**(1992) 11 AHC CK 0012**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 16618 of 1986

Babu Nandan APPELLANT

Vs

Board of Revenue and Others RESPONDENT

**Date of Decision :** 05-11-1992

**Acts Referred:**

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 122B, 122B(4F), 127B(4F), 132

**Citation :** (1993) 2 AWC 840 : (1993) RD 195

**Hon'ble Judges :** R.K. Gulati, J

**Bench :** Single Bench

**Advocate :** Triveni Shankar, for the Appellant;

**Final Decision :** Dismissed

## Judgement

R.K. Gulati, J.—This writ petition is directed against an order of the Board of Revenue, U.P. at Allahabad by which it accepted the reference made by the Additional Commissioner, Varanasi Division, Varanasi u/s 333-A of U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short ''the Act''). The Additional Commissioner had recommended that the orders dated 4-2-1976 and 22-5-1979 pissed by the Sub Divisional Officer, Sadar, Jaunpur being without jurisdiction be set aside.

2. Having heard learned Counsel for the Petitioner, in my opinion the writ petition has no merit and is liable to be rejected in limine. Babu Nandan, the Petitioner, has claimed that he is a landless agricultural labourer belonging to scheduled caste and he was in possession of plot Nos. 28/2/.20 and 42/3 before 30-6-1975 that were recorded in the name of the Gaon Sabha it is said that after the introduction of Sub-section (4-F) in Section 122-B of the Act, the Lekhpal of the circle made a report in favour of the Petitioner to the Supervisor Kanungo to the effect that the name of the Petitioner be entered in the revenue records as sirdar. This report was approved by the Sub Divisional Officer by his order dated 4-2-1976 and he directed that the Petitioner be recorded as sirdar in accordance

 

with the provisions of Section 122-B(4-F) of the Act. Subsequently ''Respondent No. 7 Bhaisasur Deosthan filed an application on 11-11-1978 through its Pujari against the order dated 4-2-1976 on the allegation that the plot in question constitutes ''Deosthan''. That application was accompanied by another application for condonation of the delay. Respondent No. 7 asserted that the land comprising the aforesaid plots which belonged to the Gaon Sabha was ear-marked in the consolidation proceedings for ''Deosthan'' and the name of the Petitioner was wrongly directed to be entered as sirdar without any notice to it. The Sub Divisional Officer rejected the restoration application by his order dated 22-5-1979. Against that order Respondent No. 7 preferred a revision before the Additional Commissioner, Varanasi Division, Varanasi, who after hearing the parties and considering the material that existed on the record, opined that the two orders dated 4-2-1976 and 22-5-1979 which were passed by the Sub Divisional Officer, were without jurisdiction and were liable to be set aside. With this opinion the Additional Commissioner made a reference to the Board of Revenue, U.P. at Allahabad u/s 333-A of the Act As stated earlier, the Board of Revenue concurred with the recommendation of the Additional Commissioner and accepted the reference Accordingly, it set aside the two orders passed by the Sub Divisional Officer. Aggrieved by the order passed by the Board of Revenue, the present writ petition has been preferred.

3. Learned Counsel for the Petitioner submitted that the name of the Petitioner was recorded in Zaman 4 in the year 1381-83 Fasli which implied that the plots in question belonged to the Gaon Sabha. As the Petitioner was in possession of the plots in question before 30-6-1975 and satisfied the other conditions of Section 122-B(4-F) of the Act, the Sub Divisional Officer committed no error of law when he directed the name of the Petitioner be entered as Sirdar.

4. The Petitioner claims the benefit of Section 122-B (4-F) of the Act. To appreciate the contention of the Petitioner, it is necessary to refer the provisions of Sub-section (4-F) which reads as under:

(4-F) Notwithstanding anything in the foregoing Sub-sections, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha u/s 117 (not being land mentioned in Section 132) having occupied it from before June 30, 1985 and the land occupied together with land, if any, held by him from before the said date as Bhumidhar, Sirdar or Asami does not exceed 1.26 hectares (3.125 acres) then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and it shall be deemed that he has been admitted as Bhumidhar with non-transferable rights of that land u/s 195.

5. Before proceeding further, it may be noticed that the other part of the provisions contained in Section 122-B of the Act preceding Sub-section (4-F), inter-alia, deal with the powers of the Land Management Committee in respect of the property or land vested in a Gaon Sabha or a local authority, and in the case of any damage or misappropriation or wrongful occupation of such land, it

 

prescribes the procedure for eviction of the persons in unauthorised occupation of such land and imposition of damages etc. Sub-section (4-F) which opens with a non-obstante clause, is in the nature of an exception to Section 122-B of the Act. The language of Sub-section (4-F) is precise and unambiguous. It is a beneficial provision and purports to confer certain statutory rights and grants immunity against any action of the Land Management Committee or the Collector in respect of class and description of persons who in their turn, have to satisfy certain conditions also, as laid regarding period of occupation and aggregate land occupied by them as Bhumidhar, Sirdar or Asami. The exception is provided by prohibiting exercise of the powers of the Land Management Committee and the Collector as provided in the Sub-sections preceding Sub-section (4-F) of the Act. Sub-section (4-F) precludes any action by the Land Management Committee or the Collector against the class of persons named in the Sub-section itself and creates a beneficial legal fiction in their favour namely, "then no action under this section shall be taken by the Land Management Committee or Collector against such labourer and it shall be deemed that he has been admitted as Bhumidhar with nontransferable rights of that land u/s 195".

