

Rifakat Husain And 2 Others vs State Of U.P. Thru. Prin. Secy. Home Lko. ... on 24 April, 2025

Author: Manish Kumar

Bench: Manish Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:23491

Court No. - 14

Case :- APPLICATION U/S 482 No. - 2706 of 2025

Applicant :- Rifakat Husain And 2 Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another

Counsel for Applicant :- Mohd. Mansoor, Mohammad Danish

Counsel for Opposite Party :- G.A.

Hon'ble Manish Kumar, J.

1. With the consent of the parties, the matter is being decided finally at the admission stage itself.
2. The present application under Section 482 Cr.P.C. read with Section 528 Bharatiya Nagrik Suraksha Sanhita, 2023 (in short "BNSS") has been filed by the applicants with the following main reliefs:

"Wherefore, it is respectfully prayed that this Hon'ble Court may kindly be quash the impugned Summoning Order dated 21.07.2023 issued by the learned Court of FTC (S.D.)/Additional Chief Judicial Magistrate, Sultanpur, Criminal Case No.2934/2022

(State Vs. Salman and others), arising out of F.I.R. No.0368/2022, under sections-2/3 of the Prevention of Damage to Public Property Act 1984, lodged at Police Station Gauriganj, District Amethi and its chargesheet No.01 of 2023 dated 07.01.2023, as contained in Annexure No.01 and 02 to this petition.

It is further prayed that the further proceeding of Criminal Case No.2934/2022 (State Vs. Salman and others), arising out of F.I.R. No.0368/2022, under sections-2/3 of the Prevention of Damage to Public Property Act 1984, lodged at Police Station Gauriganj, pending before the Court of FTC (S.D.)/Additional Chief Judicial Magistrate, Sultanpur and its summoning orders dated 21.07.2023 may kindly be stay, during pendency of the present petition, in the interest of justice."

3. The brief facts of the case are that an FIR dated 10.10.2022 has been lodged against the unknown persons under Section 2/3 of Prevention of Damage to Public Property Act, 1984 by the respondent no. 2 being a Gram Pradhan alleging therein that at the midnight of 9/10.10.2022 certain unknown persons reached Amrit Sarowar Park and broke the iron gate, uprooted the seven cemented benches out of 14 benches and also destroyed the plants and flowers.

4. Learned counsel for the applicants has submitted that from the perusal of the FIR, it appears that the alleged offence mentioned in the FIR was being made in a Amrit Sarowar Park developed under the MANREGA Scheme on the Gram Sabha land and in case if there is any damage to the property of the Gram Sabha, the remedy available with the Gram Sabha is to proceed under Section 67 of the U.P. Revenue Code, 2006 and lodging of the criminal case is not an appropriate proceeding to initiate the matter.

5. In support of his submission, learned counsel for the applicants has relied upon the judgment of this Court in the case of Prabhakant and Another vs. State of U.P. and Ors reported in 2023 SCC Online All 397. The relevant extracts of the said judgment are quoted hereinbelow:-

"(14). Now coming to yet another aspect of the issue, learned counsel for the applicants in order to buttress their contention have drawn attention of the Court to the provisions of Section 67 of the U.P. Revenue Code which speaks about the power to prevent damages, misappropriation and wrongful occupation of Gram Panchayat property:-

(i) Where any property entrusted or deemed to be entrusted under the provisions of this Code to a Gram Panchayat or other local authority is damaged or misappropriated, or where any Gram Panchayat or other authority is entitled to take possession of any land under the provisions of this Code and such land is occupied otherwise than in accordance with the said provisions, the Bhumi Prabandhak Samiti or other authority or the Lekhpal concerned, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(ii) Where from the information received under sub-section (i) or otherwise, the Assistant Collector is satisfied that any property referred to in sub-section (i) has been damaged or misappropriated, or any person is in occupation of any land referred to in that sub-section in contravention of the provisions of this Code, he shall issue notice to the person concerned to show cause why compensation for damage, misappropriation or wrongful occupation not exceeding the amount specified in the notice be not recovered from him and why he should not be evicted from such land.

(iii) If the person to whom a notice has been issued under sub-section (ii) fails to show cause within the time specified in the notice or within such extended time as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person shall be evicted from the land, and may, for that purpose, use or cause to be used such force as may be necessary, and may direct that the amount of compensation for damage or misappropriation of the property or for wrongful occupation as the case may be, be recovered from such person as arrears of land revenue.

