

(1980) 07 AHC CK 0075
In the Allahabad High Court
Case No : Writ Petition No. 75 of 1974

Gokul Ram

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 07-07-1980

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 132, 194, 195, 197

Citation : (1980) AWC 555

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : N.B. Nigam, for the Appellant; K.B. Garg, for the Respondent

Final Decision : Allowed

Judgement

K.P. Singh, J.—This writ petition under Article 226 of the Constitution is against the judgment of Sari Syed Husain, Member, Board of Revenue U.P. Allahabad, dated 19-12-1973, in revision No. 903 of 1972-73 Badaun, Gokul Ram v. Gaon Sabha and arises out of proceedings u/s 198(2) of the U.P. Zamindari Abolition & Land Reforms Act. It has been alleged that the Land Management Committee of village Jagat had let out the disputed plot to the Petitioner on 30-4-65, against the provisions of law, hence a prayer was made for cancellation of the allotment of land in favour of the Petitioner. The District Revenue Officer, Budaun vide his order dated 15-11-68 had cancelled the lease. In appeal, the aforesaid order of the District Revenue Officer was set aside and the case was remanded for re-trial. After remand a notice was issued to the Petitioner and the proceedings were initiated against him. The Sub-Divisional Officer, Budaun through his judgment dated 30-3-72 has cancelled the lease in favour of the Petitioner with regard to plots Nos. 297, 867 and 943 but did not cancel the lease executed by the Land Management Committee in respect of plot No. 9 (Annexure A-I) attached to the writ petition. The Petitioner preferred an appeal against the order dated 30-10-72 passed by the Sub-Divisional Officer, Budaun but could not

succeed as is evident from Annexure A-2 attached to the writ petition. Thereafter, the Petitioner preferred a revision petition which has also been dismissed by the revisional Court through its judgment dated 19-12-1973 which is under challenge in the present writ petition.

2. The Learned Counsel for the Petitioner has contended before me that the provisions of paragraph 58 of the U.P. Gaon Sabha and Bhoomi Prabandhak Samiti Manual are ultra-vires and against the provisions of the Act, hence the opposite parties Nos. 1 to 3, namely the Board of Revenue, U.P. Allahabad, the Additional Commissioner, Rohilkhand Division, Bareilly and the Sub-Divisional Officer, Badaun have patently erred in relying upon the aforesaid provision and have thereby acted illegally in negating the claim of the Petitioner. His main grievance in this connection is that under the provisions of Section 195 of the U.P. Zamindari Abolition and Land Reforms Act, the Land Management Committee could admit any person as Sirdar to any land (other than land falling in any of the classes mentioned in Section 132) where the land is vacant land and the land is vested in the Gaon Sabha u/s 117 or the land has come into possession of the Land Management Committee u/s 194 or any other provision of this Act. According to the Learned Counsel for the Petitioner since the disputed land had vested in the Gaon Sabha u/s 117 of the U.P. Zamindari Abolition and Land Reforms Act, the Land Management Committee had absolute power to let out the whole land in any manner it liked. He has emphasised that paragraph 58 of the U.P. Gaon Sabha and Bhoomi Prabandhak Samiti Manual puts a restriction to the effect that the Bhoomi Prabandhak Samiti should in no circumstances let out the uncultivated land if, it is less than 10 per cent of the total area of the village, hence the aforesaid provision is against the provisions of the U.P. Zamindari Abolition and Land Reforms Act and are ultra-vires and should not have been relied upon by the Revenue Authorities. In this connection the Learned Counsel for the Petitioner has placed reliance upon the ruling in Radha Krishan Vs. Compensation Officer, Meja, Allahabad and Others, , wherein it has been observed as below:

Rules cannot take away what is given by the Act. Rules are for the purpose of carrying out the provisions of the Act.

3. Emphasizing the above observations the Learned Counsel for the Petitioner has contended that the provisions of paragraph 58 of the U.P. Gaon Sabha and Bhoomi Prabandhak Samiti Manual have been made under the provisions of the U.P. Zamindari Abolition and Land Reforms Act and are against the provisions of the Act. To my mind the contentions raised on behalf of the Petitioner are devoid of merits. Section 230(J) of the U.P. Zamindari Abolition and Land Reforms Act empowers the State Government to make rules for the procedure of admission to land under Sections 195 and 197 of the Act No. 1 of 1951. If the State Government has indicated guidelines for admission to land u/s 195 in paragraph 58 of the U.P. Gaon Sabha and Bhoomi Pra-bandhak Samiti Manual it has not acted against the provisions of the Act No. 1 of 1951. The provision of Section

195 of the U.P. Zamindari Abolition and Land Reforms Act does not provide that whole uncultivated land belonging to the Gaon Sabha must be let out to deserving persons. In this view of the matter if the State Government has provided through rules that 10 per cent of the total area of the village land should be reserved for planned use; that is, for fuel plantation, fruit orchards, pastures and compost pits etc. it has in no manner acted against provisions of the Act No. 1 of 1951. In my opinion the contentions of the Learned Counsel for the Petitioner in this regard are misconceived and ill founded.

