
(1998) 03 AHC CK 0126
In the Allahabad High Court
Case No : C.M.W.P. No. 40262 of 1997

Ajay Singh and another

APPELLANT

Vs

Board of Revenue and others

RESPONDENT

Date of Decision : 20-03-1998

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 195, 197, 198, 198(1), 198(4)

Citation : (1998) 2 AWC 1353 : (1998) RD 450

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : G.N. Verma, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of the Commissioner, respondent No. 2, making reference to the Board of Revenue and the order of the Board of Revenue dated 28.8.1997 accepting the reference in the matter of cancellation of allotment of lease alleged to have been executed in favour of Akshay Kumar Singh, the father of the petitioners.

2. The facts, in brief, are that Mahavir Singh had two sons, namely, Vijay Kumar Singh and Akshay Kumar Singh. The petitioners are sons of Akshay Kumar Singh. The Land Management Committee granted lease in favour of Akshay Kumar Singh and Vijay Kumar Singh in respect of plot Nos. 1461, 1463, 1465 (new plot Nos. 1758 and 1762) area 4.87 acres. One Prakash Chand filed an application for cancellation of the said lease deed u/s 198 (4) of U. P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act) on the allegation that Mahabir Singh was an advocate. He had 40 bighas of land. His son Akshay Kumar Singh was an advocate and his another son. Vijay Kumar Singh, was in Government service. He was then posted as Sub-Inspector of Police. The lease was granted in their favour who were not landless persons and entitled to get any preference in the matter of allotment. It was further alleged

that the proper procedure was not followed in making the allotment of the land.

3. Akshay Kumar Singh, the father of the petitioners, filed objection to the said application. It was denied that he was in possession of any land. The allotment was made after following the procedure prescribed for it. The said application was dismissed in default. The complainant filed an application to recall the said order but the said application was also dismissed in default on 23.2.1980.

4. Udaibir Singh, respondent No. 4, filed an application on 15.9.1987 u/s 198 (4) of the Act, for cancellation of the said lease almost on the same allegations which were made earlier in the application filed by Prakash Chand u/s 198 (4) of the Act. Akshay Kumar Singh filed objection that he had no land when it was allotted to him and the Land Management Committee did not commit any illegality in making allotment of the land in dispute to him. He filed additional objection stating that as the notice was issued to him on 18.1.1987 on the application filed by respondent No. 4 it was barred by sub-section (6) of Section 198 of the Act. His second objection was that one Prakash Chand having already filed an application and the same having been rejected, the order passed in the said proceeding operates as resjudicata.

5. The objection taken by the lease-holder was accepted by the Additional Collector and he rejected the objection filed by respondent No. 4. Respondent No. 4 filed revision before the Commissioner, respondent No. 2. The Commissioner held that the application filed by Prakash Chand was not decided on merits, the order dismissing in default does not operate as res judicata. The application filed by respondent No. 4 was within time. A reference was made to the Board of Revenue that the revision be allowed. The petitioners filed objections before the Board of Revenue against the referring order. The Board of Revenue, respondent No. 1, after hearing the counsel for the parties, accepted the reference and allowed the revision against the order dated 10.8.1990 by the impugned order dated 28.8.1997.

6. Sri G. N. Varma, learned counsel for the petitioners, submitted that Board of Revenue has assumed that the petitioners' names having been recorded in the revenue papers over an area of 18.58 acres, the said land should be taken to have belonged to the father of the petitioners. It is stated that in fact the petitioners have inherited this land from Akshay Kumar Singh, their father. It is not denied that the land in dispute was allotted to the father of petitioners and Vijay Kumar Singh, Mahabir Singh, their father, was tenure-holder of 18.58 acres of land before the land was allotted by the Land Management Committee to them. The land in dispute of an area of 4.87 acres was allotted to them. This fact is also admitted in para 15 of the writ petition. It may be that at the time of allotment, Akshay Kumar Singh and Vijay Kumar Singh were not tenure-holders of any piece of land. Akshay Kumar Singh was, however, practising as an advocate and his father was also practising. Vijay Kumar Singh was in Government service.

7. Sub-section (1) of Section 198 of the Act provides that in the admission of persons to land as bhumidhar or asami u/s 195 or Section 197, the Land Management Committee shall observe the order of preference as given therein. A landless agricultural labourer residing in the circle and belonging to the Schedule Caste/Scheduled Tribe and in absence of such person any other landless agricultural labourer residing in the circle is entitled in preference and in absence of such person a landless person. The Explanation (I) to Section 198 of the Act defines a person who or whose spouse or minor children hold no land as bhumidhar, sirdar or asami and also held no land as such within two years immediately preceding the date of allotment. It is true that in the definition of landless refers to a person who does not own as bhumidhar. Sirdar or asami. This, however, cannot be the intention of the Legislature that under the garb of the Explanation, a person who has no land becomes entitled to allotment of land when he has sufficient source of income or livelihood. This provision has to be examined keeping in view the economic condition, social status and all the relevant factors while allotting the land to such persons by the Land Management Committee u/s 195 of the Act. If this aspect is ignored, the persons who are carrying on business, practising professions and are highly placed in status, economically well off will grab the land which has been vested in Gaon Sabha in a village. The basic concept is that the land should be allotted to the tiller of the land who has no source of livelihood.

