

(1997) 12 AHC CK 0071

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9156 of 1982

Aigu and Ors.

APPELLANT

Vs

Additional District Magistrate (Executive) Gyanpur, Varanasi &
Ors.

RESPONDENT

Date of Decision : 12-12-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 12 AHC CK 0071

Hon'ble Judges : R.S.Dhavan, J and V.P.Goel, J

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, J.

1. This writ petition has been pending at the High Court for more than 14 years. This in itself reflects badly on a public justice system. The Court is informed by the Bench Secretary that there is an adjournment slip of learned counsel for the petitioner. Formally, this Court would have adjourned this matter, but it is too embarrassing for the Court to adjourn a case which is pending for the last 14 years. In the circumstances, the Court has carefully perused the record and taken the assistance of learned Standing Counsel, Mr. Krishna Prasad, Advocate, and is rendering its opinion on the state of the record.

2. At the time when this writ petition was filed, the prayer for an ad interim order had been rejected by a Division Bench on 10 September 1982. The case, apparently, appears to have been built up by supplementary affidavits. On the first occasion when the matter was considered for admission, the Division Bench, on 16 August 1982, recorded.

"Learned counsel for the petitioner prays for and is granted three weeks time for filing supplementary affidavit indicating precisely the points which had been argued by him before respondent No. 1" Sd/Hon'ble H.N.Seth, J. Sd/ Hon'ble R. R. Rastogi, J.

3. Respondent No. 1 is the Additional District Magistrate (Executive), Gyanpur, Varanasi. He has been arrayed as a respondent as he has acted as an authority under the Uttar Pradesh Bhoodan Yagna Act, 1952. This was an Act which facilitated the donation and settlement of lands following the Bhoodan movement making land available to the landless, a reform initiated by Shri Acharya Vinoba Bhave.

4. The Collector has been referred as an authority under Section 13 of the Act for the purpose of preparing a list of lands which have been subjected to donations and settlement as part of the Bhoodan Yagna. Under Section 14 he has been invested with the authority to make grants to landless agricultural labourers. Under Section 15A he can make an enquiry into grants which may aggrieve the person who made it or a person who should have received the grant but did not. The order of the Collector, consequent upon an enquiry, the Act provides shall be final and conclusive.

5. The proceedings, in context, apparently, were in reference to issues raised after the Maharaja of Benaras had given and donated his land to the Bhoodan movement. These lands became the subjectmatter of a grant under the Act, aforesaid. In the writ petition it is accepted that the sir land of Sri Vibhuti Narain Singh, the Raja of Banaras, became the subjectmatter of a donation. The petitioners further contend that these lands were recorded in the name of Rudra Pratap Singh, Kamla Pratap Singh and others as "asamiyan sir". Hereinafter they submit that different plots in dispute were, however, in possession of the petitioners since the time of their ancestors as "Dar Sikmi". To fortify this contention they place the record of Khatauni 1385 Fasali. They also mention that a certified copy of the Khatauni of 1371 Fasali, which was part of the record of the proceedings is also being placed. They now submit that they have heard that Sri Vibhuti Narain Singh had donated certain lands, sir in category, in Village Beerampur to the Bhoodan Yagna in 1952. Their precise submission in the writ petition is that "That it is said that Sri Vibhuti Narain Singh, the Maharaja of Benaras donated 110 bighas of his sir land situate in village Beerampur, Taluka Kondh, ParganaBIadohi district Varanasi to "Bhoodan Yagna Samiti" in 1952. However, no declaration in writing by Sri Vibhuti Narain Singh, the Raja of Benaras as required by Section 8 of the Bhoodan Yagna Act, 1952 read with Rule 8 of the Rules framed under the Act could ever see the light of the day." They refer to a proceeding between Bhoodan Yagna Committee v. Vibhuti Narain Singh. In paragraph 4, they contend, "That to the best of the petitioners knowledge, Sri Vibhuti Narain Singh did not make any "Bhoodan" declaration in respect of the land in dispute in the prescribed form given in Appendix I to the Rules framed under the Act nor any such declaration has been filed with the Tahsildar Gyanpur". They further contend in this paragraph. "The Tahsildar never published any such declaration in respect of the land in dispute as required by Section 9 of the Act. The land in dispute, therefore, never vested in the Bhoodan Yagna Committee.

6. Thereafter, they claim that as the land had never been formally nor legally donated, there is in law no donation under the Act and the pattas which have been executed in favour of those allotted are illegal. They contend in their writ petition fortified by a second supplementary affidavit that "As a matter of fact the petitioners were denied oral hearing". They refer to a written argument having been filed before the Respondent No. 1, in effect, the Collector, otherwise, the Additional District Magistrate (Executive), Gyanpur, Varanasi.

