

(2013) 10 AHC CK 0111
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 54062 of 2013

Jagat Narain and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2013) 9 ADJ 581 : (2013) 121 RD 510

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Ajay Srivastava, for the Appellant; Ashish Kumar Srivastava, for the Respondent

Judgement

Amreshwar Pratap Sahi, J.—The petitioners have sought for a relief that a direction be issued to the District Magistrate, Firozabad to consider the claim of the petitioners and settle the land in their possession on the basis of a lease that may be granted in terms of the judgment dated 9.3.2007 passed in Writ Petition No. 39068 of 2008, Brijesh Kumar Upadhayay and others v. State of U.P. and others. The case of the petitioner Nos. 1 and 2 are distinguishable from the other petitioners. The causes of action and foundation of claim on facts are different but all the petitioners have joined together to pray for a common relief.

2. Having heard the learned counsel for the petitioners and having perused the judgment referred to hereinabove, it appears that in proceedings u/s 122B of the U.P.Z.A. & L.R. Act, 1950 certain occupants thereon claimed that they should be settled with the land and the proceedings for having encroached on Gaon Sabha Land against them u/s 122B of the 1950 Act should be dropped. The judgment also refers to a judgment in the case of Ram Charan and others v. Additional Collector (Prashashan), Firozabad and another, Civil Misc. Writ Petition No. 4775 of 1983 decided on 9.3.2007. A copy of the said judgment has also been filed on record.

3. Having considered the facts of the said decision also, I find that the learned

Judge in turn has referred to the judgment in the case of Budhaee Vs. Collector, Assistant Collector/Tahsildar Khaga, Gram Sabha Sanwat and State of U.P., , where it has been held that if on a small portion of a Gaon Sabha land some individual in possession for long and has made constructions, then instead of eviction or penalty, damages equivalent to the market value of the land should be realized as it would be a more appropriate relief and accordingly the land should be settled with that person. It was further directed therein that the amount so realized should be deposited in the Gaon Sabha Fund u/s 125A of the U.P.Z.A. & L.R. Act for its utilization.

4. Thus, a method relating to grant of a sort of free hold rights over the said land was enunciated in the aforesaid decisions of the learned Single Judge, on the basis whereof the petitioners herein also claim that the land should accordingly be settled in their favour. It is for the said purpose that they have filed an application before the Collector and have also prayed for a mandamus to that effect.

5. Having considered the aforesaid submissions raised, in the opinion of the Court, there is no such provision under the U.P.Z.A. & L.R. Act, 1950 that may empower the authorities or this Court to grant any such tenurial rights or confer any such benefit over Gaon Sabha Land.

6. The petitioners in Paragraphs 5 to 8 of the writ petition have claimed allotment of the disputed holding as an abadi site for residential purposes. The claim, that they are in long standing possession and therefore they are entitled for such settlement is founded on the decisions referred to in this order. They also rely on certain decisions in relation to summary proceedings under the 1950 Act as also in a civil suit to urge that they have perfected their rights and in such circumstances the petitioners are entitled for the regularisation of their occupation in terms of the judgment dated 9th March, 2007 referred to hereinabove in the case of Brijesh Kumar Upadhyay and Ram Charon and others (supra). It is for this reason that they have prayed for a direction to be given to the District Magistrate to extend such benefit.

7. Learned counsel for the petitioners has been unable to point out any statutory provision under the U.P.Z.A. & L.R. Act, 1950 to that effect in order to issue a mandamus. Nonetheless since heavy reliance has been placed on the judgment in the case of Ram Charan (supra), it would be apt to refer to the decisions on this count.

8. A learned Single Judge of this Court in the case of Ajanta Udyog Mandal Vidyalaya v. State of U.P. and others, writ petition No. 47268 of 2004 decided on 28th January, 2005 held that since a school was running and was in occupation of Gaon Sabha land having been constructed 25 years hence, the said occupation was regularised on payment of Rs. 1,75,000/- as damages instead of evicting the institution.

9. The same learned Single Judge while deciding the case of Budhaee Vs.

Collector, Assistant Collector/Tahsildar Khaga, Gram Sabha Sanwat and State of U.P., , relying on the aforesaid decision decided another case where the petitioner was in occupation of the Gaon Sabha land unauthorisedly that had been earmarked and entered in the revenue record as a Basic Primary School. The learned Single Judge recorded that there was nothing to indicate the existence of the School and since the petitioner in that case was in occupation of the said land it was found appropriate not to evict him and the award of damages was held to be the proper relief. While allowing the writ petition on the payment of the damages as fixed therein the learned Single Judge made observations in Paragraphs 5 to 7 indicating ingredients which require to be assessed while regularising such occupations on payment of damages. The learned Single Judge also noted that unauthorised occupation of Gaon Sabha land can be settled in favour of the Scheduled Caste and Other Backward Category or of the General Category in accordance with the preference as prescribed under the Act and Rules under the amended provisions of Section 123 of the U.P.Z.A. & L.R. Act, 1950 and the provisions of Section 122A, B and C of the said Act.

10. It appears that the learned Single Judge drew an analogy that since the Legislature had permitted the regularisation of unauthorised occupied land in favour of such category of persons provided they were in possession in accordance with the Rules and the cut-off-date mentioned therein, such a course was acceptable.

11. It is the said judgment which has been again relied upon by the same learned Single Judge in the cases of Ram Charan and Brijesh Kumar Upadhyay (supra).

12. Three other decisions have also relied on the aforesaid ratio to grant relief to unauthorised occupants in the case of Sukhdeo Vs. The Collector, The Assistant Collector Ist Class/Tahsildar, Gaon Sabha Amlikaur, ; Kishore Singh v. Additional Collector, Agra and others, 2007 (1) ADJ 679 and reiterated in the decision of Siya Ram and Others Vs. Additional Commissioner, (Administration), Kanpur Division and Another, .

