

R.K. Garg vs Superintendent District Jail ... on 28 October, 1970

Bench: J.M. Shelat, G.K. Mitter, C.A. Vaidialingam

CASE NO.:

Writ Petition (civil) 319 of 1970

PETITIONER:

R.K. GARG

RESPONDENT:

SUPERINTENDENT DISTRICT JAIL SAHARANPUR & ORS.

DATE OF JUDGMENT: 28/10/1970

BENCH:

M. Hidayatullah CJ & J.M. Shelat & G.K. Mitter & C.A. Vaidialingam & A.N. Ray

JUDGMENT:

JUDGMENT 1970 (3) SCC 227 The Judgment was delivered by :

(From Allahabad High Court) JUDGMENT HIDAYATULLAH, C.J. for the This order will dispose of Writ Petitions Nos. 319 and 372 of 1970, filed by Rajendra Kumar Garg and Writ Petition No. 323 of 1970, filed by Raj Kumar Vohra and others. By these petitions Rajendra Kumar Garg questioned his arrest and detention under Section 107/117 of the Code Criminal Procedure and for his trial for offences under Section 188, etc. of the Indian Penal Code. The petitioner contended inter alia that the provisions of Section 144 and Chapter VIII of the Code Criminal Procedure were violative of the Constitution and were, therefore void after January 26, 1950. The other petitioners also had urged the same grounds. By an order in Writ Petitions Nos. 77, 219 and 307 of 1970, delivered earlier, but for which reasons have been given today, we have held these provisions to be valid and operative. These grounds, therefore, fail. Since Writ Petition No. 323 was based only on these grounds it must fail but no order is necessary as we understand that persons proceeded against under section 107/117 have since been released and the case withdrawn against them.

2. This leaves over the contentions of Rajendra Kumar Garg regarding the validity of the order under Section 144, Criminal Procedure Code, apart from the constitutional validity of the section itself which we have already upheld. It may be mentioned that the petitioner moved another petition under Section 561-A of the Code Criminal Procedure in the High Court of Allahabad relating to his arrest for an offence under Section 188 of the Indian Penal Code and the matter is pending there. We will not, therefore, consider that aspect of the case as, according to the practice of this Court, no pronouncement is made on a point on which another petitioner is pending in the High Court. We will, therefore, confine our observations to the validity of the order under Section 144, Criminal

Procedure code as a legal order under that section.

3. The contention is that it is too wide and goes beyond the report of the police which itself is vague and gives no real information, that it imposes a blanket ban on all the Districts under the directions of the Government of the State and that the remand for trial of an offence under Section 188, Indian Penal Code, on top of a remand under Section 107/117 is invalid. The question of a second remand was also argued the other way round, that is, after a remand for trial of the offence there could be no remand under Section 107/117(3). The High Court was moved under Section 561(a) and has stayed the proceedings under section 188 of the Indian Penal Code.

4. The facts may now be stated briefly. The petitioners in these Writ Petitions were arrested under Section 151 of the Code Criminal Procedure, read with Section 188 of the Indian Penal Code on August 23, 1970. The petitioners' case is that in 1968, land in excess of the ceiling fixed by law was demarcated and vested in the State. The State, however, continued to allow it to be cultivated by the previous owners. In District Saharanpur there is a large tract of land belonging to the late Nawab Rahman Khan and is fallow and in excess of the ceiling. The petitioners are in sympathy with the movement for re-distribution of lands and the petitioners went to village Patehar, P. S. Chilkhana, District Saharanpur at about 12 noon but were obstructed by a police force and arrested before they had carried out their plans of grabbing the fallow land. Their intention was to defy the prohibitory order which had been earlier promulgated under Section 144 of the Code Criminal Procedure.

5. The petition filed by the Sub-Divisional Magistrate, Nakur, District Saharanpur, discloses that a part of the lands declared surplus under the Ceilings on Land Holdings Act were on a long term lease till 1975 for realisation of public dues. The ceiling lands were settled with Smt. Bismillah Begum, heir of Nawab Nurul Rahman Khan by the prescribed authority for one year ending on June 30, 1970, but the landholder filed a Writ Petition in the High Court of Allahabad and obtained a stay order and thus continued in possession. Besides these lands a very small portion was available for distribution. The Sub-Divisional Magistrate states that this position was explained to a certain Rao Mukhtar, one of the persons arrested, but persons were bent upon taking forcible possession of the land. The persons were, therefore, arrested in village Bertha Kayosth, Police Station Chilkana. According to the affidavit of the Sub-Divisional magistrate they were asked to disperse and it was also announced that Section 144, Criminal Procedure Code order was in force, being promulgated by the District Magistrate, Saharanpur. The order had also been given wide publicity in the village. The petitioner, however, persisted and were actually digging the land, and had put the flags of their parties on the site. There was no option but to arrest them.

