

(2004) 10 AHC CK 0008

In the Allahabad High Court

Case No : C.M.W.P. No"s. 5382, 8497, 8751, 10645, 11105 and 12082 of 2004

Gram Panchayat and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-10-2004

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 256
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117

Citation : (2005) 2 AWC 1792 : (2005) 1 ESC 575 : (2005) 2 UPLBEC 1225

Hon'ble Judges : M. Katju, Acting C.J.; Sunil Ambwani, J

Bench : Division Bench

Advocate : R.K. Shukla and Anuj Kumar, Addl. S.C, for the Appellant; Krishna Mohan and Y.K. Saxena and Pankaj Kumar, S.C., for the Respondent

Final Decision : Allowed

Judgement

1. The Gram Panchayats Basta Raipur; Khadar, Tehsil Chandpur; Rasoolpur; Rehar; Jai Singh Jot; Kotwali; Basantpur; Gohawar, and Gohawar Hallu, District Bijnor have filed these writ petitions, for quashing a letter dated 17.1.2004, issued by Chief Development Officer, Bijnor to Sub Divisional Magistrate, Chandpur directing him, that, except, for Village Kasampur Garhi and Seervasu Chand, the Tehbazari, shall be collected by the contractors of Zila Panchayat, Bijnor in accordance with the bye-laws, and for a writ of mandamus directing the respondents not to interfere with their right to collect the Tehbazari from the markets situate in their territorial limits.

2. We have heard learned counsel for the parties.

3. The dispute in these writ petitions is between the petitioner Gram Panchayats and the Zila Panchayat, Bijnor for collection of Tehbazari. In Writ Petition No. 15251/2002, filed by Gram Panchayat Kasampur Garhi and Gram Panchayat Seervasu Chand, Tehsil Dhampur, District Bijnor, this Court by its judgment dated 18.4.2002, directed the State Government to decide the petitioner's representation. The State Government by its order dated 5.5.2003 (Annexure-1

to Writ Petition No. 5382/2004), held that the markets had vested in the Gram Panchayats u/s 117, of the U.P. Zamindari Abolition and Land Reforms Act, 1950, and hence the Gram Panchayats have a right to manage and develop the markets and to realise Tehbazari.

4. Aggrieved by the order of the State Government dated 5.5.2003, the Zila Panchayat Bijnor filed a Writ Petition No. 22013/2003 between Zila Panchayat Bijnor and Ors. v. State of U.P. and Ors., which was disposed of by judgment dated 21.5.2003, directing the petitioner to avail alternative remedy u/s 256 of U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam. The judgment is quoted as below :

"In our opinion, the petitioners have an alternative remedy u/s 256 of the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam to approach the State Government for resolution of this dispute, [Vide 1996 (2) UPLBEC 1091]. This petition is dismissed on the ground of an alternative remedy.

However, if the petitioners approach the State Government, the State Government shall decide the dispute after hearing the parties concerned, preferably within two months from the date of production of a certified copy of the order in accordance with law. We are also of the opinion that the State Government u/s 256 of the Adhiniyam has power to grant interim order pending the final decision of the matter. Hence if the petitioners are so advised they can file a stay application which shall be decided preferably within two weeks from production of a certified copy of this order."

5. The Zila Panchayat Bijnor, instead of availing the alternative remedy approached the Chief Development Officer, Bijnor, for a direction to allow the contractors appointed by the Zila Panchayat, to collect Tehbazari and to make adequate arrangement for police protection for such realisation. The Chief Development Officer, Bijnor in his letter dated 17.1.2004, to the Sub Divisional Magistrate Chandpur has relied upon the order dated 5.5.2003, of the State Government and observed that it is applicable only to Gram Panchayat Kasampur Garhi and Gram Panchayat Seervasu Chand. He has further observed that the order dated 5.5.2003 does not operate in favour of any other Gram Panchayats in District Bijnor, and thus the Nagar Panchayat, Bijnor is entitled to eviction and realise Tehbazari, in accordance with its bye-laws.

6. Section 256 of the U.P. Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961, provides for a statutory mechanism for resolution of the dispute by the State Government. The Court had already given liberty to the Zila Panchayat Bijnor, to get the dispute resolved through the State Government. In our opinion, in view of the provisions of Section 256 of the Act the Chief Development Officer, Bijnor, did not have any authority to issue the directions, even in respect of those Gram Panchayats which were not covered by order of the State Government.

7. The writ petition is accordingly allowed. The letter of the Chief Development Officer dated 17.1.2004, is set aside. It will be open to the Zila Panchayat, Bijnor,

to approach the State Government to decide the dispute u/s 256 of the U.P. Kshettra Panchayats and Zila Panchayats Adhiniyam, 1961. No order as to costs.