

(1965) 11 AHC CK 0014

In the Allahabad High Court

Case No : First Appeal From Order No. 155 of 1963

Abdul Aziz

APPELLANT

Vs

State of U. P. and another

RESPONDENT

Date of Decision : 10-11-1965

Acts Referred:

Citation : (1965) 11 AHC CK 0014

Hon'ble Judges : D.S.MATHUR, J

Final Decision : Dismissed

Judgement

1. This is an appeal by Abdul Aziz, plaintiff, against the order, dated 2121963 of the Civil Judge of Agra, allowing the appeal of the State of Uttar Pradesh and the Gaon Samaj, defendants, and thereby remanding the suit for a fresh hearing after recording the evidence of the parties.

2. Abdul Aziz was alleged to have unlawfully occupied the land belonging to the Gaon Samaj of Jetpur Kalan, Pargana Bah, district Agra, and as appears from the order of the SubDivisional Officer, he took action under R. 115C of the U.P. Zamindari Abolition and Land Reforms Rules and directed the ejectment of Abdul Aziz on the ground that he had made encroachment on the land of the Gaon Samaj without any title. Thereupon Abdul Aziz instituted the present suit for declaration that he was the owner of the land in dispute and the defendants had no right or title therein, and that the order of the SubDivisional Officer passed under R. 115C was ultra vires, without jurisdiction and was not binding on the plaintiff.

3. On the basis of the decision of this Court declaring R. 115C to be invalid and beyond the rule making power of the State Government, the Munsif declared that the impugned order of the SubDivisional Officer was ultra vires without jurisdiction and not enforceable. The defendants were at the same time restrained from interfering with the plaintiffs possession of the property in suit by taking possession for demolition or otherwise in pursuance of the impugned order. The defendants went up in appeal before the District Judge, but before the

final hearing thereof the U.P. Zamindari Abolition and Land Reforms Act was amended by incorporation therein of S. 122B. SubSection (5) of this new section validating Rr. 115C to 115H of the U.P. Zamindari Abolition and Land Reforms Rules by laying down that these rules shall be deemed to have been made under the U.P. Zamindari Abolition and Land Reforms Act, as amended, as if the amendments, i.e., the provisions of S. 122B, were in force on all the material dates. In view of this amendment the lower appellate Court recorded the finding that R. 115C was now valid and, at the same time remanded the suit for hearing on merits.

4. The validity of S. 122B of the U.P. Zamindari Abolition and Land Reforms Act has been challenged. SubSection (2) of this section has been worded on the lines of R. 115C and, consequently for purposes of this F. A. F. O., comments need be made on the provisions of S. 122B only. SubSections (1) and (2) of this section are as below :

"(1) Where any property vested, under the provisions of this Act, in a Gaon Sabha or a local authority, is damaged or misappropriated by any person, or where any land so vested in it, or any vacant land or any land, which it is entitled to take possession of under this Act, is occupied otherwise than in accordance with the provisions of this Act by any person, the Land Management Committee, or the local authority, as the case may be, shall take steps forthwith to recover compensation for damage to, or misappropriation of the property and for the recovery of possession of the land together with damages caused by wrongful occupation.

(2) Where the Land Management Committee or the local authority fails to take action in accordance with the provisions of SubS. (1) within a period of six months from the date of wrongful occupation, and one month from the date of damage or misappropriation, the Collector may, except, in a case involving a bona fide question of title, on an application of the Chairman, Member or Secretary of the Land Management Committee or the local authority, as the case may be, or on facts coming to his notice otherwise, take steps for the ejectment of the person in wrongful occupation of the land and for recovery of compensation for wrongful

occupation of the land and for damage to, or misappropriation of the property."

5. On a perusal of the SubSections it shall be clear that the two SubSections are independent of each other, though action under SubS. (2) can be taken only on the failure on the part of the Land Management Committee, or the local authority, to take action in accordance with the provisions of SubS. (1) within the period prescribed, i.e., within a period of six months from the date of wrongful occupation and of one month from the date of damage or misappropriation.

Another factor of importance is that under SubS. (1) it is for the Land Management Committee, or the local authority, to take steps to recover compensation for damage to, or misappropriation of the property, and for the

recovery of possession of land together with damages caused by wrongful occupation; while action under SubS. (2) is taken by the Collector suo motu or on the application of the Chairman, Member or Secretary of the Land Management Committee or the local authority, as the case may be.

The exercise of jurisdiction under SubS. (2) is dependent upon two factors, namely, that the Land Management Committee or the local authority has failed to take action in accordance with the provisions of SubS. (1) within the prescribed period and, secondly, that the case does not involve bona fide question of title.

6. When the Land Management Committee or the local authority has not been given the power to move the Collector under SubS. (2) of S. 122B for taking action under and in accordance with R. 115C, the only action that it can take is under SubS. (1) of S. 122B, i.e., sue for ejectment of the trespasser and to claim damages or compensation. The Land Management Committee or the local authority cannot take recourse to the summary proceeding under R. 115C but must institute a regular suit before a competent Court. Such a suit can be instituted within the period of limitation, i.e., within six months or more but not beyond the prescribed period of limitation counting from the accrual of the cause of action. To put it differently, the period prescribed in SubS. (2) of S. 122B does not govern the action to be taken by the Land Management Committee or the local authority. This period merely governs the exercise of jurisdiction by the Collector under SubS. (2), including the maintainability of an application of the Chairman, Member or Secretary of the Land Management Committee or the local authority.

