

(1957) 08 AHC CK 0024
In the Allahabad High Court
Case No : Civil Misc. Writ No. 1026 of 1956

Babulal

APPELLANT

Vs

G.S. Hashmi and Others

RESPONDENT

Date of Decision : 09-08-1957

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 209
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115, 115C, 115C(1), 115C(2), 115D

Citation : AIR 1958 All 97

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : V.K.S. Chaudhary, for the Appellant; K.B. Asthana, for the Respondent

Final Decision : Allowed

Judgement

Mehrotra, J.—This is a petition under Article 226 of the Constitution praying for a writ of prohibition restraining the Tehsildar of Mau, opposite party No. 1, from proceeding further with the proceedings, under Rule 115-C, U. P. Zamindari Abolition and Land Reforms Rules.

2. Before the abolition of the zamindari, the petitioner asserts that he was a co-sharer in patti No. 10 of village Khor, pargana Mau, district Banda, in which plot No. 251/1 measuring an area of 53 bighas and 3 biswas is situate. According to the petitioner's assertion in the affidavit it was cleared and brought under cultivation in 1358-F. and since then he has been cultivating it.

Near about 6th of November, 1956 a registered letter purporting to be on behalf of apposite parties Nog. 2 to 14 was sent to the Tahsildar of Mau complaining against Sri Ansdhari, Pradhan of the Gaon Sabha. A similar letter was sent to the Sub-Divisional Magistrate, Karvi, and that was sent by him to the Tahsildar of Mau. Thereupon a notice under Rule 115-D of the U. P. Zamindari Abolition and

Land Reforms Rules was issued against the petitioner requiring him to file an objection in his Court on 4th of April, 1956. These proceedings have been challenged by means of the present petition.

3. The history of the plot as set out in the affidavit of the petitioner is that on 3rd of December, 1953 a meeting of the Land Management Committee of the Gram Samaj was called under the orders of the Government to give land of the Gram Samaj to needy villagers. On that date the petitioner had come to know that plot No. 251/1 which had been under his cultivation was also to be let out.

The petitioner made a representation in the meeting praying that the land was cultivated by him and should not be let out to others. The Land Management Committee unanimously decided to recognise the petitioner's right over 24 bighas of plot No. 251/1 and a patta was executed in the name of the petitioner and his younger brother Ram Krishna. On 28th of March, 1955 the Sub-Divisional Officer, Karvi, during his inspection tour and partial in village Kher made a note in the Khasra of 1362F, against the name of Babu Lal on plot No. 251/1 in the following words:

"This patta is cancelled. The land vests in the Gaon Samaj."

The validity of this endorsement is challenged by the petitioner. Thereupon on 13th of May, 1955 the Chairman of the Gaon Samaj was called by the Naib Tehsildar and certain endorsement was made on the register of the Gaoa Samaj behind the back of the petitioner or Ram Krishna. The petitioner, however, continued to be in possession of this plot since 1358F.

Thereafter 13 persons of the village sent a registered letter to the Tahsildar of Mau which was sent by him to the Supervisor Kanungo. Rajapur, on 16th of November, 1955 for enquiry and a report was submitted by him on 5th of December, 1955, and thereupon on 6th of December, 1955 the Tahsildar sent a report to the Sub-Divisional Magistrate to the effect that the Chairman of the Land Management Committee executed a lease in favour of the present petitioner his brother which was cancelled by the Sub-Divisional Magistrate on 28th of March, 1955; but in spite of that cancellation the petitioner continued to be in possession. If approved by the Sub-Divisional Magistrate the petitioner may be prosecuted under the criminal law. The Sub-Divisional Magistrate, however, issued notice under Rule 115 on 16th of December, 1955 requiring the petitioner to file objections on 4th of April, 1956.

4. Notices were sent to the opposite parties and a counter-affidavit has been filed on behalf of opposite party No. 1 by the Standing Counsel and another counter-affidavit has been filed on behalf of the opposite parties Nos. 3 and 7. In the counter-affidavit filed on behalf of the opposite party No. 1 it is stated that the patta which was executed on 15th of March, 1954 in favour of the petitioner was void as the Land Management Committee was not authorised to lease out to persons other than landless persons or persons having an uneconomic holding vide Section 198 of the U. P. Zamindari Abolition and Land Reforms Act.

It is admitted that while on tour a complaint was made to the Sub-Divisional Officer who cancelled the patta. It is then contended that out of the thirteen persons who signed the application and sent it to the Tehsildar of Mau complaining against the action of the Pradhan in executing the patta four were the members of the Land Management Committee.

In the counter-affidavit filed on behalf of the opposite parties Nos. 3 and 7 it is stated that they are not interested in these proceedings and have been arrayed as opposite parties without any ground and their signatures were obtained by opposite party No. 2 in a blank paper before writing anything on it. They in fact therefore deny having given their consent to the application sent by the 13 persons and in effect support the case of the petitioner.

