
(2013) 10 AHC CK 0047
In the Allahabad High Court
Case No : Writ-C No. 56967 of 2013

Giraja Shanker

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2013) 121 RD 770

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : L.K. Dwivedi and Lavkush Kumar Shukla, for the Appellant; Manoj Kumar Yadav and Pankaj Mishra, for the Respondent

Judgement

Amreshwar Pratap Sahi, J.—Heard learned Counsel for the petitioner Sri Lokesh Kumar Dwivedi and Sri Pankaj Misra for the respondent No. 5 and the learned Standing Counsel for the respondents No. 1, 2 and 3 and the learned Counsel for Gaon Sabha for respondent No. 4. This is a peculiar case where the benefit of exchange has been extended to the respondent No. 5 by the Sub-Divisional Officer, Badlapur, District Jaunpur vide order dated 14.9.2011 on the presumption that such an exchange in respect of a chak road was permissible with the land of the petitioner which has been given in exchange.

2. The petitioner, who claims himself to be a resident of the same village, filed a revision on the ground that the chak road is being utilized by the villagers including the petitioner and, therefore, the revision should be entertained as the order of the Sub-Divisional Officer was clearly in violation of the provisions of section 161 of the U.P.Z.A. & L.R. Act, 1950 and without following the procedure prescribed in law. It was urged before the revising authority that there was no proposal of the Gaon Sabha for giving the said land in exchange which was entered as a chak road to the respondent No. 5 and as such the order deserves to be set aside. Even otherwise, land which was covered u/s 132 of the 1950 Act could not have been given in exchange.

3. The revising authority firstly held that the petitioner had no locus to maintain the revision as he had failed to establish that he was an aggrieved person. It was secondly held that since the purpose for which the land was carved out as a chak road did not fulfill any public purpose, therefore, the exchange was permissible and for which reliance was placed on a couple of decisions of this Court. Thirdly, it was held that since the Land Management Committee of the Gaon Sabha has not opposed the said exchange, therefore, it would not necessary to interfere at the instance of the petitioner.

4. Sri Dwivedi, learned Counsel submits that all the three findings recorded by the learned Commissioner are against law, inasmuch as, the petitioner being a villager had every right to maintain the petition as he was also using the said chak road. Secondly, the exchange had been made without the Gaon Sabha having made any proposal for such exchange and, therefore, the Sub-Divisional Officer could not have assumed this jurisdiction himself. Thirdly, Sri Dwivedi contends that even if the Gaon Sabha had not opposed it, the Sub-Divisional Officer or the learned Commissioner were absolutely in error in allowing the said exchange on their own.

5. Sri Pankaj Mishra, on the other hand, contends that no loss or damage would be caused to the Gaon Sabha as a very minimal area of .005 hectare has been given in exchange and the petitioner has handed over his valuable land. In view of this error which was pointed out, he submits that the Sub Divisional Officer and the learned Additional Commissioner have done substantial justice, as such the impugned orders do not call for any interference.

6. Having heard the learned Counsel for the parties, in the opinion of the Court, the Sub-Divisional Officer and the learned Additional Commissioner have completely overlooked the provisions of law and the Sub Divisional Officer concerned appears to have gone out of the way to favour respondent No. 5 to permit such an exchange that too even in the complete absence of any proposal of the Gaon Sabha. This, therefore, was in clear violation of the provisions of the 1952 Rules which are the Rules applicable to the controversy. Learned standing Counsel is right in his submission that Rules 144 to 146 of the U.P.Z.A. & L.R. Rules, 1952 have not been followed.

7. Apart from this, the question of giving in exchange land covered by section 132 of the 1950 Act also arises. The decisions on which reliance has been placed by the learned Additional Commissioner were in relation to manure pits and not a chak road. This distinguishing feature, therefore, has also escaped the notice or has been overlooked by both the authorities below. If the petitioner is a resident of the village he is entitled to utilize the chak road or any other road which is meant for the villagers. Therefore, he had locus to maintain the revision as he fell within the definition of an aggrieved person. The learned Additional Commissioner was, therefore, wrong in assuming that the petitioner had no locus to maintain the revision.

8. Apart from this, even if the Land Management Committee or the Gaon Sabha had not approached the Commissioner then it is the duty of every Revenue authority to maintain the status of State and Gaon Sabha land. Such provisions are Available under the U.P.Z.A. & L.R. Act, 1950 as well as the U.P. Consolidation of Holdings Act, 1953. The authorities, therefore, are obliged to protect and preserve the property of the Gaon Sabha even if the Gaon Sabha is not contesting the claim. Consequently, the impugned orders of the learned Additional Commissioner dated 12.8.2013 as that of the Sub Divisional Officer dated 14.9.2011 cannot be sustained. The writ petition is allowed. The impugned orders are set aside. It shall be open to the Sub-Divisional Officer to pass an appropriate order in accordance with law.