

T. N. Mathur

Vs

State of Uttar Pradesh

Writ Petition (Criminal) No. 1820 of 1990

(M. N. Venkatachaliah, R. C. Pathak JJ)

06.04.1992

ORDER

1. This petition alleges - and indeed the counter-affidavit substantially confirms these allegations - a very unsatisfactory state in the matter of housing of persons arrested and detained under Section 279 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 for defaults in the repayment of loans to Government. It would appear that loans borrowed from the State or its agencies are recoverable as if they were arrears of land revenue, and one of the modes of such coercive recovery is the arrest and detention of such defaulters.

2. This case also raises certain issues as to the antecedent conditions to be satisfied before the power of arrest and detention could be invoked and exercised under Section 279. On the analogous provisions of Section 51 read with Rule 37 of Order 21 of the Code of Civil Procedure, this Court has laid down the conditions for the exercise of such a drastic power (see : Jolly George Varghese v. Bank of Cochin [(1980) 2 SCC 360 : (1980) 2 SCR 913]).

3. The petition raises the immediate problems of the conditions of the lock-up at a place called Unnao in the State of Uttar Pradesh. It is alleged that the lock-up is wholly unhygienic, insanitary and unfit for human habitation. We have a report of the District Magistrate, which confirms that the lock-up is of the size of 11.5 x 8 feet, and that a small latrine of 6" x 11" attached to it is separated only by a dwarf-wall. There are no other basic facilities such as platform for sleeping, chairs or fan etc. The petitioner, who has brought this public interest litigation, states that at times 30 to 35 persons are huddled into this cell. This is disputed. But it is virtually undisputed that on occasions 7 persons were housed in it. The minimal civilised conditions required to be maintained for such detentions are not satisfied as the facts disclosed indicate that the extant conditions are wholly unsatisfactory.

4. We, therefore, issue an interim direction to the State of U.P. that wherever such detentions are resorted to, the persons detained must be housed in a lock-up which will provide at least 40 sq. ft. per person with minimal facilities of some furniture such as a cot for each of the detained persons and supply of potable water. Having regard to the climatic conditions of the place, the lock-up should provide for an electric fan. There must be hygienic arrangements for toilet. The State of U.P. shall ensure the satisfaction of these conditions wherever such arrests and detentions are resorted to.

5. The matter shall be listed for further hearing on the procedural requirements for the exercise of the power and the conditions of such detention.

6. The matter shall be listed on April 22, 1992. In the meanwhile, the State of U.P. shall file a

detailed counter-affidavit.

Court Master

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