5. The petitioner has canvassed three points before me. Firstly, he has urged that the proceedings under Rule 115-C in the present case are without jurisdiction inasmuch as they could only be started on a report made by the Land Management Committee. The letter written by the 13 persons, is neither a report by the Land Management Committee nor it purports to be one. Rule 115-C of the U. P. Zamindari Abolition and Land Reforms Rules provides as follows:

"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) The Chairman, or any Member or the Secretary of the Land Management Committee shall report all cases of injury to or interference with the property as aforesaid to the Collector requesting him to get the encroachment removed or damage repaired or take such other action as may be necessary."

6. It is not disputed that some of the signatories to the application are members of the Land Management Committee. The contention of the petitioner, however, is that the report does not purport to be on behalf of the Land Management Committee or by the signatories as being members of the Land Management Committee.

7. The second contention raised by the petitioner is that the land was the khudkasht of the petitioner and as such never vested in the Gaon Samaj u/s 117 and consequently the Land Management Committee has no jurisdiction to take proceedings under Rule 115-C, Thirdly, it was contended that Rule 115 is ultra vires inasmuch as it is hit by the provisions of Article 14 of the Constitution.

The argument in this contention was that Section 209 of the U. P. Zamindari Abolition and Land Reforms Act provides for a suit for ejectment of the trespasser in a regular Court and orders under that section are appealable. Rule 115 also provides for a summary remedy of ejectment, but no appeals are provided against orders passed under Rules 115-C and 115-D. There are no guiding principles on which the cases could be selected for action under Rule 115-

C or those u/s 209. Lastly, it was contended that on admitted facts the provisions of Rule 115-C do not apply to the present case.

8. Taking up the first point raised by the petitioner, in my opinion there is nothing in Rule 115-C (1) or (2) which makes it obligatory on the members of the Land Management Committee to make the report after they have received the sanction by a resolution of the Land Management Committee. The power under Clause (2) has been given to the Chairman or any member or Secretary of the Committee to bring all cases of injury to the property of the Gaon Samaj to the notice of the Collector.

If some of the applicants are admittedly the members of the Land Management Committee it cannot be said that there was no proper report to the Collector on which action could be taken by him. Reliance was placed on Z. A. Form No. 49 which is the form in which the report is to be submitted by the members of the Land Management Committee to the Collector. It is argued that the present report does not fulfil the requirements of the said form.

It is conceded that Clause (2) of Rule 115-C was amended in February, 1957 and the words in "Z. A. Form No. 49-A" were inserted between the words "Shall report" and "cases" in Rule 115-C (2) by that amendment. At the time therefore when the present report was made there was no prescribed form for a report. It cannot therefore be said that the report is not in accordance with the provisions of Rule 115-C (2).

The Counsel conceded that this amendment will not apply to the present case; but his argument is that the subsequent form will give an indication as to the nature of the report which was required even under the unamended rule. In the absence of any prescribed form it cannot be said that the report which was sent to the Collector by some of the members of the Land Management Committee was not in accordance with the provision of Rule 115-C.

9. My attention was also drawn to some other provisions of the Z. A. Act which provide the manner in which the Gaon Samaj is to act in certain cases. That, however, to my mind does not in any way affect the clear provisions of Rule 115-C (2). Once it is admitted that some of the applicants were members they had power to bring certain matters to the notice of the Collector and it was for the Collector to act on that report. It cannot be said that the proceedings started by the Collector on the report of the members were without jurisdiction.

10. The next argument was that u/s 117 the land in dispute did not vest in the Gaon Samaj, it was the khudkasht of the petitioner and as such it could not vest in the Gaon Samaj and proceedings therefore under Rule 115-C could not be taken. It is sufficient to point out that according to the petitioner's own case when the matter came up before the Land Management Committee for considering the question of leasing out this plot of land the petitioner put forward his claim and was content with a patta of 24 bighas in his favour. Having accepted that patta it is not now open to the petitioner to say that the land did

not vest in the Gaon Samaj and that the proceedings therefore under Rule 115-C in respect of this plot are without jurisdiction.

11. It was then contended that the provisions of Rule 115 are ultra vires inasmuch as they are hit by the provisions of Article 14 of the Constitution. It is alleged that Rule 115-C gives summary powers to the District Magistrate to order the ejectment of a person and a similar relief can be obtained by a suit u/s 209. The orders u/s 209 are appealable while orders under Rule 115 are not appealable.

There are no principles laid down under which the Collector could select cases where he would take actions under Rule 115-C or file a suit u/s 209. The consequence is that people placed under similar situation are liable to be discriminated against. The argument appears to be attractive but in the view which I take of the provisions of Rule 115-C there is no conflict between Rule 115-C and Section 209.

Rule 115-H expressly provides that nothing in Rules 115-D to 115-G shall debar any person from establishing his right in a Court of competent jurisdiction in accordance with the law for the time being in force in respect of any matter for which any order has been made by the Collector. This rule clearly preserves the right of the petitioner to seek his remedy in a Court of competent jurisdiction. Rule 115 really provides for a summary remedy to remove any injury done to the property of the Gaon Samaj.

