



2026:AHC:60085

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 8015 of 2026

Sunil Yadav

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Jai Singh Parihar
Counsel for Opposite Party(s)	:	G.A.

Court No. - 81

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. Present Application U/S 528 of B.N.S.S. has been filed to quash the chargesheet dated 05.09.2023 and cognizance order dated 21.09.2024 as well as entire proceedings of Case No. 12741 of 2024 (State vs. Sunil Yadav) arising out of Case Crime No. 118 of 2023, under Sections 447 of I.P.C. and Section 3 of the Prevention of Damage to Public Property Act, 1984, (hereinafter referred to as "the Act, 1984") P.S. Baruasagar, District Jhansi, pending in the court of Additional Chief Judicial Magistrate-I, Jhansi.
3. According to the First Information Report dated 01.07.2023, the applicant has constructed eight feet long wall over the Government land and encroached upon Gata No. 60 and Gata No. 642 which is a public property. The applicant was requested to remove the encroachment, but the same was not removed by the applicant.
4. The contention of the learned counsel for the applicant is that a detailed procedure is prescribed under Revenue Code, 2006, for eviction of unauthorized occupants from Gram Sabha property, therefore, the First Information Report should not have been lodged and the Investigating Officer without considering the law, wrongly and illegally submitted chargesheet in this case. The learned Magistrate has also taken cognizance of offence vide order dated 21.09.2024 which is abuse of process of the law.

5. The learned counsel for the applicant has further submitted, relying the judgment of this Court dated 06.08.2020 passed in **Application U/S 482 of Cr.P.C. No. 9964 of 2020 (Munshi Lal and Another vs. State of U.P. and Another)**, that complete procedure has been provided under the Revenue Code, 2006, for eviction of unauthorized occupants from the Gram Sabha property, therefore, the provisions of the Act, 1984, cannot be invoked against such unauthorized occupants.

6. Per contra, learned A.G.A. opposed the prayer made by the learned counsel for the applicant and submitted that the proceedings for eviction of unauthorized occupants under Section 67 of the Revenue Code, 2006, are summary proceedings and that the provisions of the Act, 1984, can be simultaneously invoked against an unauthorized occupant if the bundle of facts constitute an offence under the Act, 1984. Thereunder, a person can be sentenced to imprisonment, which cannot be done under the Provisions of the Revenue Code, 2006.

7. It is further submitted by the learned A.G.A. that **Munshi Lal (supra)** judgment has been discussed and distinguished by the Division Bench of this Court in the case of **Devnath Yadav vs. State of U.P. and three others, Criminal Misc. Writ Petition No. 1131 of 2021**, decided on 03.03.2021 and it was held by the Division Bench of this Court that the law laid down the case of **Munshi Lal (supra)** was incorrect. The Act, 1984, would apply broadly to any damage or encroachment by the public property.

8. I have heard both the parties and perused the record and also the judgments cited by the parties.

9. Upon a careful perusal of the Act, 1984, I find that Section 2(a) of the Act provides that the word "mischief" occurring in the Act shall have the same meaning as in Section 425 of the Indian Penal Code, which is quoted below -

"Section 425 :Mischief : Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

10. Admittedly, the land in question is a public property. Any encroachment thereon, is a punishable offence under the Act, 1984, since the situation of the property has been changed by the applicant by constructing a boundary wall. Such construction prevents the use of land encroached upon and has diminished its value or utility. The act of the applicant is, therefore, covered by Section 425 of the I.P.C. Therefore, there is no doubt that the encroachment by the applicant over public property, amounts to a mischief within the meaning of the term under Section 425 of I.P.C.

11. Section 3(1) of the Prevention of Damage to Public Property Act, 1984 provides that who ever commits mischief in respect of any public property shall be punished with imprisonment for a term upto five years with fine.

