
(2002) 09 AHC CK 0147
In the Allahabad High Court
Case No : C.M.W.P. No. 23810 of 1997

Indrapal and Suresh Kumar

APPELLANT

Vs

Up-Ziladhikari (Sub-Divisional Officer) and Others

RESPONDENT

Date of Decision : 04-09-2002

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 166, 167

Citation : (2002) 4 AWC 3183 : (2002) 93 RD 761

Hon'ble Judges : M.P. Singh, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Sankatha Rai and Ajai Kumar Singh, for the Appellant; Alok Kumar Singh, S.C., for the Respondent

Final Decision : Allowed

Judgement

Binod Kumar Ray and M.P. Singh, JJ.—The petitioners have come up with a prayer to quash the order dated 10.7.1997 (as contained in Annexure-1) passed by the Parganadhikari, Chhibaramau (respondent No. 2) in Case No. 1 of 1997 u/s 167. U.P.Z.A. and L.R. Act.

2. A perusal of the impugned order shows that it was passed in the background that even though the petitioners in the sale deed have described themselves as belonging to Scheduled Caste, the villagers told about them that they are "Thakur" by caste and do not belong to Scheduled Caste and a notice by registered post sent on 27.3.1997 to them to produce document showing that they belong to Scheduled Caste has proved futile as they have not produced any evidence/Certificate and hence the proceeding is decided ex parte holding their sale deed as void.

3. On 25.7.1997, the Court had passed the following order :

"Standing counsel is granted one month's time to file counter-affidavit. List in the week commencing 1st September, 1997.

In view of the allegation in paragraph 14 of the writ petition that the impugned order was passed without giving opportunity of hearing to the petitioner, we stay the operation of the impugned order dated 10.7.1997 but we leave it open to the authority concerned to pass a fresh order after giving opportunity of hearing to the petitioner."

4. No counter-affidavit has yet been filed despite pendency of the writ petition for about five year by now.

5. Mr. Ajai Kumar Singh, learned counsel appearing on behalf of the petitioners contended that no notice was served on the petitioners which is apparent from a perusal of the impugned order and the onus of proof that the petitioners were not Scheduled Caste but "Thakur" by caste was on the person who alleged that fact, who had not adduced any evidence before respondent No. 2, He also referred to the statements made in paragraph Nos. 14 to 17 of the writ petition to which no counter-affidavit has been filed.

6. Mr. Alok Kumar Singh, learned Brief Holder of the State appearing on behalf of the respondents seems to be in a very embarrassing position to rebut the submission of Mr. Ajai Kumar Singh in the absence of the counter-affidavit.

7. Paragraphs 14 to 17 of the writ petition read thus :

"14. That the impugned order dated 10th July, 1997, suffers from jurisdictional error and has been passed by Sri P.K. Agarwal. Up Ziladhikari. Chhibaramau suo motu, on the application made by some tenure holders without mentioning the names, to the effect that Dashrath Singh, son of Daphedar Singh and Indrapal and Suresh, wrongly written sons of Dashrath Singh (in fact they are sons of Pooran Das) have purchased the land of the tenure holders, being members of the Scheduled Caste and also the land of some other persons, without any notice and knowledge to the petitioners and without giving any opportunity of hearing. Hence, the aforesaid order violates the principle of natural Justice and is liable to be quashed on this ground alone. The respondent No. 1 has observed that some enquiry was made by him. However, in the impugned order dated 10th July. 1997 it has been mentioned that a registered notice dated 27.3.1997, was sent to the petitioners at the address of Rana Pratap Marg, Lucknow, but the notice has not been received back. There will be presumption of service of notice under the provisions of CPC and, therefore, the proceeding is made against them ex parte.

15. That the impugned order appears to have been passed on the basis of alleged applications made by some tenure holders, names not disclosed without any proceeding u/s 201 or Section 202A read with Section 167 of U. P. Zamindari Abolition and Land Reforms Act, though the case No. is mentioned as 1 of 1997 u/s 167 of U. P. Zamindari Abolition and Land Reforms Act. Section 167 itself is not any proceeding as mentioned in Schedule II of Section 331 of U. P. Zamindari Abolition and Land Reforms Act, rather Section 167 of U. P. Zamindari Abolition and Land Reforms Act simply provides the consequences that ensue in respect of any property by virtue of Section 166 of U. P. Zamindari Abolition and Land

Reforms Act. That proceeding itself is not a suit.

16. That had the petitioners any notice of the aforesaid case, the petitioners could have filed the certificates of being members of Scheduled Caste. Indrapal, petitioner No. 1 has obtained certificate from Tehsildar dated 21.1.1993 that being Chamar by caste, he is a member of Scheduled Caste. Sri Suresh Kumar, petitioner No. 2 could have also filed certificate of Tehsildar dated 26.8.1996 that being Chamar by caste, he is a member of Scheduled Caste. However, to satisfy the conscience of the Court, the petitioners are filing the aforesaid certificates. A Photostat copy of the certificate issued by Tehsildar dated 21.1.1993 in respect of Indrapal, petitioner No. 1 is being filed herewith as Annexure-IX to the writ petition. A photostat copy of the certificate issued by the Tehsildar dated 26.8.1996, in respect of Suresh Kumar, petitioner No. 2 is being filed herewith as Annexure-X to the writ petition.

17. That in the impugned order, it has been wrongly observed that the petitioners are sons of Dashrath Singh. In fact, in the sale deeds itself it has been mentioned that Indrapal and Suresh Kumar are sons of Pooran Das and, thus members of the Scheduled Caste."

8. The facts stated in the aforesaid paragraph speak for themselves which have not been rebutted.

9. We are thus of the view that the impugned order has been passed violating the principles of natural justice. Further, in the absence of any evidence or material to support the finding that the petitioners are "Thakur" by caste and not Scheduled Caste was illegally recorded.

10. Accordingly, we quash the impugned order and remit back Case No. 1 of 1997 in which the petitioners are directed to appear by 7.10.2002 and file their show cause and thereafter the case will be decided by respondent No. 2 in accordance with law.

11. This writ petition is allowed to the extent indicated.

12. In the peculiar facts and circumstances we make no order as to cost.

13. Let a copy of this order be handed over to Mr. Alok Kumar Singh, learned Brief Holder of the State, within two weeks for its intimation to and follow up action by respondent Nos. 1 and 2.