
(1999) 02 AHC CK 0108

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 20784 of 1992

Girja

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-02-1999

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 20, 9

Citation : (1999) 02 AHC CK 0108

Hon'ble Judges : Binod Kumar Roy, J and Yatindra Singh, J

Final Decision : Dismissed

Judgement

1. The prayer of the petitioner is to command the Respondents not to demolish his house and to evict him from his peaceful possession over lands bearing Plot Nos. 277, 273, 279 and 280 of Mauja Jarahar Taluka Naugarh, Tahsil Chakia, District (Varanasi) Presently Chandauli by issuance of a writ, Order or Direction in the nature of mandamus.

2. He asserts to this effect He is a Schedule Caste. He has been residing on the land in dispute for a period of more than 40 years before the Zamindari Abolition and Land Reforms Act. The land on which his house is situated will be deemed to have settled with him under Section 9 of U.P.Z. A. and L.R. Act. He has been using the lands in dispute for the purpose of agriculture. Parcha Awapasi (Annexures 2 to 7) PassBook (Annexure 8) which was granted to him shows that he has been in continuous possession from 1977 till date. He was shocked and surprised when he came to know that Respondent No. 2 (the Forest Ranger, Majhgayee Range, Mauja) is going to demolish his house and evict him from the: abovementioned plots without giving any opportunity to him. He made a representation dated 21/9/92 alongwith others, on 24/9/92 before the District Magistrate, Varanasi (as contained in Annexure 9). In view of the Notifications dated 30/6/75 and 30/6/85 (copy not appended) a Scheduled Caste is not to be dispossessed from a land which is used for the purpose of his dwelling shelter. There is no notification showing that the land in dispute was ever declared as

Forest land. Thus, the Forest Department has no concern with it. Accordingly the action of the respondent is wholly arbitrary and unwarranted.

3. In the counteraffidavit dated 18595 which has been sworn by Sri Rakesh Chandra the SubDivisional Forest Officer, Kashi Forest Division, Ram Nagar Varanasi, it has been stated to this effect: The land in dispute is Forest Department's land. It is reserved Forest land under Section 20 of the Indian Forest Act, 1927 vide Govt. Notification No. 10355/14B dated 15172. As such the petitioner's possession is unauthorised and illegal. The Parcha Awapasi granted by the Irrigation Department do not mention for which land water rate is being charged. The passbook of the Irrigation Department has got no concern with the Forest Department. The petitioner has no right to encroach upon the lands of the Forest Department which is entitled to save its prosperity. There is no house constructed over the disputed plot. There was only Kachha huts which were removed by the villagers voluntarily. The claim that the alleged house was settled under Section 9 of the U.P.Z.A. and L.R. Act is incorrect. He has not even produced the notification on which he relies. The petitioner is not entitled to any relief.

4. The petitioner has filed rejoinder dated 3995 to the counteraffidavit aforesaid.

5. Sri Jitendra Kumar, learned Counsel appearing on behalf of the petitioner, holding brief of Sri S.R. Tiwari, contested as follows

In view of the statements made by the petitioner in his writ petition and the rejoinderaffidavit to the counteraffidavit he is entitled to reliefs claim for. The existence of the house has been wrongly denied. In view of the provisions made by the Government in the notifications as he petitioner belongs to Scheduled Caste the cannot be evicted from his lands which has been possessed from last 50 years.

6. Mr. P.K. Bisaria, learned standing Counsel appearing on behalf of the Respondents, on the other hand contended that the claim of the petitioner has been demonstrated in the counteraffidavit to be incorrect. It is apparent from the notification under Section 20 of the Act that the land in question is Forest property. Accordingly, the petitioner has not business to keep the forest land in his possession. Consequently, this writ petition is liable to be dismissed.

7. There is no tangible material before us to hold that there is a house on the land in question much less which is used as a dwelling shelter. Even the notification on which reliance is placed has been produced or shown to us. It is difficult for this Court to rely on the self serving statements of the petitioner.

8. Pursuant to the notification, there cannot be any doubt that the lands which the petitioner is claiming before us, do not belong to the Forest Department.

9. We are, thus, of the view that the petitioner is not entitled to any relief.

10. In the result, this writ petition is dismissed but without cost.

11. The office is directed to handover a copy of this order to the learned Standing Counsel Sri P.K. Bisaria within one week for its intimation to the authority concerned. Petition dismissed.