(iv) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under sub-section (ii), he shall discharge the notice.

(v) Any person aggrieved by an order of the Assistant Collector under Sub-section (iii) or Sub-Section (iv), may within thirty days from the date of such order, prefer an appeal to the Collector.

(vi) Notwithstanding anything contained in any other provisions of this Code, and subject to the provisions of this section every order of the Sub-Divisional Officer under this section shall, subject to the provisions of sub-section (5) be final.

(vii) The procedure to be followed in any action taken under this section shall be such as may be prescribed.

Explanation.- For the purposes of this section, the word "land" shall include the trees and building standing thereon."

(15). Further, under Rule 67(1) of U.P. Revenue Code, 2016, it is incumbent upon the Assistant Collector to make an inquiry as he deems proper and obtain further information regarding the following issues :

"(a) full description of damage or misappropriation caused or the wrongful occupation made with details of village, plot number, area, boundary, property damaged or misappropriated and market value thereof;

(b) full address along with parentage of the person responsible for such damage, misappropriation or wrongful occupation;

(c) period of wrongful occupation, damage or misappropriation and class of soil of the plots involved;

(d) value of the property damaged or misappropriated calculated at the circle rate fixed by the Collector and the amount sought to be recovered as damages."

(16). Thus, from the above it is clear that as per the U.P. Revenue Code, it is the Assistant Collector of the area who is the authority concerned to act a pivotal role in demarcation and holding and declaring the land in dispute is encroached by the applicants. The Investigating Officer of criminal cases is not even remotely connected to conduct this exercise. The entire procedure has been laid down in Section 67(2) that only after getting a reply from the alleged encroacher, the Assistant Commissioner/Sub Divisional Officer has to pass an order giving reasons for not exceeding the explanation, if so offered by the person concerned. The eviction from the land in dispute can only be recorded after disposal of the explanation offered by the person concerned keeping in line with the cardinal principle of natural justice by passing a well reasoned and speaking order while disposing of the said explanation. The Act itself contained the amount of compensation of damage or misappropriation of the property or for wrongful occupation, as the case may be, may be recovered from such person as arrears of land revenue. Section 210 of the Revenue Code, 2006 confers supervisory power on the Board or the Commissioner to call for the record of any proceeding decided by the subordinate revenue court in which no appeal lies for the purpose of satisfying itself or himself as to the legality or propriety of any order passed in such suit or proceeding.

(17). A careful reading of the provisions of the Revenue Code, 2006, thus, makes it clear that the proceeding for causing damage to the public property can be undertaken against any person who is in wrongful occupation of the same or causes damage or misappropriations to the said property. The nature of eviction proceeding under Section 67 of the Revenue Code, 2006, is, however, summary in nature. The rights of the parties claimed, if gives rise to a dispute requiring adjudication on the questions of fact, a suit for declaration has to be instituted against such person. The Gram Sabha may institute a suit under Section 145 of the U.P. Revenue Code, 2006 for declaration of its right or to seek any further relief. In case of institution of such a suit, a temporary injunction may be granted by the Court concerned to prevent wastage, damage or alienation of the suit property. The Revenue Code, 2006 is a Special enactment providing for the law relating to the 'land' defined under Section 4(14) of the Code.

(18). As far as criminal proceeding for illegal encroachment, damage or trespass over the land belonging to Gram Sabha is concerned, the same can be undertaken but it would be subject to the adjudication of rights of the parties over the land in dispute as the said determination can be done only by the revenue Court."

6. Learned counsel for the applicants has further relied upon the judgment dated 06.08.2020 passed in Application U/s 482 No. 9964 of 2020 (Munshi Lal and Another vs. State of U.P. and

Ors.). The relevant extracts of the same are quoted hereinbelow:-

"5. In any case, the question as to whether the land in dispute belongs to the applicants or they had illegally encroached upon the land vested in Gram Sabha, allegedly recorded as Banjar, can only be adjudicated by the revenue Court. The proper proceeding for eviction of the unauthorized occupant can be undertaken under Section 67 of the Revenue Code, 2006. The short cut procedure adopted by the Lekhpal of the village concerned is nothing but with a view to harass the applicants.