7, The petitioners have made an issue of the fact that the land in question has never been donated by the Maharaja of Beisaras, referred by name, Sri Vibhuti Narain Singh. An aspect which is fatal to the petition is that the most essential party has been conveniently left out from the array of parties. For no other reason but for the record whether the land was donated or not donated, except the party which has made the donation, no one can reflect on this truly except the donor. "This person is available as the petitioners themselves refer to him in the writ petition as Sri Vibhuti Narain Singh, otherwise, also according to the petitioners, being no other person than the Maharaja of Benaras. He possibly in his own right has a place under the law ; one of having a sovereign state and consequentially on the coming of the Constitution being subjected to the vesting of his agricultural estate as a Zamindar, in the State, under the U. P. Zamindari Abolition and Land Reforms Act, 1950 and further having the capacity to donate whatever the erstwhile ruler though fit to donate. The best person who could have given the best version on the issue has been conveniently left out as a party to the writ petition. This writ petition is bad for misjoinder of an essential party and since the issue itself is such that it cannot be debated, but for this party, the petition is an abuse of process of the Court.

8. The petitioners admit that there was a proceeding in reference to the Act, aforesaid, but they were denied an oral hearing. But, the order which has been sought to be impugned, rendered by the Additional District Magistrate (Executive), Gyanpur, Varanasi, respondent No. 1, appended as Annexure 12 to the writ petition records "MAINE PATRAVALI KA AVLOKAN K1YA TATHA UBHAY PAKSHON KI BAHAS SUM (I have perused the file and heard the argument of counsel for the parties). This itself places on record that not only there was a hearing before the respondent No. 1, but the petitioners had sufficient opportunity to address before the order dated 25 June 1982 had been passed.

9. Then, in the supplementary affidavit filed on 16 August 1982, the petitioners contend "that after the close of evidence in the case the petitioners learnt that there was no factual or legal donation of the plots in question to Bhoodan Yagna". The Petitioner do not submit that there, in fact, had not been the transfer of the lands by the Maharaja of Benaras to the Bhoodan movement. Their contention was that there is no legal donation. To built up the plea that there is no legal donation, the petitioners make the following submission in paragraph 2 of this supplementary affidavits:

"2. That after the close of evidence in the case the petitioners learnt that there

was no factual or legal donations of the picots in question to Bhoodan Yagna. The petitioners came to know of this fact after the evidence in the case was closed and they told this fact to their counsel Sri Ram Naresh Yadav in the proceeding under Section 15A of the Act and asked him to introduce, if possible a plea in their application to the effect that the land in dispute had not been donated to Bhoodan Yagna, But the counsel told the petitioners, that such a controversy could not be taken in proceeding under Section 15A of the Act and secondly that authentic information had also to be gathered before introducing the plea. The petitioners were advised that if it was found and ascertained by them that the land in dispute was not donated under the Act, they could take the plea in the writ petition under Article 226 of the Constitution of India in either case of dismissal or grant of the applications under Section 15A of the Act."

Thus, the entire case was built up on the hypothesis that foundations on this plea in proceedings under Section 15 had not been laid. Should the petitioners have found out as a fact after ascertaining that the land in dispute, indeed, had not been donated, then it would have been one aspect of the matter. Such submission could only be answered by Sri Vibhuti Narain Singh, Maharaja of Benaras, whom the petitioners did not array as a party respondent or made any request during the course of the proceedings before the Collector. Therefore, the petitioners did not, at any stage, desire the correct evidence to come on record. This cannot be done in a proceeding under Article 226 of the Constitution of India which considers matters on the basis of record only.

10. The petitioners contend in this petition that they are subtenants of Maharaja Benaras, Sri Vibhuti Narain Singh, since more than two generations. The statement is too vague. The last two generations implies nothing. Facts limited to this aspect were within the petitioners special knowledge and they could have fortified their case in their objections before the Collector in proceedings under the Act which the petitioner have not been able to show even before the High Court. Even the record of rights on which the law has given, in reference to the context, a presumption of correctness being the records relating to 1356 Fasali, have been avoided.

11. In the writ petition, the petitioners attempt to fault the proceedings on the ground that the land had not been formally donated by the Raja of Benaras, Sri Vibhuti Narain Singh to the Bhoodan Yagna. Subsequently they contend in the second supplementary affidavit that it was on 29 August 1982 that there is an order of the Collector, Varanasi dated 4 August 1979, passed under S. 13 of the Act for information of the general public.

12. The contention in paragraph 6 of the second supplementary affidavit is that this order was never fixed at a conspicuous place in village Beerampur where the land donated is situated and that the petitioner No. 1 has been told on an oral enquiry from an office of the Tehsildar of Gyanpur that no copy of the list pasted at the Tehsil notice board is available. But, now the petitioners are changing their case and fortifying it by supplementary affidavits. A record cannot be created for

the purpose of the record. These are objections which the petitioners could have taken in the proceedings before the Collector under the Act which they did not take. Further, they left out an essential party throughout the proceedings.

13. The Court does not find any error nor illegality in the judgment of the respondent No. 1, the Additional District Magistrate (Executive), Gyanpur, Varanasi, dated 25 June 1982, appended as Annexure12 to the writ petition. The records as have been placed by the petitioners for the purposes of being examined by a writ of certiorari does not inspire confidence.

14. The petition is misconceived, without merit, and is, accordingly, dismissed.,
Petition dismissed