
(1960) 02 AHC CK 0029

In the Allahabad High Court

Case No : Civ. Miscellaneous Application No. 89 of 1956

Ambika Prasad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-02-1960

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 133

Citation : (1960) 30 AWR 433

Hon'ble Judges : Tandon, J; Misra, J

Bench : Division Bench

Advocate : R.M. Shukla, for the Appellant; Jr. Standing Counsel for Opposites 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

Tandon, J.—The property around which controversy is centre in this case is a well said to situate in Banjar land in village Bhagwan Ganj, District Unnao. The dispute arose at the instance of Gaon Samaj of the place which claimed this well and accused Ambika Prasad the Petitioner here who laid a counter claim that it belonged to him. Proceedings started in the first instance u/s 133 of the Code of Criminal Procedure but ultimately the Sub-Divisional Magistrate in his capacity of Sub-Divisional Officer decided the matter under Rule 115 D of the UP ZA and LA Act. Rule 115-D refers to Rule 115-C which is thus:

115-C (1) It shall be the duty of the Land Management Committee to manage, maintain, preserve and protect all property vested in the Gaon Samaj u/s 117 including land over which it is entitled to take possession u/s 194 and vacant land and to protect it from injury or interference.

(2). ...(Not necessary to state).

2. It will appear from Sub-section (1) above that the Land Management Committee has been charged with the duty to manage, maintain, preserve and protect all property which has vested in the Gaon Samaj u/s 117 of the ZA and

LR Act. The right of the Land Management Committee extends similarly to property which has come into its possession u/s 194 of the Act and to vacant land. Rules 115 D and onwards lay down the procedure etc. which the Collector shall follow in cases where any encroachment is made on or injury is threatened to such property. The property, which was in controversy in the particular case, as has been noticed above, was a well. The Assistant Collector held that the well being situated in a banjar which had vested in the Gaon Samaj belonged to the Gaon Samaj. He, therefore, made an order that the encroachment which Ambika Prasad had made on it should be removed. The order passed by him is in these terms:

Sri Ambika Prasad who has made an encroachment over the property of Gaon Samaj is hereby evicted. A copy of order may be served on the opposite party Ambika Prasad through Police. If the Rabat fixed is not removed within a week of the date of service the Police is directed to remove the Rabat and report compliance.

3. By the present petition Ambika Prasad has impugned the above order of the Assistant Collector on the ground, inter alia, that it is without jurisdiction.

4. In our opinion the order of the Assistant Collector is on the face of it in excess of his powers under Rules 115-C and 115-D and subsequent rules. Rule 115-C lays down what properties shall be controlled, managed etc. by the Gaon Samaj. These properties are those which have vested in the Gaon Samaj u/s 117 of the Act or have come into its possession under S.194 or are vacant lands. The well in question was certainly not any of these properties. It was not property which had vested in the Gaon Samaj u/s 117 of the ZA and LR Act. Similarly it was not the property which had come into its possession u/s 194 and obviously it was not vacant land. Under these circumstances the well was not the property which could be said to be the property to which Rule 115-C was applicable. Rule 115-D however refers to properties described in Rule 115-C, It is only in respect of the properties which are covered by the description given in Rule 115-C that the power belonging to the Collector under these and subsequent rules is exercisable. The Collector has no jurisdiction to proceed under these rules if the property does not fall within the description of properties given in Rule 115-C.

5. In view of the above conclusions the action of the Assistant Collector was in excess of his powers. In the result, therefore, this petition should succeed.

6. The order of the Sub Divisional Officer dated the 28th April, 1956, is quashed. The Petitioner will get his costs from the Respondents Petition allowed.