4. The second contention raised on behalf of the Petitioner is to the effect that the Collector alone could cancel the lease in favour of the Petitioner and the Learned Counsel for the Petitioner has relied upon the provisions of Section 198 of the U.P. Zamindari Abolition and Land Reforms " Act wherein it has been mentioned that the Collector may of his own motion and shall on the application of any person aggrieved by allotment of land enquire in the manner prescribed into such allotment and if he is satisfied that the allotment is irregular he may cancel the allotment. It is note-worthy that the provisions of Section 198 of the U.P. Zamindari Abolition and Land Reforms Act have undergone amendments several times. Before 1-9-1969 the Sub-Divisional Officer could of his own motion take action u/s 198(2) of the U.P. Zamindari Abolition and Land Reforms Act and if he was satisfied that Gaon Sabha had acted with substantial irregularity or otherwise than in accordance with the provisions of the Act, he could pass such orders as he thought fit. In the present case it appears that the proceedings u/s 198(2) of the Act against the Petitioner were initiated sometime in the year 1968, hence the Sub-Divisional Officer had jurisdiction to proceed against the Petitioner. I am not inclined to accept the contention of the Learned Counsel for the Petitioner that in the circumstances of the present case the Collector alone had power to cancel the lease in favour of the Petitioner.

5. The other contention raised on behalf of the Petitioner before me is that the Sub-Divisional Officer has not proceeded against the Petitioner suo moto. Rather, he has proceeded against the Petitioner due to directions made by the Additional Commissioner in appeal. In order to examine this contention of Learned Counsel for the Petitioner I summoned the record of the trial court. It appears that the original proceeding decided by Shri B.P. Srivastava Judicial Officer Revenue, Buadun, on 15-11-1968 was set aside by the Additional Commissioner through the order dated 20-4-71 on the ground that the aforesaid Judicial Officer had no jurisdiction to decide the proceeding u/s 198(2) of the U.P. Z.A. and L.R. Act and the case was sent to the Assistant Collector in charge of the sub-division for fresh decision after giving opportunity to the parties to contest the case. The perusal of the impugned judgments attached with the writ petition does not give a clear cut idea as to whether the Sub-Divisional Officer had initiated proceedings suo moto against the Petitioner. It also does not indicate whether the proceedings against the Petitioner are within time as contemplated by serial No. 24 of Appendix 3 attached to the U.P. Z.A. and L.R.R. The Judicial Officer while deciding the case against the Petitioner had observed that the proceeding at the

instance of Tika Ram was beyond time but according to him it was within time as the Sub-Divisional Officer had powers to initiate suo moto action from the date of the knowledge about irregular allotment of the land within three years. Since the aforesaid judgment has been set aside it was proper for the Sub Divisional Officer to indicate in his judgment whether the proceeding against the Petitioner was within time or not. The Sub-Divisional Officer should have examined this aspect of the matter in the light of the provisions mentioned at serial No. 24 in appendix 3 attached to the U.P. Z.A. and L.R. Rules. The question of limitation does not appear to have been examined either by the first Appellate Court or by the Revisional Court. Since the aforesaid question goes to the root of the matter I have entertained the submission raised on behalf of the Petitioner and I think it proper to direct the revisional Court to examine the question of limitation in the present case.

6. The revenue authorities appear to have cancelled the lease in favour of the Petitioner on the ground that the lease in favour of the Petitioner was in contravention of the provisions of paragraph 58 of the Gaon Sabha Manual. I have learnt that the aforesaid paragraph has been deleted. In this connection it is proper to mention the ruling reported in Lal Kesho Ram v. U.P. State 1978 R.D. 131 and it is expected that the revisional court shall examine the effect of deletion of paragraph 58 of the Gaon Sabha Manual on the claim of the present Petitioner.

7. In the result, the writ petition succeeds and the impugned judgment of the revisional Court dated 19-12-1973 (annexure A-3 attached to the writ petition) is hereby quashed and the revisional Court is directed to re-examine the claim of the Petitioner in the light of the observations made above. Parties are directed to bear their own costs.