
(2011) 11 AHC CK 0475
In the Allahabad High Court
Case No : C.M.W.P. No. 63022 of 2011

Anwar	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 5

Citation : (2012) 4 AWC 3386 : (2012) 115 RD 38

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri Shiv Sagar Singh for the petitioner and the learned Standing Counsel and the learned Counsel for the Gaon Sabha for the respondents. Learned Counsel for the respondents submit that they do not propose to file any counter-affidavit as the material on the basis whereof the impugned order has been passed is already on record and therefore the matter be disposed of finally at this stage.

2. This petition arises out proceedings initiated against the petitioner for an alleged encroachment over Gaon Sabha land u/s 122-B of the U.P. Z.A. & L.R. Act, 1950.

3. The allegation is that the petitioner has encroached partly over Plot No. 554 which is recorded in the name of Gaon Sabha, and as such he was liable to be evicted and also liable to pay the fine imposed.

4. Learned Counsel Sri Shiv Sagar Singh for the petitioner submits that the notice which was served on the petitioner did not indicate as to on which side and where was the encroachment situate. An objection was filed indicating the same. The Lekhpal who had submitted the report against the petitioner was also examined and cross-examined and who admitted in his statement that the petitioner has his constructions over the Plot No. 545. Learned Counsel submits

that the statement of the Lekhpal also indicated in sum and substance that there was no actual encroachment. The cross-examination dated 23.11.2010 has been filed as Annexure-9 to the writ petition. Several other objections have also been taken in the statement. The Tehsildar after considering the same came to the conclusion that there was an encroachment of a lesser area, inasmuch as the notice reflected an encroachment of 168 square meters whereas the ultimate finding is that the encroachment is of 68 square meters only.

5. Learned Counsel submits that this reduction in area is also an indicator of the incorrect report of the Lekhpal therefore the order is vitiated. He further submits that this was taken as a specific ground before the Collector.

6. It appears that the revision filed against the order of the Tehsildar was time barred and therefore an application u/s 5 along with an affidavit was submitted stating therein that the petitioner had fallen ill due to a slip disc. He also relied on a medical report of one Dr. Neeraj Kumar. The affidavit which runs in 11 paragraphs, and a copy whereof has been filed on record, avers about the details of the delay caused on account of the ailment and also on account of the incorrect information given by the lawyer. The revision of the petitioner has been dismissed only on the ground of no valid explanation having been given for delay, and further the affidavit in support of the delay condonation being defective, the plea for condoning the delay deserved to be rejected. While doing so the learned Collector has relied on a Division Bench judgment of this Court in the case of Rai Prem Chandra and others v. Obectee Pvt. Ltd. 1991 AWC 238, paragraph 6 in particular.

7. The delay in filing of the revision has been explained in the affidavit filed in support of section 5 application. The learned Collector while disposing of the revision has considered the said affidavit to be defective on the ground that each paragraph of the affidavit has not been sworn separately and since the verification clause is defective therefore in view of the Division Bench judgment aforesaid the same did not inspire confidence.

8. In my opinion the entire affidavit is only in relation to the personal knowledge of the petitioner. No other factor has been indicated and as such the swearing clause and its verification in paragraph 11 does not appear to be defective. On facts the affidavit therefore being not defective, the Division Bench judgment would not be attracted in the present case. The Collector therefore erred in rejecting the affidavit for no valid reason.

9. In view of the nature of the dispute and the pendency of the proceedings this Court accepts the explanation for delay in filing of the revision and condones the same. The section 5 application as well as the plea in respect thereof is allowed and the revision shall be treated to be within time.

10. Accordingly, the impugned order of the Collector dated 13.10.2011 is set aside and the matter is remitted back for decision on merits in accordance with law within a period of three months from the date of presentation of a certified

copy of this order before the Collector.

11. The writ petition is allowed.