6. Having heard the learned counsel for the applicants and perused the record. At the out set, we may note that complete mechanism has been provided under Section 67 of the Revenue Code, 2006 empowering the Gram Sabha or any other authority to take possession of any land under the provisions of the Revenue Code, where such property is entrusted or deemed to be entrusted to a Gram Sabha or other local authority and is damaged or misappropriated by anyone. The Sub-Divisional Officer of the concerned Sub-Division is empowered to take action on the information received from the Bhumi Prabandhak Samiti or other authority or the Lekhpal concerned about such illegal occupation or damage or misappropriation of the Gram Sabha Land. In case, any person is found in occupation of any such land in contravention of the provisions of the Revenue Code, the Sub-Divisional Officer has to issue notice to the person concerned to show cause as to :- (i) why compensation for damage, misappropriation or wrongful occupation specified in the notice be not recovered from him? (ii) why he should not be evicted from such land?

7. The person to whom such a notice is issued under sub-section (2) of Section 67 of the Code, can submit his reply disclosing his right or title or the nature of occupation over the land in question. In that case, the Sub- Divisional Officer has to pass an order giving reasons for not accepting the explanation, if so, offered by the person concerned. The eviction from the land can only be ordered after disposal of the explanation offered by the person concerned keeping in line with the principles of natural justice by passing a reasoned and speaking order which shall disclose the application of mind by the Officer. The amount of compensation for damage or misappropriation of the property or for wrongful occupation, as the case may be, may be recovered from such person as arrears of land revenue. Under sub-section (4) of Section 67, the Officer is empowered to discharge the notice if he forms an opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation of the property in question. Any person aggrieved by the order of the Sub-Divisional Officer under sub-section (3) or sub-section (4) of Section 67 may prefer an appeal to the Collector within thirty days from the date of such order. The procedure for undertaking the proceedings under Section 67 of the Revenue Code, thus, is complete in itself and does not leave any scope for any further computation of damage for wrongful occupation, damage caused or misappropriation of Gram Sabha land.

8. Section 210 of the Revenue Code, 2006 confers supervisory power on the Board or the Commissioner to call for the record of any proceeding decided by the subordinate revenue court in which no appeal lies for the purpose of satisfying itself or himself as to the legality or propriety of any order passed in such suit or proceeding.

Chapter XV of the Revenue Code, 2006 talks of penalties for encroachment and provides that any person who encroaches upon or causes any obstruction to the use of any public land (including chak road). path or common land of the village, shall be liable to a fine minimum Rs. 500/- and not exceeding Rs. 2,000/- and in case of his repetitive act, the Sub-Divisional Officer or the Tehsildar may require him to execute a personal bond for a sum not exceeding of Rs. 5,000/-.

9. A careful reading of the provisions of the Revenue Code, 2006, thus, makes it clear that the proceeding for causing damage to the public property can be undertaken against any person who is in wrongful occupation of the same or causes damage or misappropriation to the said property. The nature of eviction proceeding under Section 67 of the Revenue Code, 2006 is, however, summary in nature. The rights of the parties claimed, if gives rise to a dispute requiring adjudication on the questions of fact, a suit for declaration has to be instituted against such person. The Gram Sabha may institute a suit under Section 145 of the U.P. Revenue Code, 2006 for declaration of its right or to seek any further relief. In case of institution of such a suit, a temporary injunction may be granted by the Court concerned to prevent wastage, damage or alienation of the suit property. The Revenue Code, 2006 is a Special enactment providing for the law relating to the 'land' defined under Section 4(14) of the Code.

10. As far as criminal proceeding for illegal encroachment, damage or trespass over the land belonging to Gram Sabha is concerned, the same can be undertaken but it would be subject to the adjudication of rights of the parties over the land in dispute as the said determination can be done only by the revenue Court.

