

(2017) 01 AHC CK 0172
In the Allahabad High Court
Case No : Writ C No. 61636 of 2016

Dhani Ram

APPELLANT

Vs

Collector, District-Jhansi

RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

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

Citation : (2017) 134 RD 709

Hon'ble Judges : Surya Prakash Kesarwani, J.

Bench : Single Bench

Advocate : Prem Shankar Kushwaha and Archana Singh, Advocates, for the Petitioner; C.S.C. and Anand Kumar Yadav, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Surya Prakash Kesarwani, J.— Heard Sri Prem Shankar Kushwaha, learned counsel for the petitioner, Sri Raj Kumar Pandey, learned standing counsel for the State respondents and Sri Diwakar Singh holding brief of Sri Anand Kumar Yadav, learned counsel for respondent no.3.

2. Briefly stated, facts of the present case, are that the petitioner had encroached over land of Khasra Plot No.498 measuring 4350 Sq. Ft. of village Atariya, Pargana and Tehsil Moth, district Jhansi by constructing a house thereon. Consequently, the proceeding under Section 122-B of the U.P. Z.A. & L.R. Act, was initiated against him and a case No.6 of 2001 (Gaon Sabha v. Dhani Ram) was registered, which was decided by the Tehsildar/Assistant Collector, (First Class), Moth, by an order dated 12.12.2002, whereby, the petitioner was directed to be evicted and damages of Rs.52,200/- was imposed.

3. On 16.12.2002, the petitioner moved an application before the Tehsildar, Moth in the aforesaid case stating that the damages fixed is highly excessive, which may be reduced and he is ready to pay the reduced amount and shall also remove his encroachment over the said land. The said application was disposed

of by Tehsildar/Assistant Collector (First Class), Moth, district Jhansi by order dated 20.12.2002 modifying the order dated 12.12.2002 by reducing the damages to Rs.2,100/-. However, it appears that despite the aforesaid order dated 12.12.2002, as modified by order dated 20.12.2002, under Section 122-B of the Act, no steps were taken by the Tehsil authorities for eviction, as provided under Rule 115-E read with paragraphs-137 and 138 of the Revenue Code Manual. It appears that the petitioner did not wholly remove the encroachment, as aforesaid, and continued with his encroachment over plot No.498, over an area of 2242 Sq.Ft. Consequently, again proceeding under section 122-B of the Act, was initiated, which was registered as Case No. 85 of 2009-10 and was decided by the Assistant Collector (First Class), Tehsil Moth, by order dated 27.11.2015. By order dated 27.11.2015, the petitioner was directed to be evicted from Plot No.498, area 2242 Sq. Ft. of Harijan Abadi. The Tehsildar also imposed damages of Rs.1,34,520/- and directed for issuance of notice in Form 49-C.

4. Aggrieved with this order, the petitioner preferred Revision No.01 of 2016 before the Collector, Jhansi, which was dismissed by the impugned order dated 23.9.2016.

5. The law with regard to encroachment over Gram Sabha land with reference to the provisions of Section 122-B of the Act, has been settled by a Division Bench of this Court in the case of Jagat Narain and others v. State of U.P. and others (2015) 3 ADJ 466. The relevant paragraphs of the said judgment being paragraph Nos. 22, 22A, 23, 24, 25, 26 and 27 are as under :

"22. Land which has been vested in the Gaon Sabha under Section 117 has to be utilised for the purposes for which the vesting has taken place. The Act of 1950, which is an enactment with a social purpose, has taken due care of the need to allot lands to marginalized sections of society. Provisions have been made, as already noted in the earlier part of this judgment for the allotment of land as abadi sites for members of the Scheduled Castes and Scheduled Tribes as well as for the Other Backward Classes, besides persons belonging to the general category living below the poverty line, agricultural labourers and village artisans. Sub-section (4-F) of Section 122-B specifically contemplates that a person in occupation of land belonging to Gaon Sabha under Section 117 before a cut off date would be admitted as a bhumidhar, sirdar or, as the case may, asami provided such a person is an agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe and the total extent of the holding does not exceed 1.26 hectares. The legislature, being cognizant of the hardship which may be caused to an unauthorised occupant to a specified category, has carved out an exception in sub-section (4-F) of Section 122- B, which operates as an overriding provision over the other preceding subsections. Hence, in order to seek protection against an order under Section 122-B, an individual who falls within one of the categories mentioned in sub-section (4-F) has been recognised by the legislature. In our view, it would not be open to the Court, while exercising its

