

(1998) 03 AHC CK 0093
In the Allahabad High Court
Case No : C.M.W.P. No. 33495 of 1991

Jagdamba and others

APPELLANT

Vs

Sub-Divisional Officer, Sadar, Mirzapur and others

RESPONDENT

Date of Decision : 10-03-1998

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 132, 195, 197, 198, 198(4)

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 176, 176A, 176A(2), 5

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 132, 195, 197, 198, 198(4)

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 176, 176A, 176A(2), 5

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 132, 195, 197, 198, 198(4)

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 176, 176A, 176A(2), 5

Citation : (1998) 2 AWC 1505 : (1998) RD 433

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : A.K. Shukla, for the Appellant; Ashutosh Srivastava and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

D. K. Seth, J.—By an order dated 26.10.1991 passed by the Sub-Divisional Magistrate in exercise of power conferred under Rule 176 (2) of the Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952, the lease granted to the petitioners in respect of the land covered u/s 132 of the U. P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter called as the Act) was sought to be cancelled.

2. Mr. A. K. Shukla, learned counsel for the petitioner contends that the Sub-Divisional Magistrate not being a Collector empowered by the State Government

by a notification within the meaning of Section 4 (2) of the Act is not competent to pass the said order of cancellation and as such, the order is wholly without jurisdiction. Secondly, he contends that the order has been passed without giving any notice in terms of Rule 5, on this ground also this order cannot be sustained.

3. Mr. Ashutosh Srivastava, learned counsel for the respondents, on the other hand, contends that the property being a property under Rule 132 of the Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 (hereinafter called as the said Rules), the same can very well be cancelled by Assistant Collector incharge of Sub-Division under Rule 176A of the said Rules. Section 198 of the Act has no manner of application in respect of the land covered u/s 132 of the Act.

4. I have heard learned counsel for the parties at length. I have also heard Shri P. N. Agarwal, learned standing counsel.

5. It appears that u/s 132 of the Act, the character of the lands have been described. In respect whereof no bhumidhari rights can accrue. Such land can be distributed by the Assistant Collector incharge of the Sub-Division on lease not exceeding a period of 5 years to an asami under Rule 176A (1) of the, said Rules. By virtue of sub-rule (2) of Rule 176A of the said Rules, the Assistant Collector-incharge of the Sub-Division is empowered to determine at any time the lease in favour of an asami.

6. The contention of Mr. Srivastava appears to be fallacious. Inasmuch as sub-rule (2) of Rule 176A empowers the Assistant Collector to determine a lease. Whereas in the present order, the leases have cancelled on the ground that those were granted irregularly. Determination and cancellation are two different acts. Determination of lease is cessation of the lease which was otherwise lawful on determination thereof. Whereas cancellation of lease is altogether recalling of the lease on the ground it was a void one or was granted irregularly, as the case may be. The lawful lease cannot be cancelled but can be determined or terminated. Determination may be on account of certain breaches on the condition of the lease. Whereas cancellation may not be considered on the ground of breach of any terms of the lease when it, , was improperly granted or otherwise. Though the Assistant Collector incharge of the Sub-Division is empowered to determine the lease but he is not empowered to cancel the lease.

7. Then again, as rightly contended by Shri Shukla, there cannot be any inconsistency between the Rules and Act. In case of such inconsistency between the two, the Act would prevail. He contends that sub-section (4) of Section 198 of the Act empowers the Collector to cancel the allotment of the lease. The Collector has defined in sub-section (4) of Section 3 of the Act which has specifically mentioned Collector and includes an Assistant Collector of the first class empowered by the State Government by a notification in the Gazette. Mr. Shukla contends that the Assistant Collector who had passed the impugned order was not empowered by any notification. Mr. Srivastava has not been able to show

anything that the Assistant Collector was so empowered by the State Government in terms of sub-section (4) of Section 3 of the Act. When Section 198 specifically provides that it is the Collector who may cancel and the Assistant Collector not being a Collector within the meaning of sub-section (4) of Section 3, he cannot be said to be a competent authority to undertake the exercise u/s 198 (4) of the Act for cancellation of the allotment.

8. Sri Srivastava, learned counsel for the respondents sought to argue that Section 198 of the Act does not apply in respect of the lands covered u/s 132. But such contention appears to be a misconception. Inasmuch as Section 198 of the Act deals with admission of persons to land as bhumidhar With non-transferable rights or admission of asami u/s 195 or Section 197 by the Land Management Committee according to procedure laid down u/s 198. Sub-section (4) of Section 198 of the Act empowers the Collector to cancel any such allotment by the Land Management Committee in the manner after giving notice to the person in whose favour the land has been allotted in terms of sub-section (5) in the manner contained in subsection (6) of Section 198. Sub-section (8) of Section 198 provides that the order passed by the Collector, under sub-section (4), shall, subject to the provisions of Section 333, be final. However, in the present case, the order having not been passed by the Collector, we are not concerned with such proposition- Section 195 deals with admission of landless persons to land as bhumidhar with non-transferable rights. In the said provision, land covered u/s 132 of the Act has been specifically excluded. Section 197 of the Act, on the other hand, deals with the provision of allotment of land to a person as asami in respect of classes of land mentioned in Section 132. Therefore. Section 198 of the Act covers both bhumidhari rights with non-transferable rights in respect of the land other than those specified in Section 132 as well as admission of asami in respect of lands classified in Section 132. Therefore, such allotment being governed by Section 198, it is only the Collector who under sub-section (4) of Section 198 is empowered to cancel such patta and the Assistant Collector cannot come unless he is so empowered by the notification by the State Government within the purview of sub-section (4) of Section 3 to usurp such power in him. Then again cancellation has to precede by a notice to show cause in terms of sub-section (5) of Section 198 to be served on the person in whose favour the allotment of land was made or as per, the manner provided under sub-section (6) of Section 198.

9. In the present case, the order having passed by the Assistant Collector who is not competent authority under sub-section (4) of Section 3 and sub-section (4) of Section 198 and that too without any notice as provided in sub-section (5) of Section 198, the order cannot be sustained and as such the same is quashed.

10. Accordingly, a writ of certiorari do issue.

This order, however, will not prevent the Collector to pass appropriate order if it is necessary and this order will not affect any pending proceeding before the Collector or any authority under the said Act.

11. Mr. Srivastava, learned counsel for the respondents has pointed out that such lease of duration for 6 years and in the meantime 5 years period have expired. The writ petition has become infructuous. By virtue of interim order granted in the writ petition, the petitioners have enjoyed the property for the whole period of lease.

12. Therefore, this order will not prevent the allotment of lease by the land management committee in accordance with law either by way of renewal or by any other mode as is permissible under the law in favour of the petitioners or any one else including the respondents, as the case may be. The decision in this regard shall be taken independently in accordance with law as the situation may call for.

13. With the aforesaid observation, this writ petition is disposed of finally. However, there will be no order as to cost.