

(2006) 03 AHC CK 0211
In the Allahabad High Court
Case No : C.M.W.P. No. 14351 of 2006

Bhagwana Singh and Others

APPELLANT

Vs

Gaon Sabha Village Paijaniya

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Constitution of India, 1950 — Article 226

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

Citation : (2006) 2 AWC 1684 : (2006) 100 RD 620 : (2006) 1 RD 620

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Advocate : K.M. Garg, for the Appellant; Anuj Kumar. S.C., for the Respondent

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—Heard learned Counsel for the parties.

2. This petition challenges the order of trial court as well as the appellate court whereby the plaintiffs' application for temporary injunction under Order XXXIX, Rules 1 and 2, C.P.C. has been rejected.

3. Learned counsel contends that the land in question was subject of an allotment by Gaon Sabha about which certain lease amount was paid by the petitioners and they continue in possession. The proceedings started against the petitioners u/s 122B of U.P. Z.A. and L.R. Act (hereinafter referred to as the "Act") were misconceived and beyond jurisdiction as the land in question is "abadi" land and the jurisdiction of Asstt. Collector u/s 122B of the Act, does not extend over such abadi land. Learned counsel in the aforesaid context has further added that the suit for permanent injunction naturally involves the declaration of title over the disputed property and in such suit the orders of the authorities, passed u/s 122B of the Act, would not be of much consequence in the face of Sub-section (4D) of Section 122B of the Act. Learned counsel has

placed reliance upon the case law of *Likhi Ram alias Moola and Anr. v. State of U.P.* and Ors. 2000 (1) AWC 521 : 2002 (93) RD 126 ; *Shankar Saran and Ors. v. State of U.P.* and Ors. 1987 ALT 877 and *Kali Charan Vs. Additional District Magistrate, Agra and others*,

4. Vide Annexures- 3 and 4, it is demonstrated on the record that the petitioners-plaintiffs have been directed u/s 122B of the Act for their eviction from the disputed portion of plot No. 398, area 0.045 hectare. The revision filed against that order before the Collector has also been dismissed and these orders have become final. It is true that this Court in the aforesaid cases of *Shankar Saran (supra)*, *Likhi Ram (supra)* and *Kali Charan (supra)* has made it quite specific that the findings recorded u/s 122B of the Act, are such findings, which do not directly deal with the determination of title of a person against whom the dispossession has been claimed or the applicant Gaon Sabha which seeks for the eviction and dispossession. The suit for declaration of title by the aggrieved party is very much permissible under Sub-section (4D) of Section 122B of the Act before a competent court. But then for the purposes of finding out if the petitioners-plaintiffs have a prima facie case for grant of temporary injunction, the findings recorded by the Assistant Collector or the Collector in this regard cannot be said to be irrelevant. The aforesaid cases do not propound anything to this effect. Of course, if in a suit for declaration of title over the properties, it is found at the time of its final disposal that the plaintiffs have their title over the property, the same can be declared and relief can be granted by the Court. But that is only at the stage of final disposal of the suit. In the first place, the present suit is not a declaratory suit. It is a pure and simple suit for permanent injunction in which a prayer for temporary injunction has also been made under Order XXXIX, Rules 1 and 2, C.P.C. For the purposes of grant of such temporary injunction in favour of the plaintiffs, the Court has to consider its three paramount aspects (i) whether the plaintiffs have prima facie case; (ii) have balance of convenience in their favour for grant of such temporary injunction and (iii) if they shall entail irreparable injury, which cannot be adequately compensated by one of damages in case their prayer for such temporary injunction is refused. If all these three conditions are found favourable with the plaintiffs, in that case only, the courts are supposed to grant temporary injunction and not otherwise. It is already referred to above that the suit of the petitioners is not in the form of a declaratory suit. The petitioners while claiming the title over the disputed land have given only documentary evidence in Annexure-6, which is just a receipt of deposit of some premium amount towards the allotment of the portion of disputed plot No. 398. In addition to this, the petitioners-plaintiffs have claimed their possession over the property since 1970. This possession of land held by the plaintiffs, was subject of challenge by the respondent-Gaon Sabha in the proceeding u/s 122B of the Act in which the eviction orders have been passed by the Assistant Collector and the revision of the petitioners has also been dismissed by the Collector. Therefore, the copies of these orders filed on record being Annexures- 3 and 4 prima facie go to show