power under Article 226 of the Constitution, to expand the ambit of the exemption which has been granted in sub-section (4-F) of Section 122-B. This would clearly be a matter of legislative judgment and policy. Such an exercise cannot be carried out by the Court, because to do so, would be to re-write the law and to substitute new categories by expanding the area of protection which has been conferred by the legislature.

22-A. The danger in the Court in doing so, is clear on a reading of the decisions of the learned Single Judges. The first decision in *Ajanta Udyog Mandal Vidyalay* (supra) was based on a decision in a second appeal rendered in *Ram Shankar* (supra) which was relied upon as a precedent, holding that in some rare instances, instead of granting relief of ejectment, an award of damages may be the proper relief. *Ram Shanker* (supra) was a dispute, plain and simple between two private parties, one of whom sought eviction on the ground that the other had made an encroachment on his land. There was no element of public interest directly involved. In *Budhaee* (supra), the learned Single Judge was of the view that if the land is not reserved for an important public purpose, such as pond, rasta etc. and a "small portion" of 100 to 200 sq. metres of Gram Sabha land has been encroached upon, an order of eviction could be substituted by an order of payment of damages. In *Sukhdeo* (supra), the area in occupation was as much as 2 bighas and 13 biswas. This only indicates that if the Courts were to take up a plea for regularisation on a case to case basis what area of unauthorised occupation is regarded as a "small portion" would be a subjective assessment which may vary from case to case and from Judge to Judge. In *Sukhdeo* (supra), the area under unauthorised occupation was 2 bighas and 13 biswas. The learned Judge held that if a person is in occupation for more than 12 years, instead of eviction, an award of damages is the appropriate relief. We are affirmatively of the view that this would not reflect the correct position in law. Even in the case of a plea of adverse possession, where such a plea is available, mere possession over a particular period is not sufficient to sustain or establish a plea since such possession has to be open, hostile and to the knowledge of the owner.

23. In a matter relating to an order of eviction under Section 122-B, the Court ought not to place a premium on illegal attempts to grab land belonging to the Gaon Sabha. If such attempts were to be permitted in cases which do not fall within the purview of the exception which has been carved out by the legislature, this would only result in a situation where persons with muscle and clout would be encouraged to take the law in their own hands. The mere silence of the Gram Pradhan over a long period of time would be construed as an entitlement to resist efforts to evict an unauthorised occupant. Such a consequence would be contrary to public interest and cannot be countenanced.

24. In the judgment of the Supreme Court in *Jagpal Singh v. State of Punjab* AIR 2011 SC 1123, the manner in which Gram Sabha's lands are being encroached upon has been taken due cognizance of. The Supreme Court observed as follows:-

"13. ...The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularisation of possession of these unauthorised occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorised occupation has subsisted for many years."

The Supreme Court further held as follows:

"22....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. Regularization 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." Thus, regularisation was contemplated only in exceptional cases where a lease has been granted under a Government notification to landless labourers or members of Scheduled Castes and Scheduled Tribes or where there is already a school, dispensary or other public utility land. The State Governments were directed to prepare schemes for eviction, for the removal of unauthorised occupants from the Gaon Sabha land.

