

(2013) 02 AHC CK 0130

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5348 of 2013

Brij Mohan Mishra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-02-2013

Acts Referred:

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

Citation : (2013) 2 ADJ 757 : (2013) 4 AWC 3522 : (2013) 118 RD 765

Hon'ble Judges : Sunil Ambwani, J; Bharat Bhushan, J

Bench : Division Bench

Advocate : Radha Kant Ojha and Ratnakar Upadhyay, for the Appellant; Navin Sinha and P.C. Pathak, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Shri R.K. Ojha, learned counsel appearing for the petitioner. Learned Standing Counsel appears for the State respondents. Shri Navin Sinha, Sr. Advocate assisted by Shri P.C. Pathak appears for respondent No. 5. On a complaint made by Shri Prem Shanker Mishra, the cousin brother of the petitioners, proceedings were initiated against the petitioner for having illegally encroached on the village pond situate in Plot No. 611 /0-348 hecets. in Village Dhania Mau. The Sub-Divisional Magistrate directed the complaint to be enquired. After taking measurements and receiving the report an order was passed by the Sub Divisional Magistrate, Badlapur, Jaunpur on 18th January, 2013 directing encroachments made by the petitioner, on the land recorded as pond to be removed giving rise to this writ petition.

2. Learned counsel appearing for the petitioner submits that the proceedings have been taken ex parte against the petitioner. No notice was given, nor any action was initiated u/s 122B of the UPZA & LR Act, which prescribes a procedure for eviction from the Gaon Sabha land including pond. The orders passed for demolition-and eviction will cause serious civil consequences. It is also stated that the orders have been passed in violation of the principles of natural justice.

3. Shri Navin Sinha on the other hand submits that the proceedings were actually initiated in the year 2010 on the complaint of Smt. Barfi Devi, President of Jal Prabandhak Samiti, Dhania Mau, Baksha, Teh. Badlapur, Jaunpur. Enquiries were made on the complaint on 5.4.2010 on which it was verified that Plot No. 611 area 0-3480 hec. in Village Dhania Mau, Block Baksha, Tehsil Badlapur, Distt. Jaunpur recorded as pond, has been encroached by the petitioners. On such verification directions were issued by the Addl. District Magistrate, Finance & Revenue, Jaunpur on 9.2.2010, after he also caused inspections on 8.2.2010, and verified the encroachment, to demolish the constructions made over the pond and to evict them.

4. Shri Navin Sinha submits that in the present case it is not denied that the plot in question is recorded as pond. It is also not denied that the petitioner have house adjacent to the pond and that he has made construction in the pond by raising pillars. The objections of the petitioner that they had constructed their house on the disputed portion of the land in the year 1945-50 is wholly misconceived in as much as no evidence whatsoever has been placed nor any objection was filed to that effect against the orders passed on 10.2.2010 and the orders challenged in this writ petition passed on 18th January, 2013.

5. In the present case it is not denied by the petitioner that the land in question is recorded as pond. The petitioner's house is adjacent to the pond and that there are constructions over the pond made by the petitioners.

6. The petitioner has made vague statement in para 9 of the writ petition that the constructions were made in 1945-50 prior to the date of vesting (when the Zamindari in the State of U.P. were abolished). He has not enclosed any document of proof, nor has he filed any objection before the Sub-Divisional Magistrate or the District Magistrate.

7. The Supreme Court in Hinch Lal Tiwari Vs. Kamala Devi and Others, , held that ponds are part of habitat of the village. The water reservoirs repeatedly encroached by the villagers, raise important environmental issues, which must be addressed by discouraging and demolishing such constructions and restoring land to the common use by the villagers.

8. In Jagpal Singh and Others Vs. State of Punjab and Others, , the Supreme Court observed in paragraphs 16, 18 and 22 as follows:

16. The present is a case of land recorded as a village pond. This Court in Hinch Lal Tiwari Vs. Kamala Devi and Others, (followed by the Madras High Court in L. Krishnan Vs. State of Tamil Nadu and Others, held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

18. Over the last few decades, however, most of these ponds in our country have

been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of Gram Sabha/Gram Panchayat/ Poramboke/Shamlat land and these must be restored to the Gram Sabha/ Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularisation should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

9. In the present case we may observe that the petitioner has admitted that construction of his house over part of land, which has been recorded as pond. He has not challenged the extent of the encroachment nor has he questioned the complaint of encroachment made by his own family members. The order is challenged only on the ground that the constructions are existing since prior to the date of vesting. We do not find that there is any proof of the objection nor any such objection was raised before the competent authority.

10. The Zamindari was abolished in the State of U.P., with the date of vesting as 1st April, 1951. It is difficult to believe that since thereafter, if there were any constructions, on the pond, they were not recorded nor any effort was made to get such old constructions, if they were really old, to be so recorded or documented at any time. On the contrary the entry of the pond on the land has continued.

11. We are of the opinion that the plea that constructions are old has been taken only to avoid the demolition of the unauthorised constructions over the pond. There is no substance in the plea.

12. Before parting with the case, we may observe that the Division Bench of this Court in Prem Singh Vs. State of U.P. and Others, , has also issued directions in this regard as follows:

After the judgment of the Supreme Court in the case of Jagpal Singh and Others Vs. State of Punjab and Others, , followed by some other judgments, upon directions of this Court, the Commissioner-cum-Secretary, Board of Revenue, U.P. Lucknow has issued a circular dated 4th October, 2012. Para-1 of that circular simply refers to certain directions of this Court in a writ petition bearing

number 6472 (M/B) of 2012 (On Prakash Verma and others v. State of U.P. and others) and judgments of the Apex Court including that in the case of Jagpal Singh's case (supra), but Para-2 is relevant for the purpose. The same runs as hereunder:

We have noticed that large number of similar writ petitions are being filed only for enforcement of law laid down in the case of Jagpal Singh (supra) and some subsequent judgments.

In view of direction noticed in the aforesaid circular, we are of the considered view that if complaints regarding unauthorised occupation over the public ponds or other similar public lands are received by the District Magistrate of a District, he should take all the required actions in view of law already settled in the case of Jagpal Singh and others.

In case, the District Magistrate finds some good reasons to seek guidance from the Members Committee indicated in Para-2 of the aforesaid circular, then he may refer the matter and seek guidance in appropriate cases.

So far as the present writ petition is concerned, we grant liberty to the petitioner to approach respondent Nos. 2 and 3 again with a certified copy of this order. The concerned respondents shall get appropriate inquiry made and take required action to protect public ponds as per law laid down by the Apex Court, expeditiously.

Let a copy of this order be furnished to the learned Standing Counsel for the State for communication to the Principal Secretary, Revenue, Government of Uttar Pradesh, who shall circulate a copy of this order to all the Divisional Commissioners as well as the District Magistrates so that number of such types of cases coming to this Court may be checked.

The petition is, accordingly, disposed of.

13. In this case on the admitted position that the petitioner has encroached upon the land recorded as pond, which were verified on the spot inspection by the ADM (F & R), Jaunpur on 8.2.2010, such constructions must be demolished and the pond restored to the villagers. The writ petition is dismissed.