13. In the case of Sukhdeo v. Collector (supra), the same learned Single Judge in Paragraph 3 of the said decision has indicated that even if there is no limitation for initiating the eviction proceedings, a delay of 30 years is sufficient to refuse to pass such order of eviction and again relying on the case of Budhaee awarded damages and allowed the regularisation of unauthorised occupants over Gaon Sabha land. In the case of Kishore Singh (supra) also the land which was recorded as "Navin Parti" and was found to be in possession to the petitioner therein was settled by awarding damages in favour of the petitioner.

14. Having perused the aforesaid decisions and having perused the provisions of Section 122B, 122C and Section 123, I find that there are specific provisions under which unauthorised occupation has been legalized and regularised. I however do not find any such regularisation or acceptance of lawful possession in

respect of land as presently involved through any provision under the U.P.Z.A. & L.R. Act, 1950 recommended by the Legislature in a general way to all unauthorised occupants. The decisions aforesaid therefore appear to have been guided by pure equity without there being any legal provision under which such unauthorised occupation could be regularised after award of damages.

15. There is yet another dimension relating to the problem. The Gaon Sabha has been empowered to file a suit for ejectment against unlawful occupation u/s 209 of the 1950 Act. The consequences of non-filing of a suit are prescribed in Section 210 thereof. The learned Single Judge in the case of Sukhdeo v. Collector (supra) has referred to the period of limitation and the consequence of a suit not being filed within a reasonable time. The said observation appears to find support from the decision in the case of Shish Ram and Another Vs. Board of Revenue and Others, , even though the same has not been referred to. It would however be useful to note the decision in the case of Rakshpal Singh Vs. Board of Revenue and Others, where, after considering the amendments with retrospective effect in Section 210 of the 1950 Act, the Court has held that no period of limitation arrests of the right of the Gaon Sabha to file a suit for eviction. Thus the observations made in Sukhdeo's case may require a reconsideration on this aspect for an authoritative view.

16. The Courts in my opinion, and on settled principles of interpretation, "can iron out the creases and not weave a new texture." A general observation and successive decisions based on the same principle of settling land on payment of damages may not be in consonance with the law as codified under the 1950 Act.

17. Learned Standing Counsel for the State has submitted that the decisions aforesaid do not therefore come to the aid of the petitioners as they are not backed up by any statutory provision. It is also urged that the Court in the exercise of powers under Article 226 of the Constitution of India can interpret the law as laid down by the Legislature but a new provision cannot be created for regularising unauthorised occupancy by awarding damages as has been done by the learned Single Judge in the aforesaid cases.

18. The learned Standing Counsel has relied on a contrary view expressed by another learned Single Judge in the case of Pratap Singh Shishodia Vs. Board of Revenue and Others, . The learned Single Judge in that case was also urged to extend such benefit in the alternative relying on the decisions in the case of Sukhdeo and Kishore Singh (supra) which in turn rely on the decision in the case of Budhaee (supra). The learned Single Judge noted the said decisions and submissions in Paragraph 5 and then answered the same in the negative in Paragraph 11 of the said judgment. It was held that the reliefs granted in the aforesaid decisions were on the facts of that particular case but the learned Single Judge opined that if such a method is permitted, it will give an opportunity to mighty persons to encroach upon Gaon Sabha land through a back door process and as such the Court rejected the claim of the petitioner therein for settling the land on any premium basis.

19. Another learned Single Judge in the case of Naresh Kumar and others v. State of U.P. and others, Writ Petition No. 48874 of 2012, decided on 21.9.2012 has opted not to follow the decisions in the case of Siya Ram (supra) and Budhaee (supra), even though on issues based on facts involved therein, copy whereof has been placed before the Court by the learned Standing Counsel.

20. Having noted the aforesaid decisions and the provisions aforesaid, I am unable to persuade myself to extend the benefit of a mandamus as prayed for by the petitioners, but since there are a large number of decisions that have been noticed hereinabove and a contrary view in the case of Pratap Singh Shishodia (supra), it would be more appropriate that such issues should be decided authoritatively by a larger bench that may finally rest this dispute on the basis of the statutory provisions that exist under the U.P.Z.A. & L.R. Act, 1950.

21. Consequently, the following questions are framed for such consideration in view of the conflict of the decisions referred to hereinabove, as against the opinion of the learned Single Judge in the case of Pratap Singh Shishodia (supra) and Rakshpal Singh (supra):

1. Whether the law laid down by the learned Single Judge in the cases of Ajanta Udyog Mandal Vidyalay (supra), Budhaee (supra), Sukhdeo (supra), Kishore Singh (supra) and Siya Ram (supra), are in direct conflict with the view taken by another learned Single Judge in the case of Pratap Singh Shishodia (supra) and consequently;

2. As to which of the said decisions lay down the law correctly keeping in view the provisions referred to hereinabove of the U.P.Z.A. & L.R. Act, 1950.

3. Whether the view expressed in the case of Sukhdeo (supra) on the issue of limitation runs counter to the view taken in the case of Rakshpal Singh(supra)?

22. Learned Standing Counsel for the respondent Nos. 1, 2 and 3 and the learned counsel for the Gaon Sabha - Respondent No. 4, are directed to file a counter affidavit in response to the writ petition and also submissions in relation to the reference made hereinabove. Let the papers be placed before Hon"ble the Chief Justice for passing appropriate orders for referring the matter to a larger bench to resolve the aforesaid conflict, and for an authoritative pronouncement on the issues raised at the earliest.