

State vs Hiralal on 6 January, 1953

Equivalent citations: AIR1953ALL355

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Raghubar Dayal, J.

1. This is a Government Appeal against the acquittal of Hira Lal o an offence under Section 33, Forest Act (16 of 1927) by the Additional Sessions Judge of Kumaun who set aside the order of conviction by a Judicial Magistrate of Lansdowne.

2. Hira Lal, opposite party, constructed a house on a portion of plot no. 288 which was a Kaiser-e-Hind plot. Rule 6 of the Rules made by the Governor in 1939 and notified in Notification No. 357/XIV-1928, dated 3-8-1939 and published in the Government Gazette of U. P. dated 5-8-1939, part I-A, at p. 249, is :

"No building shall be erected on unmeasured land without the permission of the Deputy Commissioner."

These rules were made under Sections 30 and 32, Forest Act, Hiralal was prosecuted because he made these constructions without the permission of the Deputy Commissioner. His defence was that the shop was constructed by his father who died in 1939. This defence was not believed.

3. The relevant portion of Section 30, Clause (c) of the Forest Act is :

"The Provincial Government may by notification in the Official Gazette prohibit from a date fixed as aforesaid the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest."

Section 33. The relevant portion of Section 33, Sub-section (i) (c) is :

"Any person who commits any of the following offences namely, contrary to any prohibition under Section 30 breaks up or deal's for cultivation or any other purpose any land in any protected forest, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both."

It is clear that the prohibition about erecting any building ordered under Rule 6 mentioned above does not come within the powers given to the Provincial Government under Section 30, Clause (c) and that even if such a power can be deemed to come under Section 30, any contravention of the rule does not make out any offence under Section 33. No other clause of Section 33 of Sub-section (1) except Clause (c) can have any bearing on this question and even Clause (c) refers to the breaking up or clearing for cultivation or any other purpose of any land in any protected forest contrary to any prohibition under a. 30. The construction of a house by itself does not come within the expression of breaking up or clearing land.

4. There was no allegation against the applicant that he had cleared up or broken land. There was no evidence about it. The opposite party was not questioned about it by the learned Magistrate. On the other hand, the evidence on the record makes it quite possible that the land of plot 288 was actually broken up or cleared by Ham Dayal, father of the opposite party. (His Lordship referred to the evidence on the point and proceeded.) 5-9. In view of this statement it is quite possible that the land had been cleared and broken up by Ram Dayal, father of the accused and that the accused himself did not commit any offence under Section 33 in connection with the clearing and breaking of land.

10. Further the rule about not constructing the house without the permission of the Deputy Commissioner does not appear to come under any of the provisions mentioned in Section 32 with respect to which the Provincial Government could make rules. It might have come under the provisions of Clause (k) of that rule which gives the Government power to make rules to regulate protection and management of any portion of the forest closed under Section 33. There is nothing on the record to show that plot no. 288 lies in any such closed area of the forest.

11. The learned Deputy Government Advocate has been unable to show us any notification under Section 30 declaring that any portion of the forest would be closed for a certain term. It follows, therefore, that this Rule 6 in its general form cannot be said to be framed within the rule-making power of the Government under Section 30 or Section 32, Forest Act.

12. The result is that the opposite party cannot be held guilty of contravening any rule made under Section 82, Forest Act.

13. In view of the above, we are of opinion that Hiralal has been rightly acquitted of the offence under Section 33, Forest Act. We, therefore, dismiss the appeal.