6. Now Section 195 enjoins the Land Management Committee with the powers to admit any person as Bhumidhar with non-transferable right in respect of three categories of land enumerated in that section other than the land covered by any of classes mentioned in Section 132 of the Act in other words, the land of Classes mentioned in Section 132 of the Act is specifically excluded from the purview of Section 195 and the Land Management Committee has no power to admit any person and grant non-transferable Bhumidhari rights in respect of the land falling within any of the classes mentioned in Section 132 of the Act. A reference to Section 132 would show that it speaks of the land in which Bhumidhari rights shall not accrue and vide Clause (c)(vi) it is stipulated that Bhumidhari rights shall not accrue in the land set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953.

7. From the provisions referred above, it is evident that the provisions of Section 195 have no application to the lands enumerated in Section 132 of the Act, inasmuch as, in respect of such lands, the Land Management Committee has no power to admit any person and grant non-transferable bhumidhari rights. It follows that the beneficial fiction by granting the deemed benefit spoken of in Section 122-B(4-F) will not be available to a person In respect of the lands covered by Section 132, for, such lands being out of purview of Section 195. This legal position is further fortified by the non-obstante opening portion of Sub-section (4-F) itself, which grants beneficial fiction only in respect of "land vested in Gaon Subha u/s 117" and specifically excludes "not being land mentioned in Section 132. Thus, the classes of land mentioned in Section 132 have been kept well out of beneficial fiction by the provisions of Section 122-B(4-F) itself. In short, once it is found that the land in question is of one of the classes enumerated in Section 132", the person in occupation of such land shall not be entitled to the benefit of beneficial fiction u/s 122-B(4-F), nor u/s 195 of the Act.

 

8. Having said all that when we turn to the order dated 22-5-1979 passed by the Sub Divisional Officer, it is evident that the land in question was the subject-matter of consolidation proceedings and it was earmarked for "Deosthan" of Respondent No. 7 This was evident from CH Forms 41 and 45. Now, the land eamarked for Deosthan, may fall within the class of land, described in Section 132(c)(vi) namely, the land set apart for public purposes under the U.P. Consolidation of Holdings Act. Despite this factual position, the Sub-Divisional Officer proceeded to reject the application made by Respondent No. 7 by his order dated 22-5-1979 by saying that restoration was sought belatedly and it had not been shown that Respondent No. 7 had acquired the possession over the disputed land after it was earmarked for ''Deosthan''. This approach of the Sub-Divisional Officer was found unsustainable both by the Commissioner as well as Board of Revenue, for the Sub-Divisional Officer had passed his initial order dated 4-2-1976 directing that the name of the Petitioner be recorded as Sirdar without any notice to Respondent No. 7 and oblivious of the fact that Respondent No. 7 had already moved the relevant authorities for recording Its name in pursuance of the proceedings taken under the U.P. Consolidation of Holdings Act.

9. That apart, it is settled that is the proceedings u/s 122-B, if a bona fide question of title is Involved, the same can not be decided in those proceedings and the same can only he decided by a competent court of law. It is in this context, the Board observed in its order that the Petitioner cannot take advantage of Section 127-B(4-F) for getting himself declared as Sirdar without a declaratory suit, and, therefore, the proceedings culminating in the order of the Sub-Divisional Officer dated 4-2-1976 were ab-initio ill-conceived and illegal. It further held that the recommendation of the Revenue Authorities to the Sub-Divisional Officer for conferring Sirdari rights on the report itself was illegal and under the law, rights of the land can not be conferred in such a manner.

10. The challenge to the order of the Board of Revenue for what has been stated above can not be sustained.

11. Learned Counsel for the Petitioner then contended that the Petitioner was recorded in Zaman 4 is the revenues records and the name of Respondent No. 7 did not figure In the Khatauni for the relevant years. This contention is again not acceptable for as noticed earlier, Respondent No. 7 had already filed an application for correction of the revenue records and that Application is still pending decision before the relevant authority. Yet another contention was wised that the revision before the Commissioner was against the order dated 22-5-1979 and, consequently, the order dated 4-2-1976 could not have been set aside. This argument, in my opinion, is misconceived. The Commissioner had recommended for setting aside of both the orders passed by the Sub Divisional officer. From the revision petition which has been filed as one of the annexures to the writ petition, it is apparent that Respondent No. 7 had sought setting aside of both the orders passed by the Sub-Divisional Officer. In fact, the setting aside of the order dated 4-2-1976 was consequential to the quashing of the order dated

 

22-5-1979. This is what has been done in the instant case both by the Commissioner and Board of Revenue.

12. No other point was urged'' before this Court.

13. The writ petition has no merit and is accordingly, rejected in limine.

 