that the possession of the plaintiffs over the land in question has been illegal. If the plaintiffs-petitioners had to prove that their possession is legal, the relevant documents for the purpose should have been filed on record. These documents are the orders of allotment of the land in the form of proposal by the Land Management Committee and its approval by the Assistant Collector/S.D.O. concerned. Unless and until the allotment has been made in accordance with the procedure prescribed by the statute, any possession so held by any villager over the Gaon Sabha property is an illegal possession and for that purpose only the provisions of Section 122B of the Act have been enacted. Mere filing of a receipt taken from the then Pradhan of the village in the year 1970, is not sufficient to show the prima facie case of the petitioners for his legal possession over the disputed property. It is true that the orders passed in the proceeding u/s 122B of the Act are no findings regarding the ownership and title of the parties over the property. But once the orders of the authorities have been passed for eviction in a particular case, that order as such cannot be said to be wholly irrelevant, beyond jurisdiction and illegal. The argument of the learned Counsel for the petitioners is that the jurisdiction of the Assistant Collector u/s 122B of the Act, does not extend to an abadi land. I am surprised at the submissions itself when it is already admitted by the petitioners themselves that this land was subject of an allotment in their favour by the Gaon Sabha. Obviously, this property vested in Gaon Sabha u/s 117 of the Act, which says that after the notification u/s 4 of the Act the State Government may declare all or any of the properties detailed in Sub-section (i) to (vi) to vest in Gaon Sabha. The property so described in Sub-section (i) to (vi) of Section 117 of the Act also includes the abadi sites. Therefore, the abadi sites, which is vested in Gaon Sabha by the order of the State Government, is definitely a property of Gaon Sabha and if an order of Assistant Collector u/s 122B of the Act for eviction from such abadi site has been passed against the plaintiffs, that order cannot be said to be without jurisdiction and this aspect has not been specifically stated in Ltkhi Ram's case by the Division Bench of this Court. The plaintiffs have neither filed the allotment order which includes the proposal of Land Management Committee nor the approval of the same by the Assistant Collector/ S.D.O. concerned whereby alone any right would legally have been created for the plaintiffs-petitioners over the disputed land. On the contrary, there is eviction order of the petitioners passed u/s 122B of the Act and in such fact situation if the courts below have found that the petitioners did not have prima facie case for grant of temporary injunction and have given concurrent findings to that effect, I do not propose to make any interference against those orders in extraordinary jurisdiction of a writ petition under Article 226 of Constitution of India.

5. Learned counsel while citing the case law of Dalpat Kumar and Anr. v. Prahlad Singh and Ors. 1992 (1) ARC 300, has tried to emphasise that in case the plaintiffs-petitioners have their long standing possession over the disputed property, their interest to the extent of restraining defendant from evicting them from the property should be protected and that alone is the purpose of Order

XXXIX, Rules 1 and 2, C.P.C. While dealing with the scope of granting temporary injunction under the aforesaid provision of the Code, the Apex Court in this case has specifically propounded that the presence of all the aforesaid three parameters is a sine qua non and without that the courts cannot satisfy themselves for such grant of temporary injunction. In the aforesaid case, it has been made clear by the Hon'ble Supreme Court that the existence of the prima facie right and infringement of the enjoyment of his property or the right is a condition for the grant of temporary injunction and the petitioners must possess a prima facie case to that extent. Satisfaction of the Court to the extent of prima facie case is not alone sufficient for grant of injunction. It has to be established on record that non-interference by the Court would result in irreparable injury to the party seeking such relief of temporary injunction and no other remedy would be available thereafter if the injunction is refused. The third condition "the balance of convenience" has also been discussed by the Hon'ble Court and it has been propounded that this balance must be in favour of granting injunction and not refusing it. The Gaon Sabha respondent-defendant has an order of the competent court for eviction of the petitioners from the disputed land. Even without seeking relief of declaration of title over the said abadi site the plaintiffs in the garb of injunction suit are trying to withhold the execution of the said order of the authorities passed u/s 122B of the Act. Obviously, in such a fact situation, it cannot be said that the balance of convenience is in favour of grant of temporary injunction and not in favour of refusal of the same. As regards the irreparable injury, which has to be incurred in the event of refusal of the prayer of temporary injunction, it cannot be said that the possession of the petitioners, if it is disturbed during the pendency of the suit, it will not be restorable to them in case they are found real owners of the property after the final disposal of the suit. Therefore, in the available circumstances, if both the courts below have found it not be a case for grant of temporary injunction, I do not propose to interfere in such orders.

6. This petition is without merits and is hereby dismissed.