

(2012) 07 AHC CK 0065

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3422 of 2008

Dharam Singh and Others

APPELLANT

Vs

Commissioner and Others

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198

Citation : (2013) 1 ADJ 611

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : S.D. Kautilya, Anil Kumar, G.N. Tiwari, Raghubir Singh and S.R. Singh, for the Appellant; Rahul Sahai, V.K. Singh, S.K. Purwar and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard learned counsel for the petitioners, Sri S.K. Purwar for the contesting respondent No. 4 and the learned Standing Counsel for the respondent Nos. 1 and 2. Learned counsel for the Gaon Sabha is not present. None of the other respondents have put forth any contest to this petition. The petitioners are allottees of certain land by the Gaon Sabha under the provisions of Section 198 of the U.P. Z.A. & L.R. Act, 1950. The respondent No. 4 who is the erstwhile gram pradhan appears to have complained against the said allotment proceedings as being without authority in law and one of the major grounds raised was that the Sub-Divisional Magistrate had no authority to approve the said allotments after 20th July, 2002, inasmuch as, the said power had been conferred on the Assistant Collector (Tehsildar) of the area concerned. It is undisputed that by a subsequent amendment the powers have again now been vested in the Sub-Divisional Magistrate. The fact remains that in the present case the Sub-Divisional Magistrate has passed the order of approving the lease on 25th July, 2002 which is during the period when the amendment was operating.

2. This complaint of the respondent No. 4 has been accepted and the lease of the

petitioner has been cancelled as the impugned orders clearly recite that the lease has been approved by an incompetent authority. The petitioners have come up before this Court challenging the said orders on the ground that the aforesaid orders proceed on a misconception of law and also on erroneous assumptions of fact, inasmuch as, the amending Act did confer powers on the Tehsildar, but a subsequent approval by the Sub-Divisional Magistrate does not entirely annul the allotment proceedings. At the most, the Tehsildar may be required to reconsider the matter with regard to approval in the event it is found that there is no approval of the Tehsildar.

3. Sri Purwar on the other hand contends that apart from this ground there were several other infirmities in the grant of lease, inasmuch as, the petitioners were not eligible persons entitled to get the lease. He therefore contends that there were other grounds available for cancellation of the lease even though no finding has been recorded in the impugned orders as it proceeds simply on the ground that the Sub-Divisional Magistrate had no authority to grant approval. Sri Purwar submits that once the Amendment Act has been brought in force, the order of approval passed by the Sub Divisional Magistrate is void ab-initio and as such the petitioners cannot be permitted to place reliance thereon or take any advantage of the approval by the Sub Divisional Magistrate.

4. No counter-affidavit has been filed on behalf of the State or the Gaon Sabha. Having heard learned counsel for the parties, it is evident from a perusal of the impugned order and the documents on record that the entire file relating to allotment was again processed through the Tehsildar on 20th October, 2002. The fact that the file was processed by the Tehsildar has not been denied and which is also evident from the impugned orders itself. The main ground of cancellation therefore appears to be the exercise of powers of approval by an incompetent authority, namely, the Sub-Divisional Magistrate, instead of by the Tehsildar.

5. The aforesaid argument of the respondent that the Sub-Divisional Magistrate had no authority to formally approve the lease is debatable as in view of the date of the enforcement of the amendment as indicated hereinabove, it was the Tehsildar who was empowered to accept the recommendations of the Land Management Committee for allotment of the land to the petitioners. However it is to be noticed that even though the powers were conferred on the Tehsildar with effect from 20.7.2002, yet the said amendment was published and notified in the gazette on 10.9.2002. The Sub-Divisional Magistrate therefore had no such inkling of any alteration of powers when he passed the orders on 25.7.2002. The said order may on subsequent scrutiny be classified as being hit by a latent lack of jurisdiction but the allotments were ratified by the Tehsildar through his report and recommendation dated 20.10.2002 (Annexure-4 to the petition).

6. Nonetheless as noticed above, and which is evident from the records, the Tehsildar himself processed the file and recommended that the leases were valid and did not suffer from any infirmity. In essence, and in pith and substance, the

Tehsildar applied his mind to the said allotments and accordingly made a recommendation that the petitioners were eligible to receive the said allotment of lease from the Gaon Sabha. In the opinion of the Court, once the Tehsildar had applied his mind being the competent authority for approval, then in that view of the matter the Tehsildar will be presumed to have approved the said allotment in favour of the petitioners, and which has been noticed by this Court while granting an interim order on 22.1.2008. This act of the Tehsildar, even though subsequent in point of time cannot be faulted with. The factum of the report and recommendation of the Tehsildar has been noticed in the impugned orders. This fact has been stated in Para 7 of the petition and has been accepted as a matter of record in Para 5 of the counter-affidavit of the private respondent. The same has also not been questioned or disputed in the counter-affidavit.

7. The Tehsildar therefore having recommended favourably, will be presumed to have applied his mind to the same. To approve means to be in favour of or to judge favourably. It is to favourably sanction and confirm an act. This expression is an act of approval, ratifying an authorised act. It is an assent which is an approbation through a formal attestation. The Tehsildar's recommendation was favourable to the petitioners and therefore it was a conduct by a competent official approving the allotment. The respondents have not been able to bring on record any material to the contrary nor has the State filed any affidavit of the Tehsildar controverting the said fact.

8. In the circumstances, it cannot be said that the approval was bereft of any orders of the Tehsildar who was the authority competent to grant the approval. Putting of signatures by the Sub-Divisional Magistrate might therefore be superfluous, but the exercise of the discretion by the Tehsildar in supporting the recommendations cannot be said to be an act either without authority or without jurisdiction. In the opinion of the Court, the recommendation made by the Tehsildar will amount to his approval and in the aforesaid circumstances the findings recorded by the authorities below on that count cannot be sustained. The impugned orders dated 29.8.2007 and 31.12.2007 are hereby quashed for the aforesaid reasons.

9. So far as the issue of eligibility of the petitioners and the issue of cancellation on other grounds of irregularity is concerned, it is open to the Collector to take appropriate action in case he finds that the allotments were otherwise made in favour of ineligible persons provided that the limitation as prescribed under the provisions of Section 198 permit him to proceed to do so. The writ petition is allowed subject to the aforesaid observations.