8. Admittedly the father of Akshay Kumar Singh and Vijay Kumar Singh already had 18.58 acres (7.12 hectares) of land. One was practising advocate and the other was in Government service.

9. The second submission of the learned counsel for the petitioners is that the notice was issued to the allottees on 18.11.1987, and therefore, the entire proceeding u/s 198 of the Act was barred by limitation. It is admitted that respondent No. 4 had filed application u/s 198 (4) of the Act for cancellation of the lease. On the said application, the trial court is alleged to have issued notice on 18.11.1987. It is necessary to refer to sub-sections (4), (5) and (6) (a) and (b) :

"(4) The Collector may of his own motion and shall on the application of any person aggrieved by an allotment of land inquire in the manner prescribed into such allotment and if he is satisfied that the allotment is irregular, he may cancel the allotment and the lease, if any.

(5) No order for cancellation of an allotment or lease shall be made under sub-section (4), unless a notice to show cause is served on the person in whose favour the allotment or lease was made or on his legal representatives :

Provided that no such notice shall be necessary in proceedings for the cancellation of any allotment or lease where such proceedings were pending before the Collector or any other Court or authority on August 18. 1980.

(6) Every notice to show cause mentioned in sub-section (5) may be issued :

(a) in the case of an allotment of land made before November 10, 1980 (hereinafter referred to as the said date) before the expiry of a period of seven years from the said date ; and

(b) in the case of an allotment made on or after the said date, before the expiry of a period of five years from the date of such allotment or lease or upto November 10, 1987, which ever be later".

10. Learned counsel for the petitioners submitted that under sub-section (6), the emphasis is with regard to issue of a notice under sub-section (5) of the Act which must be before the expiry of a period of seven years i.e., before November 10, 1980 as the allotment of the land was made before November 10, 1980. This provision must be read along with the provision of sub-section (4) of Section 198 of the Act. Under sub-section (4) of Section 198, the Collector may on his own motion and shall on the application of any person aggrieved by an allotment of land, inquire in the matter prescribed into such allotment. He can exercise power suo motu as well as on the application. If he exercises power suo motu, he has to issue a notice to the person whose allotment of land is to be cancelled. He applies his mind when he issues a notice after taking cognisance in the matter after perusal of record or information received by him but in a case where an application is filed by a person u/s 198 (4) of the Act, the issuance of notice is procedural. The date of the application shall be relevant and not the date of issue of notice. A person has right to file application u/s 198 (4) of the Act for cancellation of lease granted to an allottee and the right cannot be defeated because the notice is not issued by the officer or its ministerial staff. It may be that the application is filed in time, the officer does not get time to consider the application and passes an order for issue of notice after some time or there may be cases when officer has passed the order to issue notice but the clerk or the person who is to take the steps for service of notice, issues notice in compliance of the order of the officer after expiry of period of limitation. This will not make the application as barred by time. The notice has been issued on the application filed by respondent No. 2 under sub-section (4) of Section 198 of the Act. The application was filed within the period of limitation. Notice is alleged to have been issued one day after the prescribed date i.e. 10.11.1987.

11. Secondly, the requirement of issue of notice as provided under subsection (6) is directory. It uses the words "may be issued". If the application is filed in time, the authorities are bound to issue notice as no order can be passed without issuing show cause notice to the person against whom the application is filed. The requirement of sub-section (5) is only to show cause to the person against whom the application has been filed to submit objection regarding allegations made against him and the prayer made for cancellation of the allotment of land made in his favour. The limitation in that case will start from the date the application is filed before the authority concerned. It is not denied that the application was filed within time by respondent No. 4, i.e., before 10th November. 1997. The proceedings were thus within the period of limitation.

12. The last submission of the learned counsel for the petitioners is that Akshay Kumar Singh had died on 5.2.94. The Commissioner passed ex parte order on 27.1.1995 and this has materially prejudiced them. The Commissioner, respondent No. 2, had only made a reference to the Board of Revenue by his order dated 27.1.1995 to allow the revision against the order of trial court dated 10.8.1990. The petitioners filed objection. They contested the matter and they were given full opportunity. The final order allowing the revision has been passed by the Board of Revenue on 28.8.1997. The petitioners were, therefore, given full opportunity before the Impugned order was passed. No other point has been pressed.

13. The writ petition is accordingly dismissed.