

(2002) 01 AHC CK 0137

In the Allahabad High Court

Case No : Writ Petition Nos. 276-277 (M/S) of 2002 (Revenue)

Ambika Prasad and Bishambhar Dayal

APPELLANT

Vs

Collector, Sitapur & Ors.

RESPONDENT

Date of Decision : 24-01-2002

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B

Citation : (2002) 01 AHC CK 0137

Hon'ble Judges : R.H. Zaidi, J

Final Decision : Dismissed

Judgement

R.H. Zaidi, J.—In these two writ petitions common questions of law and fact are involved. They were, therefore, heard together and are being disposed of by this common judgment. Writ Petition No. 276 of 2002 shall be the leading case.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of writ, order or direction in the nature of certiorari quashing the order dated 1242001 passed under Section 122B of the U.P. Zamindari Abolition and Land Reforms Act, for short 'the Act', directing the ejectment of the petitioner and awarding damages against him and the order dated 28112001 whereby the revision filed by the State of Uttar Pradesh against the order passed by the Collector was partly allowed and the amount of damages was enhanced to Rs. 5,000.00.

3. It appears that a portion of Plots No. 281M and 289 of village Patti Sawai, District Sitapur, which were recorded as Navin Parti in the revenue papers, was given to the petitioner by the Pradhan of the village after accepting a premium of Rs. 300.00. The petitioner after paying the premium of Rs. 300.00 raised some constructions in the land in dispute. The Lekhpal of the village reported to the respondent No. 2, the Assistant Collector, Tahsil Laharpur, Sitapur that the petitioner was in unauthorized occupation of land in dispute which was owned by the Gram Sabha. On the basis of the said report, notice on the Form No. 49A, framed under Act, was issued to the petitioner to show cause as to why he be

not evicted from the said land. On the receipt of the said notice, the petitioner submitted his explanation to the effect that the land was given to him by the Pradhan of the village after accepting Rs. 300.00 as premium and since then he was in possession thereof and he was not in unauthorized possession of the land in dispute, therefore, he was not liable to ejectment from the same. Parties in support of their cases produced evidence. Respondent No. 2 after going through the material on record came to the conclusion that the land in dispute was owned by the Gram Sabha. The same was illegally and unauthorisedly occupied by the petitioner as the Pradhan of the village had no authority to allot the land in dispute to the petitioner that too without permission of the competent authority. The petitioner was, therefore, liable to ejectment from the said land. Having recorded the said findings order of ejectment was passed and damages were also awarded by respondent No. 2 against the petitioner according to the rules, by judgment and order dated 12/4/2001. Against the said judgment and order no revision was filed by the petitioner as such the order of ejectment and award of damages, as awarded by respondent No. 2, became final. However, a revision was filed by the State of Uttar Pradesh against the said order of enhancement of the amount of damages. The Revisional Court affirmed the findings recorded by respondent No. 2 on the questions involved in the case and also held that the amount of damages awarded by respondent No. 2 was inadequate. He, therefore, enhanced the same from Rs. 300.00 to Rs. 5,000.00 by his judgment and order dated 28/11/2001. Hence, the present petition.

4. Learned Counsel for the petitioner submitted that respondents No. 1 and 2 have acted illegally in passing the impugned orders of ejectment against the petitioner. It was urged that the land was rightly allotted to the petitioner by the Pradhan and he has on the strength of the said allotment raised valuable constructions which are not liable to be removed and he was not liable to be evicted from the land in dispute. It may be noted that the validity of the order of enhancement of damages was not challenged by the petitioner. On the other hand, learned Standing Counsel supported the validity of the order passed by the authorities below. It was urged that admittedly the land was admittedly recorded as Navin Parti and was owned by the Gram Sabha. The Pradhan of the village had no authority to give the said land to the petitioner or any body else. The whole transaction entered into between the parties was wholly illegal and without jurisdiction. The Court below, therefore, rightly came to the conclusion that the possession of the petitioner was wholly illegal and unauthorized and awarded damages against him in accordance with the rules. The writ petition was, therefore, liable to be dismissed.

5. I have considered the submissions made by learned Counsel for the parties and also perused the record.

6. It is not disputed that the land in dispute was recorded as Navin Parti and was owned by the Gram Sabha. The land could be allotted after following the procedure prescribed under the law by the Land Management Committee and not

by the Pradhan of the village after receiving premium as pleaded by the petitioner. The allotment made by the Pradhan was wholly illegal. The land was admittedly not owned by the Pradhan, therefore, he had no right to settle the same with the petitioner. On the basis of the said transaction entered into between the parties, which was illegal, the petitioner did not acquire any right in the land in dispute. It may also be noted that against the order passed by the trial Court for ejectment and imposing damages, the petitioner did not file any revision. The said order, therefore, became final against the petitioner and the petitioner now has no right to challenge the same in a writ petition filed under Article 226 of the Constitution of India. The order passed by respondent No. 2 operates as res judicata against him. I do not find any illegality or infirmity in the impugned orders passed by the authorities below. The findings recorded by the authorities below are all findings of fact, which are based on relevant evidence on record. It may be noted that the quantum of damages awarded by the Court below has not been challenged by the petitioner. No case for interference by this Court under Article 226 of the Constitution of India is made out.

7. The writ petition fails and is hereby dismissed.