11. As far as the P.D.P.P. Act, 1984 is concerned, the same has been enacted with the specific purpose. The statement of objects and reasons of the said Act shows that it was enacted with a view to curb acts of vandalism and damage to public property including destruction and damage caused during riots and public commotion. A need was felt to strengthen the law to enable the authorities to deal with cases of damage to public property. The "public property" as defined under Section 2(b) of the P.D.P.P. Act, 1984 means any property, whether immovable or movable (including any machinery) which is owned by or in possession of or under the control of the Central or State Government or any local authority or any Corporation or any institution established by the Central, Provincial or State Act or its undertaking. Section 3 of the P.D.P.P. Act, 1984 provides that anyone who commits mischief by doing any act in respect of any public property' including the nature referred in sub-section (2) in the said section shall be punished with imprisonment and a fine depending upon the

nature of the property as per sub-section (1) and sub-section (2) of Section 3 of the P.D.P.P. Act, 1984. Section 4 provides punishment for an act of 'Mischief' causing damage to public property by fire or explosive substance. The P.D.P.P. Act, 1984 is, thus, a Special Act enacted to punish for the offence committed under Sections 3 and 4 of the said Act by doing any act of vandalism including the destruction or damage during any riots or public demonstration in the name of agitations, bandhs, hartals and the like. The "Mischief" has been defined under Section 2(a) of the P.D.P.P. Act, 1984 having the same meaning as in Section 425 of the Indian Penal Code (45 of 1860). Section 6 is the saving clause which says that the Act' 1984 covers the offence committed under it and the provisions of it are in addition to any other law which provides for any proceeding (whether by way of investigation or otherwise) which may be instituted or taken against the offender, apart from this Act. Special provisions with regard to disposal of a prayer for bail made by a person accused of commission of offence under the Act' 1984 has been provided under Section 5 of the P.D.P.P. Act, 1984.

The provisions oblige a person found guilty of commission of offence to pay the damage or loss caused to the public property. This Act, thus, covers the specific area of damage or loss or destruction of public property and recovery of such damages from the person(s) who is/are found guilty of such damage during the course of any public demonstration in the name of agitations, bandhs, hartals and the like.

12. In Re. Destruction of Public and Private Properties, In Re vs. State of Andhra Pradesh and others'. Taking a serious note of various instances where there was a large scale destruction of public and private properties in the name of agitations, bandhs, hartals and the like, suo motu proceedings had been initiated by the Apex Court and two committees were appointed to give suggestions on strengthening of the legal provisions of P.D.P.P. Act to effectively deal with such instances. The recommendations of two committees were considered and it was observed that the suggestions were extremely important and they constitute sufficient guidelines which need to be adopted. It was left open to the appropriate authorities to take effective steps for their implementation.

In a recent decision in Kodungallur Film Society and another vs. Union of India and others, relief was sought to issue a mandamus to the appropriate authorities to strictly follow and implement the guidelines formulated by the Apex Court "Destruction of Public & Private Properties In re:", with regard to measures to be taken to prevent destruction of public and private properties in mass protests and demonstrations and also regarding the modalities of fixing liability and recovering compensation for damages caused to public and private properties during such demonstration and protests.

It was acknowledged in Kodungallur Film Society that the recommendations of the Committee noted in the said judgment traversed the length and breadth of the issue at

hand and, if implemented in their entirety, would go a long way in removing the bane of violence caused against persons and property.

As far as implementation of the said recommendations, the Union had advised the States to follow the same in its letter and spirit. Issuing directions to implement recommendations made by the Apex Court in both the above decisions. Direction was issued in Kodungallur Film Society to both the Central and the State Government to do the same at the earliest.

13. In compliance thereof, the State of U.P. notified the "Uttar Pradesh Recovery of Damages to Public and Private Property Rules, 2020", framed with a view to provide for recovery of damages to public and private property during hartal, bundh, riots, public commotion, protests etc. in respect of the property and imposition of fine. The said 'Rules' provide for constitution of the claims tribunal to investigate the damages caused and to award compensation related thereto.

The area which is covered by the P.D.P.P. Act, 1984 is, thus, confined to the destruction or damage to the 'public property' within the meaning of Section 2(b) of the Act during the course of riots or public demonstrations (commotion). The said provisions, in the considered opinion of the Court, cannot be invoked for lodging the criminal complaint or the first information report on the allegations of damage or loss caused to the Gram Sabha land by illegal encroachment against a person permanently residing in the village or a tenure holder of any land in the village in question.