25. In the present case, the Act of 1950 provides for those cases where the land of the Gaon Sabha can be allotted in the first instance to persons falling in specified categories. The Act also contains provisions, as we have noted, of sub-section (4-F) of Section 122-B, where a protection against eviction has been granted. In our opinion, having due regard to the observations of the Supreme Court in Jagpal Singh (supra), the long duration of an illegal occupation or expenditure in making constructions thereon cannot be regarded as a justification for condoning an illegal act or for regularising unlawful occupation. In fact under Rule 115-C of the Rules of 1952, it is the duty of the Land Management Committee to preserve or protect the land which has been vested in the Gaon Sabha under Section 117 from damages, misappropriation and wrongful occupation. Where the Land Management Committee fails to do so, the Collector is duly empowered by Rule 115-D to take necessary measures. The High Court in the exercise of its writ jurisdiction under Article 226 of the Constitution would not be justified in issuing a mandamus contrary to the provisions of law.

26. With respect, we find that the view of the learned Single Judge holding that an order for eviction can be substituted by an order for the payment of damages in lieu of eviction is not consistent with law. In *Budhaee (supra)*, the learned Single Judge was of the opinion that if on a "small portion" of 100 to 200 sq. metres of land belonging to the Gaon Sabha, a person has constructed his house and the land is not reserved for any other public purpose and the house is in existence for long time, it would not be proper to direct eviction of the occupant. In *Sukhdeo (supra)*, the learned Judge observed that if a person is in possession for more than 12 years, instead of eviction, an award of damages would be the appropriate relief. In *Siya Ram (supra)*, the view of the learned Single Judge was that if the petitioner or any other person, who is a party to the proceedings, has constructed a house over a small portion of the land ad-measuring about 200 to 300 sq. mts. and the house is in existence for about 10 years, the Court may consider settling of the land over which the house is constructed by the occupant, on payment of market value of the land at the time of occupation. We have already indicated our reasons for disapproving this statement of law in the judgments of the learned Single Judge. The Act has not contemplated any such period nor has the Act carved out any such category in sub-section (4-F) of Section 122-B.

27. For these reasons, we answer the reference as follows:

(i) The law laid down by the learned Single Judge in the decisions in *Ajanta Udyog Mandal Vidyalay (supra)*, *Budhaee (supra)*, *Sukhdeo (supra)*, *Kishore Singh (supra)* and *Siya Ram* (and other decisions following the same line) do not reflect the correct position in law and those decisions are hence overruled;

(ii) A person against whom an order of eviction has been passed under Section 122-B would not be entitled to a protection against eviction on the grounds which have weighed with the learned Single Judges in the above cases. Once the legislature has, by enacting a specific provision in sub-section (4-F) of Section 122-B, made a specific statutory provision which overrides the other preceding subsections of Section 122-B, it would not be open for the Court in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution, to create a new legislative category and to issue a mandamus contrary to law;

(iii) The decision in *Sukhdeo (supra)* to the effect that if a person is in possession for more than 12 years, instead of eviction, an award of damages would be the appropriate relief, does not express the correct position in law. No such provision has been made by the legislature and it would not be open for the Court to introduce a new legislative category or to introduce a period of limitation as was purported to be done in the decisions of the learned Single Judge noted above."

(Emphasis supplied by me)

6. In view of the aforesaid Division Bench judgment in the case of *Jagat Narain and others (supra)*, I do not find any infirmity in the impugned orders.

7. After this order was dictated in open Court, learned counsel for the petitioner submits that liberty may be granted to him to move an application before the authority concerned for reduction of damages, which is highly disproportionate and also deserves to be reduced in view of the determination of damages by respondents to the tune of Rs.2,100/- by order dated 20.12.2002, which was with respect to almost half of the area of the encroachment in question. He also submits that there is an adjoining land in the name of his son, which they offer in exchange of the land in question, so as to same demolition of their only house standing on the land in question on one hand and on the other hand Gram Sabha shall also get equal land of equal value in exchange.

8. The submission so made is beyond pleadings and therefore, I decline to entertain it. It is always open to the petitioner to avail such remedy, as may be available to him under law. Consequently, I refrain from expressing any opinion on the last submission of the learned counsel for the petitioner, as afore noted.

9. In view of the aforesaid, the writ petition is dismissed. However, there shall be no order as to costs.