7. SubSection (2) of S. 122B, in so far as it prescribes a period of six months or one month, as the case may be, on the expiry of which the Collector can take action, cannot be said to be discriminatory. Some reasonable time must be allowed to the Land Management Committee or the local authority to take steps in accordance with the provisions of SubS. (1) before any other person may be authorised to move the Collector for taking summary action under SubS. (2) of S. 122B. If such an application could be made soon after the wrongful occupation or the causing of damage or misappropriation, the time of the Collector may be wasted unnecessarily by members of the rival parties making frivolous applications simply to cause harassment to others, or by his taking cognizance of matters which the Land Management Committee or the local authority intends to raise in a regular suit before a competent Court.

Further, the legislature could rightly think that the first option to take legal steps be given to the Land Management Committee or the local authority and such action be taken before the regular Courts, and if the Land Management Committee or the local authority does not take any action within a reasonable period, the Collector be empowered to take action, in case where no bona fide question of title is involved, suo motu or at the instance of others. At the same time it cannot be lost sight of that any steps taken for the dispossession of a trespasser, or for the recovery of compensation or damages, is for the benefit of

the Gaon Sabha, and no individual can be expected to spend his money to cause gain to a public institution like the Gaon Sabha. Expenses incurred by the Land Management Committee in the prosecution of a suit can be met out of the funds of the Land Management Committee or out of the Consolidated Gaon fund; but where the suit is instituted by an individual, he has to bear all the expenses of the litigation and also the expenses incurred in going to the court for file prosecution of the suit. It is well known that all the expenses incurred are not invariably taxed in the decree and to realise the amount of the decree is not easy. Consequently, the legislature could, in public interest, make a provision for a summary decision on an application made by an individual (other than the Land Management Committee or local authority).

8. In this view of the matter, SubSections (1) and (2) of S. 122B cannot be said to be discriminatory, nor are they hit by Art. 14 of the Constitution of India, when under SubSection (1) the Land Management Committee or the local authority has to institute a regular suit while under SubSection (2) the Collector can take summary action suo motu or on the application of the Chairman, Member or Secretary of the Land Management Committee or the local authority.

9. Nor can it be said that the classification of trespassers or persons to be proceeded with is arbitrary or unreasonable and is in violation of the provisions of Art. 14 of the Constitution of India. SubSection (2) of S. 122B divides the trespassers in two groups, one, whose claim or title is bona fide and the other, whose claim is not bona fide. A summary procedure can be provided for the dispossession of trespassers whose claim is not bona fide, leaving it open to such persons to obtain declaration of their title by instituting a suit before the regular courts. Such a classification is reasonable, and is connected with the nexus, the object

being quick ejectment of trespassers without title from public land and property.

10. No person or authority can be compelled to take legal action. The law can merely make a provision to enable a person or authority to seek remedy before a competent court and it is for him to assert or not to assert his rights or title. The law shall not be invalid on the ground that it does not compel a party to institute a legal proceeding. When considered in this light, SubSection (1) of S. 122B cannot be said to be arbitrary or discriminatory. After all, it casts a duty upon the Land Management Committee or local authority to take steps forthwith to recover compensation for damage to or misappropriation of the property, and for the recovery of possession of the land together with damages caused by wrongful occupation. If the Land Management Committee does not take such steps, a party interested can, if so advised, move the High Court under Art. 226 of the Constitution of India to compel the Land Management Committee to take the legal action. But to avoid unnecessary litigation the legislature can make a provision for summary enquiry or trial in case the Land Management Committee does not take the necessary action, and this has been done by incorporating SubSection (2) of S. 122B in the U.P. Zamindari Abolition and Land Reforms Act.

11. Section 122B is thus valid and constitutional, though it must be noted at the risk of repetition, that the jurisdiction of the Collector under SubSection (2) of S. 122B is dependent upon two factors and no action under this SubSection can be taken on the application of the Land Management Committee or the local authority. The Collector has no jurisdiction to take action under SubSection (2) of S. 122B within six months or one month, as the case may be, of the accrual of the cause of action, nor can he take such action in a case involving a bona fide question of title. Further, under SubSection (2) of S. 122B the Collector can take the action suo motu or on the application of the Chairman, Member or the Secretary of the Land Management Committee or the local authority, but not on the application of the Land Management Committee or of the local authority. Considering that no one can be permitted to do an act indirectly which he cannot do directly, it can also be laid down that the jurisdiction under SubSection (2) of S. 122B cannot be exercised at the instance of the Land Management Committee or the local authority.

12. The distinction between an action taken at the instance of the Land Management Committee and an action taken independent of it may, at occasions, be a narrow one. In such cases the courts of law shall have to take a liberal view as in the case of enactments; for example, the Land Management Committee may be satisfied that a person is encroaching upon public properties but the Committee may not have funds available to institute a suit, nor may it be possible for the Chairman or members of the Land Management Committee to take steps for the prosecution of the suit. If in such circumstances, the Land Management Committee does not itself take any action, but someone on his own, and not under the instructions or authority of the Land Management Committee, takes advantages of its decision and moves the Collector under SubSection (2) of S. 122B, the action taken shall be by that person and not at the instance of the Land Management Committee.

In shortfall the facts and circumstances of the case shall have to be considered in determining whether, in substance, the application is by or on behalf of the Land Management Committee or the local authority, and if so, the Collector shall not have the jurisdiction to take action under SubSection (2) of S. 122B of the U.P. Zamindari Abolition and Land Reforms Act.

13. Full evidence has not come on the record to enable this Court to record a finding on the three material points. It shall, therefore, be proper to maintain the order of remand and to leave all the questions involved open for fresh consideration by the courts below in accordance with the law laid down above.

14. The F. A. F. O. is hereby dismissed. Costs of this Court shall abide the decision of the suit. Stay order is vacated.

Appeal dismissed.