

(2005) 04 AHC CK 0207

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 55677 of 2004

Budhaee

APPELLANT

Vs

Collector, Assistant Collector/Tahsildar Khaga, Gram Sabha
Sanwat and State of U.P.

RESPONDENT

Date of Decision : 19-04-2005

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 29C
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122A(1),
122A(2), 122B, 122C, 123

Citation : (2005) 3 AWC 2447 : (2005) 98 RD 741 : (2005) 1 RD 741

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : Shyam Sunder Mishra, for the Appellant; V.K. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.U. Khan, J.—By order dated 3.1.2005 passed in this writ petition it was observed that as pure question of law was involved in the writ petition hence there was no need to call for counter affidavit on behalf of State and Gaon Sabha who are the only respondents in this writ petition. Through the said order the case was directed to be listed on 10.1.2005 for hearing. Thereafter the case was heard on 18.1.2005 and judgment was reserved. Neither on 3.1.2005 nor on 18.1.2005, learned counsel for respondents requested for opportunity to file counter affidavit.

2. This writ petition arises out of proceedings u/s 122-B of U.P.Z.A. & L.R. Act initiated by Gaon Sabha Sanwat Tehsil Khaga District Fatehpur against Budhai, the petitioner before Assistant Collector/Tahsildar, Khaga District Fatehpur in the form of case No. 3780 of 2002. The allegation against the petitioner was that petitioner had encroached upon Gaon Sabha land comprised in plot No. 719 area .006 hectares (i.e. 55 to 64 Sq.meters). Tehsildar decided the case against

the petitioner through judgment and order dated 30.7.2003. In the said judgment it was recorded that petitioner had constructed his house over the land in dispute which in the revenue record was entered as land reserved for basic school. Petitioner had stated that he was in possession of the land in dispute for about 40 years and had constructed his house thereupon. The period of possession as stated by the petitioner was not disbelieved by the Tehsildar. In fact Tehsildar did not say anything regarding period of possession. The Tehsildar accordingly directed eviction of the petitioner from the land in dispute and awarded damages of Rs. 3,000/-. Against the said order petitioner filed a revision being revision No. 124 of 2003-04. Collector, Fatehpur through judgment and order dated 1.11.2004 dismissed the revision hence this writ petition.

3. The revisional court observed that petitioner had constructed his kachi kothari over the land in dispute and his possession was unauthorized. Collector also observed that from perusal of khatauni 1409 to 1414 Fasli it was clear that the land in dispute was entered as land reserved for primary school.

4. There was no evidence available on the records of the courts below to show that actually any primary school was established over the remaining portion of the said plot or at the adjoining land.

5. In some cases instead of eviction award of damages is proper relief. For awarding damages in lieu of eviction the following considerations are relevant:

1. What is the status of owner.

2. What is the status of unauthorized occupant.

3. For what purpose owner was using the land in dispute before unauthorized occupation and for what purpose owner is likely to use the land if it is handed back to the owner.

4. For what purpose the unauthorized occupant is using the land in dispute.

5. Area of the encroached land.

6. Period of unauthorized occupation.

7. Reason of silence or inaction of the owner at the time of unauthorized occupation.

8. The reason of delay on the part of the owner to initiate proceedings for ejectment if such proceedings are initiated after a long time from the date of unauthorized occupation.

9. Interest of justice.

10. Balance of convenience and irreparable loss and injury.

6. Gaon Sabha holds the land for the benefit of the residents of the village. Gaon Sabha is permitted rather required to allot land for abadi purposes. User of the

land reserved for several other purposes may be converted into Abadi site and then it may be allotted by Gaon Sabha for constructing houses. Unauthorized occupation of scheduled caste and now of other backward classes or persons of general category living below poverty line before a particular cut off date is regularized u/s 123 of U.P.Z.A.& L.R. Act. Initially the cut off dates were June 1985 and June 1995. The latest cut off date is 1.5.2002 (vide Sections 122-A (1) and (2)(a) (e), 122-B, 122-C and 123 of U.P.Z.A.& L.R. Act and Section 29-C of UP. Consolidation of Holdings Act).

7. In view of all these provisions I am of the opinion that if on a small portion of 100 to 200 Sq.meters of land belonging to Gaon Sabha which is not reserved for some important public purpose like pond, rasta etc. a person has constructed his house and the house is in existence for a long time then it is not proper to direct demolition of the house and eviction of the occupant thereof. In such situation reasonable damages will serve the public purpose better. After all Gaon Sabha holds the land for the benefit of the public. If the occupant is a poor person and Gaon Sabha does not start eviction proceedings immediately after occupation and construction of the house then the order of eviction would be extremely unjust. Of course no such concession can be granted if the land is reserved for pond or road or some other important public purpose. This concession also does not mean that any person is authorized to encroach upon the Gaon Sabha land and construct the house. However, Gaon Sabha should be vigilant and start eviction proceedings immediately.

8. In writ petition No. 47268 of 2004 Ajanta Vidyalaya v. state decided on 28.1.2005 granted the same benefit to a school. School was in occupation of Gaon Sabha land having an area of; about hectare. The school building was constructed more than 25 years before and since then school was being run. In the said case instead of eviction directed payment of Rs. 1,75,000/- as damages.

9. About 25 to 30 years before market value of abadi land in villages was about Rs. 100/- per Sq.meter.

10. Accordingly, writ petition is allowed. Both the impugned orders are set aside and it is directed that instead of demolition of petitioners house and his eviction therefrom, petitioner shall be liable to pay Rs.6,000/- as damages to Gaon Sabha. The said damages shall be paid by the petitioner within three months from today.