

(2015) 03 AHC CK 0066
In the Allahabad High Court
Case No : Writ-C No. 4399 of 2015

Deep Narain and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 290, 342

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122-B(4-F), 123(1)

Citation : (2015) 127 RD 870

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : R.B. Singh and S.K. Pandey, for the Appellant; Tariq Meqbool Khan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.

1. Heard learned Counsel for the petitioners and learned Standing Counsel for the State-respondents. This writ petition has been filed challenging an order dated 12.12.2014 passed by the respondent No. 2. This order has been passed on a Misc. application filed by the petitioners claiming the benefit of section 122-B(4-F) of the U.P. Zamindari Abolition and Land Reforms Act and by the order impugned the claim of the petitioners have been turned down.

2. The claim of the petitioners have very long and checkened history. It appears that the father of the petitioners was found to be in illegal occupation of the land in question.

3. Proceedings under sections 342 and 290 of the IPC were drawn against him, resulting in conviction vide order dated 10.5.1958.

4. Against this order, a revision was filed wherein the matter was referred to the Nyay Panchayat on 11.9.1958. The Nyay Panchayat appears to have imposed a

fine of Rs. 5/- upon the father of the petitioners. However, the possession of the petitioners' father appears to have continued over the land in question. Thereafter repeated attempts appear to have been made by the petitioners to get their name recorded over the land on the basis of their continued illegal occupation. Repeated writ petitions have been filed in this regard.

5. The first writ petition being writ petition No. 9613 of 1989 was disposed of vide order dated 25.7.1990 granting liberty to the petitioners to approach the authorities concerned by means of a representation which was directed to be decided expeditiously. Thereafter writ petition No. 8554 of 1994 was filed which was disposed of on 23.11.1995 directing that the petitioners were not liable to be evicted from the land in question except in accordance with law.

6. Subsequent to this order, the District Magistrate appears to have passed an order on 6.2.1998 whereby the claim of the petitioners' father over the land in question was rejected.

7. The order of the Collector was challenged by means of a writ petition No. 2508 of 1998 which was disposed of granting liberty to the petitioners to file a revision.

8. Somehow the petitioners' father came to be recorded over the land in question in pursuance of the order dated 26.12.1995 passed in writ petition No. 8554 of 1994. The Sub Divisional Magistrate by his order dated 19.9.1996 directed that the name of the petitioners' father to be expunged. This order was passed on the reasoning that the High Court had never directed recording the name of the petitioners' father. This order of the SDM dated 19.9.1996 was set aside on the ground that it was ex parte and the matter was remanded.

9. Against the order of remand, the revision was filed before the Board of Revenue which was allowed, the order of remand dated 13.3.1999 was set aside and the order of the SDM passed on 19.9.2006 was affirmed.

10. Aggrieved by the order of the Board of Revenue, the petitioners preferred a writ petition being writ petition No. 10584 of 2012. This writ petition was dismissed. However it was observed therein that the defence provided under section 122-B(4-F) had not been considered or accepted by any of the Courts below and that this issue be considered and decided when occasion for the same arose.

11. In pursuance of the observations made by this Court in its order dated 28.2.2012 the petitioners appear to have made a representation. When no orders were passed on this representation yet another writ petition being writ petition No. 18059 of 2014 was preferred which was disposed of granting liberty to the petitioners to file a fresh representation. It is this representation made in pursuance of the directions contained in the order dated 28.2.2012 passed in writ petition No. 18059 of 2014 and registered as Misc. Case No. 1. that has been dismissed by the order impugned. Hence this writ petition.

12. I have heard learned Counsel for the petitioners and have perused the record

and I have also heard learned Standing Counsel in rebuttal.

13. The respondent No. 2 while passing the impugned order has recorded that the petitioners belong to the scheduled caste but are in Government service and are also possessed of agricultural holdings. It has further been held that the revenue team constituted for this purposes has carried out a detailed survey and reported that the petitioners have constructed a house and sahan on 0.028 hectares of plot No. 206 of khata No. 135. The remaining area of this plot is banjar and the petitioners are not in possession whereof. It has also been categorically recorded that the remaining portion of plot No. 206 is lying vacant on the spot.

14. As regards the area, namely 0.028 hectare of plot No. 206 is concerned, it has been observed that the petitioners have been granted benefit under section 123(1) of the Act.

15. On the aforesaid findings that the claim under section 122-B(4-F) has been rejected.

16. The findings returned in the impugned order are pure findings of the fact which are not liable to be interfered with in the writ jurisdiction. The submissions made by the learned Counsel for the petitioners, in this regard, are found to be without any substance. Accordingly and for this reasons given above especially, in view of the findings contained in the impugned order being pure findings of fact, this writ petition is devoid of merits and is, accordingly dismissed.