On a closer scrutiny of these rules it is clear that the Collector has been given summary powers to get the encroachment on the Gaon Samaj Land removed or to get any injury done to such land remedied. The person who has encroached upon the Gaon Samaj Land or caused any injury to such a land is given notice to remove the encroachment or to repair the damage and on his failure to do so power has been given to the Collector to get the encroachment removed or damage repaired and realise the costs from the person responsible for the encroachment or damage.

Section 209 on the contrary gives a power to the Gaon Samaj or the Collector to file a suit for ejectment or for recovery of possession against a trespasser. In my opinion action cannot be taken under Rule 115-C in cases where the title of the Gaon Samaj itself is disputed, nor does Rule 115-C to my mind apply to a case where in fact a person has been put in possession of the land belonging to the Gaon Samaj under a document which purports to be a patta on behalf of the Land Management Committee and to ignore the patta on the ground that that was illegal and regard the possession of the tenant as that of a trespasser and consider it as an encroachment on the land belonging to the Gaon Samaj or an injury or damage to such a land.

Even if the Collector has a right to declare the patta illegal or that the patta was otherwise illegal the remedy of the Collector was to file a suit against the petitioner u/s 209 and not to take action under Rule 115-C. A right has been

given to a member of the Land Management Committee to report all cases of injury to or interference with the property of the Gaon Samaj to the Collector and request him to get the encroachment removed or damage repaired or to take such other action as may be necessary. Rule 115-D provides that:--

"If on receiving a report under Rule 115-C and making such enquiry as he may deem fit the Collector is satisfied that it is necessary so to do, he may call upon the person concerned to refrain from causing damage, to repair the damage, or remove the encroachment or to do or refrain from doing any other thing as the exigency of the situation may demand or to show cause against it within such time, not exceeding 15 days, as the Collector may specify."

Sub-clause (E) of Rule 115 then provides that:--

"If the person to whom notice is issued fails to show cause or if cause is shown, on giving an opportunity to the person concerned of being heard, the Collector may pass such orders and take such action as may be necessary for repair or prevention of damage to property or removal of encroachment therefrom as the case may be."

Sub-clause (F) of Rule 115 provides that:--

"If the person against whom an order has been made fails to comply with it and the property is capable of being restored to its original condition, the Collector shall cause the damage to be repaired or the encroachment to be removed."

From the various sub-clauses of Rule 115 it is clear that the entire scope of the proceedings under Rule 115-C is to authorise the Collector to get the encroachment removed and to prevent or repair the damage to the property. It does not give any right to the Collector to take steps under Rule 115 in cases where it cannot be regarded as a pure question of encroachment on the land of the Gaon Samaj or a case of damage to the land.

In the present case admittedly the land was given on patta to the present petitioner. That patta was cancelled and the proceedings u/s 115-C have been started against him primarily with a view to effect his ejection. If legally the possession of the petitioner becomes that of a trespasser it amounts to dispossession of the Collector or the Gaon Samaj and it is open to the Collector or the Gaon Samaj to file a regular suit for recovery of possession u/s 209.

It was contended by the Standing Counsel that so far only notice has been given to the petitioner and it is open to the petitioner to file objections to the notice before the Collector and it may be that the Collector after consideration of all the circumstances directs the Gaon Samaj to file a suit for recovery of possession against the present petitioner, and thus this Court should not at this stage interfere with the proceedings.

Emphasis was laid on the words "or take such other action as may be necessary" after the words "encroachment removed or damage repaired" in Clause (2) of

Rule 115-C. This argument in my opinion has no force. Clause (2) of Rule 115-C only deals with the right of a member. He can approach the Collector for the removal of the encroachment or to set right the damage done to the property or to take any other action.

When the report is made by the member it is at that stage that the Collector has to make up his mind whether he will take steps for the removal of the encroachment or the repair of the damage under the subsequent sub-clauses of Rule 115 or file a regular suit. In the present case that stage is over and the Collector has already issued notice under Rule 115-D and has selected to take steps for the removal of the encroachment or to - repair the damage.

The question therefore is whether in the circumstances of the present case it is a case where proceedings could be taken for the removal of the encroachment or repair of damage or it was a case where the proper remedy was to file a suit and proceedings contemplated under Rule 115-D and other sub-clauses of Rule 115 would not apply.

12. As regards the second objection that at this stage this Court should not interfere, the relief prayed for is one of prohibition directing the officer concerned not to proceed further with the matter under the provisions of various clauses of Rule 115. A perusal of these clauses indicate that the proceedings taken by the Collector are in the nature of quasi-judicial proceedings and this Court can issue a writ of prohibition if it is of the opinion that in the circumstances of the case the Collector has no jurisdiction to proceed with the matter.

13. I therefore allow this petition in so far that I quash the notice issued against the petitioner under Rule 115-D. Because the petitioner has not got all the reliefs claimed the parties will bear their own costs.