunities are granted with a direction that certain regulations, formalities or conditions shall be complied with, it seems neither unjust nor inconvenient to exact a rigorous observance of them as essential to the acquisition of the right or authority conferred, and it is, therefore, probable that such was the intention of the Legislature."

10. In the case before us, obviously a power has been granted by the legislature to realize the cost of the additional police from persons in what has been notified to be a disturbed area, and we are of opinion that strict compliance with the provisions of the law is necessary before such power can be assumed. The present is not a case involving neglect of duty as was the case of the Montreal Street Railway Company (1).

11. The next case is --" Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others, There the question arose as to the manner in which an executive decision has to be expressed under Article 166(1) of the Constitution, and what was the effect if that article was not strictly complied with. Das J., drawing a distinction between directory and mandatory provisions of a statute, observes as follows at page 185 -

"It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done."

12. This statement of the law is almost in the same terms as in the case of Montreal Street Railway Company. We have already pointed out that in this case a certain power is conferred by the legislature, namely the power to realize costs of the additional police from the inhabitants of a disturbed area, and it is not merely a case of some duty being imposed. Under these circumstances, we are of opinion that if the power is to arise, the statute must be strictly complied with. It follows, therefore, that the provisions of Section 15(1), Marwar Police Act, are mandatory and not merely directory.

13. Reference in this connection may be made to --" AIR 1927 176 (Privy Council) That was also a case of imposition of additional police in the city of Malegaon. The question that arose for decision was whether the proviso to Section 25(1), Bombay District Police Act, was mandatory and therefore to be strictly complied with. Section 26(1) laid down that the punitive police tax for additional police shall be recovered by the Municipality. * The proviso said that in

default of such recovery, it shall be lawful for the Government to direct or to recover such tax or rate. In that case, the Collector reported that the Municipality was unwilling, to recover the tax. Thereupon the recovery of the tax was placed in the hands of the Collector, and the question arose whether the Municipality had made default in the collection of the tax to authorise the Collector to collect it.

Their Lordships observed as follows at page 182 -

"The Police Act interposes between the punitive action of the Government and the incidence of the burden on the individual the executive action of a Municipality which may be supposed to feel a responsibility towards its rate-payers and to mitigate, from their point of view the severity of the chastisement. It has, therefore, a constitutional importance, which must be recognised whether the practical moment of this arrangement is really considerable or not. On this point only and on this ground alone their Lordships are of opinion that the demand made by the Collector for payments in recovery of the costs of the additional police was premature and not in accordance with the Act."

14. This authority, in our opinion, clearly shows that when a power is conferred it can only be exercised if the provisions of the law are strictly complied with, i.e. in such cases the provisions are mandatory. Section, 15(3), Marwar Police Act, imposes liability for the cost of the additional police on the landlords or inhabitants of the area, and Section 15(4) gives power to the District Magistrate to apportion the cost between such landlords or inhabitants, and Section 16 gives power for the recovery of the cost. In order that these powers may be exercised, it is, in our opinion, necessary that Section 15 (1) should be strictly complied with, which means that it is a mandatory provision. The mere fact that in this particular case the whole cost was put on one man would make no difference to the interpretation of the section, for it happens to be merely an accident. We are, therefore, of opinion that Section 15(1), Marwar Police Act, is mandatory and not directory, and as it was not strictly complied with, the cost of the additional police cannot be recovered from the applicant.

15. The next question relates to the method of recovery. Section 16, Marwar Police Act, provides for realization of the cost in the manner provided by Sections 383 and 387, Marwar Criminal P. C. for recovery of fines, or by suit in any competent Court, Section 386, Marwar Cri. P. C. merely provided for the issue of a warrant by distress and sale of any movable property. It does not authorise realization by attachment of immovable property, and collection of rents thereof. Even if Section 386 of the Criminal P. C. which is now in Rajasthan in place of Section 386, Marwar Criminal P. C. were to be applied, the method to be adopted is either to issue a warrant for attachment and sale of movable property, or to issue an order to the Collector of the district authorising him to realize the amount by execution according to civil process against movable or immovable property, or both.

If, therefore, immovable property of the person, who is to pay the additional costs, is to be attached, the procedure is that the Collector of the district should apply to the civil Court for execution according to civil process. The method, therefore, adopted in this case for realization of the amount by attachment of the jagir of the applicant is not justified, u/s 16, Marwar Police Act. It is said in reply by the State that Section 16 did not exhaust the remedies open to the State, and that the amount could be recovered in any other manner provided by law. But the learned Assistant, Government Advocate has been unable to point out to us any other law which authorises the State Government to take the action which it actually did. We are, therefore, of opinion that the method adopted in this case for realization is also unauthorised by law.

16. The last point that is urged is that it was open to the applicant to file a suit in the civil Court, and as such we should not exercise our extraordinary jurisdiction in his favour when there was an alternative remedy open to him, which was equally beneficial, convenient and effectual. It is well settled that generally speaking the High Court will not use its extraordinary jurisdiction under Article 225 where there is an alternative remedy available, which is equally convenient, effectual and beneficial. But Article 226 is very general in its terms and this Court has power in a suitable case to pass an order under it even though there may be another remedy open to the applicant. The recovery of the cost of the additional police is in reality the imposition of a punitive police tax on the applicant. Article 265 of the Constitution lays down that no tax shall be levied or collected except by authority of law. We have already held that the tax in this case was levied without the authority of law, inasmuch as the mandatory provisions of Section 15(1), Marwar Police Act (No. 11) of 1948 were not strictly complied with. The question then is whether we should grant the applicant's prayer, even though he could have filed a suit in the civil Court. We are of opinion that a distinction should be drawn between cases where the levy of the tax itself is illegal or the law imposing the tax is ultra vires and cases where the law or the levy may be valid, but the method of collection of tax is illegal, or collection is being made from a wrong person, or there is some other dispute of detail.

Where the levy, itself is illegal as in this case or where the law imposing the tax is ultra vires, the matter should be decided as early as possible & if a party comes to this Court, it is more convenient that the question of the legality of the law imposing the levy or the legality of the levy itself should be set at rest as early as possible. We may in this connection refer to --"Madan Gopal v. Union of India" AIR 1951 Rai 94 (2) (D). There the question was whether the levy of Income Tax in Rajasthan under the Income Tax Act was legal. It was held that it was not, and thereupon a direction was issued to the Union of India not to levy Income Tax on the income of the petitioner in that case, accruing, arising or received in Rajasthan. The principle of that case, in our opinion, applies to this case also because the cost of the additional police is, in our opinion, a tax.

17. We, therefore, allow the application, and direct the opposite parties not to

realize the cost of the additional police from the applicant. The applicant will get his costs from the opposite party 1.