12. It is no doubt true that Section 67 of the Revenue Code, 2006 provides a complete procedure for eviction of unauthorized occupants of Gaon Sabha land, which may or may not be public utility land. The said provision is only for eviction and for recovery of damages on account of such unauthorized occupation and user of land belonging to the State under the management of the Gaon Sabha. It is a purely civil remedy with no criminality, attached. The same encroachment, of public utility land, under the Prevention of Damage to Public Property Act, is a criminal offence, visited by penal consequences, namely, imprisonment and fine. Besides, no order for eviction of an unauthorized occupant can be passed under the Prevention of Damage to Public Property Act. Therefore, in my considered opinion, the two provisions, namely, 67 of the Revenue Code and Sections 2, 3 and 5 of the Prevention of Damage to Public Property Act operate in different fields. In case the legislature in its wisdom, considered it fit to declare any action to be also a criminal act, the same, does not require to be read down or its scope to be narrowed down. Since, the two provisions operate in different spheres, it cannot be accepted that there is any overlap. There is no bar for the institution and prosecution of Civil and Criminal proceedings regarding an act, if both have the mandate of law. In any case, an act can given rise to both criminal and civil liability and therefore, both civil and criminal proceedings can be resorted to simultaneously.

13. So far as the judgment of **Munshi Lal (supra)** is concerned, the Division Bench of this Court in the case of **Devnath Yadav (supra)** has held that the learned Single Judge had taken a narrow view of Section 3(1) of the Act, 1984. The relevant part of Devnath Yadav, are reproduced hereunder:

17. Coming to the judgement in the case of Munshi Lal (supra), we find that the learned Single Judge, proceeded on the premise that Prevention of Damage to Public Property Act, 1984 was enacted to curb vandalism and damage to public property. The first sentence of its Statement of Objects and Reasons reads as follows -

"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 effectively with cases of damage to public property."

The use of the word "including" has been given a restrictive interpretation in the judgment cited. We are of the opinion that the said word is illustrative rather than bringing also within its ambit, "destruction and damage caused during riots and public commotion" as stated in the Statement of Objects and Reasons. The use of word "including" therefore, cannot be read to mean that the Prevention of Damage to Public Property Act can be invoked only where damage to public property is occasioned by vandalism, riots or public commotion.

In our considered opinion, the learned Single Judge has taken a narrow view of Section 3(1) of the Act and has primarily relied upon Sections 3(2) of the Act as also upon Section 4 of the Act for arriving at the final conclusion, in the judgement cited.

However, we find that in view of Section 425 of IPC and Section 3(1) of the Prevention of Damage to Public Property Act, 1984, the action of the petitioner clearly falls within the purview of these two sections, especially when construction of a boundary wall over public property is clearly admitted by petitioner.

Under the circumstances, therefore, the petitioner is not entitled to any benefit of the judgement in the case of Munshi Lal cited by him, as in the

foregoing part of the judgement, we have come to the conclusion that the provision of Section 3(1) of the Prevention of Damage to Public Property Act, 1984 is clearly attracted in the facts and circumstances of the case. Also, the judgement in the case of Munshi Lal is distinguishable on facts. Therein, the land in issue was recorded as Banjar which is, not public utility land, unlike the land in issue in the case at hand.

The first information report is therefore, not liable to be quashed.

For the same reason, the writ petition is without merit and is hereby dismissed."

14. Considering the facts and law laid down by the Division Bench of this Court, I find that in view of Section 425 of the I.P.C. and Section 3(1) of the Act, 1984, the action of the applicant clearly falls within the purview of these two Sections, especially when construction of a boundary wall over public property was made by the applicant.

15. Reverting back to the facts of the present case, the Investigating Officer recorded statements of independent witnesses namely Lal Singh, Sonu Kushwaha, Ravindra etc., who all stated that the applicant happens to be husband of Village Head Lady and he has illegally encroached Gata No. 642 by construction of a wall and he is cultivating the Government land, having Gata No. 60. They all stated that the land was not damaged by use of fire or explosives, therefore, the Investigating Officer, after considering statements of aforesaid witnesses, dropped the investigation under Section 4 of the Act, 1984. The Lekhpal after due enquiry has submitted report against the present applicant. It cannot be said that no prima facie case is made out against the present applicant.

16. The present application lacks merit and deserves to be dismissed. Accordingly, the Application U/S 528 of B.N.S.S. is dismissed.

17. However, in case, the applicant surrenders before the court concerned within a period of six weeks from today and applies for bail, his bail application shall be considered and decided expeditiously in accordance with law laid down in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another (2022 SCC OnLine SC 825)**.

18. However, it is made clear that till six weeks from today, no coercive action shall be taken against applicant herein in pursuance of aforesaid case.

(Vivek Kumar Singh,J.)

March 18, 2026

A.P. Pandey