14. The first information report dated 19.8.2017 reporting an offence committed under Section 2/3 of the P.D.P.P. Act, 1984 is nothing but an abuse of the process of law. The concerned Magistrate has committed a patent error of law in taking cognizance of the alleged offence by passing a cryptic order without application of his independent mind. The charge sheet and the cognizance order summoning the applicants herein for alleged commission of offence under Section 2/3 of the P.D.P.P. Act, 1984 are, thus, liable to be quashed.

15. As far as the allegation of criminal offence under Section 447 IPC to constitute criminal trespass, the prosecution has to prove and the Court has to return a finding on the the evidence cutie the trespass was committed with one of the intents enumerated in Section 441 of the Indian Penal Code. The prosecution has, thus, not only to allege but also to prove that the entry or unlawful occupation must be with an intent; (i) to commit an offence; or (ii) to intimidate, insult or annoy any person in possession of the property". Every 'trespass' by itself is not criminal. In absence of any such finding, the conviction under Section 447 IPC cannot be sustained. The offence under Section 447 I.P.C. though is cognizable but is also a compoundable offence triable by any Magistrate, trial of which has to be conducted summarily. A charge under this section should specifically state intent which is alleged. The

accused may lay a bonafide claim and right in the land in question. Although he may have no right to the land but he cannot be convicted of criminal trespass unless it is proved by the prosecution that he did so with an intention to intimidate, insult or annoy the person in possession or to commit an offence. The complainant need not be necessarily a person in actual physical possession of the land in question on the date of entry of the trespasser, i.e, the accused person. He may be a person to whom the land in question belonged or deemed to have been vested. The person who actually owns the land or property is the competent person to lodge the complaint.

16. In the instant case, the allegations in the F.I.R. are general and vague against many persons with respect to different nature of lands. So far as the applicants herein both sons of Ganga Ram are concerned, it is averred in the FIR that they had encroached and damaged the public property belonging to Gram Sabha. The charge sheet does not disclose appreciation of any particular material on record against the applicants. The order of taking cognizance passed by the Magistrate is a non-speaking order. In this case, the criminal action proposed against the applicants, thus, is a result of non-application of judicial mind.

17. Noteworthy is that the allegations against the applicants herein are of encroachment on "Banjar land and not on a public utility land, which can be regularized if a proceeding for eviction is instituted against the applicants under the Revenue Code, 2006 as they may take a defence of being landless labourers of the village concerned, Le of being eligible persons for allotment of land of regularization of their occupation/possession.

18. In any case, determination on the disputed questions of facts, in an appropriate proceeding before the Revenue Court is necessary. Neither the damage can be imposed for alleged 'Mischief by taking criminal action under Section 2/3 of the PD.PP. Act, 1984 nor any offence of criminal trespass under Section 447 of the Indian Penal Code can be said to have been prima facie made out against the applicants herein. The criminal proceedings initiated against the applicants pursuant to the F.I.R. namely Case Crime No. 0850 of 2017. Police Station Banda, District Shahjahanpur cannot but be said to be an abuse of the process of law or the Court. The cognizance order dated 14.10.2019 in Criminal Case No. 2418 of 2019 (State vs. Kastoori Singh and others) has been passed in complete ignorance of law. The continuation of criminal proceedings, in the considered opinion of the Court, being an abuse of process of the Court, ends of the justice requires that the said proceedings be quashed. 19. Invoking inherent powers under Section 482 Cr.P.C. of the High Court, the entire criminal proceedings of Case Crime No. 850 of 2017, Police Station Banda, District Shahjahanpur is hereby quashed.

The application stands allowed."

7. Learned AGA has opposed the present application but he could not dispute the observations made by this Court in the judgments passed in the case of Prabhakant (supra) and Munshi Lal (supra).

8. In view of the facts, circumstances and discussion made hereinabove and as per the law settled observation in the judgment, referred above, this Court is of the view that the present case is squarely covered by the judgements of this Court passed in the case of Prabhakant (supra) and Munshi Lal (supra).

9. In the result, the present application is allowed.

10. The entire criminal proceedings arising out of Criminal Case no. 2934/2022, on the basis of Charge sheet no. 1/2023, dated 7.1.2023 arising out of Case Crime/FIR No. 0368/2022, U/s 2/3 Prevention of Damage to Public Property Act 1984, Police Station Gauriganj, District Amethi, are hereby quashed.

Order Date :- 24.4.2025 AKK