6. There can be no manner of doubt than an order was promulgated under Section 144 of the Code Criminal Procedure and that the petitioners were defying the order deliberately. We believe that affidavit of the Sub-Divisional Magistrate that they were apprised of the order in many ways and disbelieve the allegation that they were not told or did not know about it. It is almost common knowledge that there was a general movement organised by the Samyukta Socialist Party and Communist Party of India to grab land of others and that orders under Section 144 of the Code of Criminal Procedure were promulgated in many districts where, the attempt was to be made. In fact,

this was the declared policy of the petitioners as is apparent from their handbills whether or not they were actually distributed before the events took place. Therefore, the police were well within their rights in frustrating the attempt by putting persons under arrest. We are not pronouncing upon the validity of the arrest of any particular individual because that matter will be gone into on evidence, if and when the trial begins. Our opinion is strictly for the purpose of these petitions and is not to be referred to in the case against them.

7. The Special Bench already indicated in their order that general orders may be issued in suitable cases. Here there was a general movement for taking over surplus land from the owners. It was not possible to serve orders upon particular persons. That is only possible where the number of persons is small and they are predetermined. In the circumstances existing in August of this year it was difficult to say who would join and who would not. A general order was thus the only course open. No doubt some other persons might have suffered inconvenience but the law allows a person to represent his case. It hardly lies in the mouths of those persons who confess to being members of parties out to seize illegally and without any excuse in law surplus lands, to say that others were likely to be inconvenienced. We, therefore, reject the contention that the application of the order being general, there was an excess in the exercise of the jurisdiction. It is significant that not one person, who was not connected with the movement, he came forward to impeach the order.

8. We are also satisfied that the District Magistrate had ample material before him to proceed to promulgate the order. The happenings of the next few days, quite clearly established the correctness of his view. We cannot probe too deeply into his reason when the conduct of the petitioners and the members of their parties clearly bears out the apprehension of the District Magistrate to be real. The evidence which has been come later from the petitioners themselves helps us in our appraisal of the assertion of the Sub-Divisional Magistrate that the District Magistrate had definite information. The reports made by the persons against whose lands the action was projected is quite clear and cogent and we cannot describe that information as either vague or not containing sufficient material for action. Further the directions of the State Government, if any, in that behalf cannot be characterised as an exercise of discretion not by the Magistrate but by the State Government. It is obvious that District Magistrates would solicit from Government advice as to the line to adopt in such a general upheaval and the advice, if any, to use Section 144 of the Code, when the situation demanded, would be perfectly in order.

9. This brings us to the consideration of the order.

The order reads :

"Whereas police report has been received that there is an apprehension of breach of peace in the district of Saharanpur due to the call of land grabbing agitation and forcible possession of the land by indulging in various overt and wrongful Acts.

Whereas it has been made to appear to me that there is apprehension of breach of peace and disturbance of public tranquillity and I am satisfied that there are sufficient grounds for immediately proceeding under Section 144, Cr. P.C., for

preservation of law and order and for maintaining public peace and tranquillity. Therefore I, G. L. Mital, District Magistrate Saharanpur, in exercise of the powers vested in me, hereby pass an order under Section 144, Cr. P.C.1. That no assembly of five persons or more than five persons shall be formed.

2. That no procession or demonstration shall be held or shall cause to be held without permission from me or City Magistrate or the Sub-Divisional Magistrate concerned in writing.

3. That no exhortation, instigation or incitement shall be caused or organised to hold any meeting, procession or demonstration.

4. That no person shall carry any fire-arms, Lathi, Spear, Danda, knife, hockey, sticks, sickle or any other sharp-edged weapon of offence.

5. That no person shall collect any bricks, brickbats, stone, acid or such other articles that can be used as missiles or as explosives on housetops or in temple, mosque or in any public places.

6. That no person shall use a loudspeaker or any other magnifying sound without prior permission by me or the City Magistrate or Sub-Divisional magistrate having jurisdiction.

7. That no person shall take possession or incite any person to take forcible possession of any land or any labourer to disassociate from work of closing any educational institution whatsoever.

8. That this order shall remain in force throughout the whole district of Saharanpur for a period of one month.

9. That is shall come into force with immediate effect and shall remain in force unless withdrawn earlier.

10. That this order shall not apply to :

(i) Magistrate, Police Officers and Government Servants on duty.

(ii) Funeral processions and religious gathering.

(iii) Old and infirm persons carrying sticks for support.

11. As immediate measures are necessary and it is a case of emergency, this order is being passed ex parte.

12. Contravention of this order shall be punishable under Section 188, I.P.C.

13. That this order shall be proclaimed by loudspeakers, affixation of copies at prominent places on the notice board of the police station and on the various notice boards in the Collectorate and other places."

The preamble gives the gist of the information, the truth of which is certified by the overt acts of the petitioners themselves. We are satisfied that the facts mentioned in the preamble existed. The order is in 13 clauses. We have read through these clauses. In the circumstances that existed these precautionary measures were not only needed but also were essential in the interest of public order. Objection was taken to Clause 6 which prohibited the use of loudspeakers. But that was capable of relaxation in a suitable case. The remaining clauses in our opinion carry out the purpose with the minimum of interruption of the life of the community. There are reasonable exclusions and the operation of the order is thus limited to those whose actions were apprehended to cause the mischief the section is intended to prevent.

10. On the whole, therefore, we are satisfied that the preventive action against the petitioners was justified. The petitions fails and are dismissed.