

(2011) 08 AHC CK 0245
In the Allahabad High Court
Case No : Writ C. No. 17743 of 1997

Jagdish Pandey

APPELLANT

Vs

Addl. Collector (City) and Others

RESPONDENT

Date of Decision : 03-08-2011

Acts Referred:

Citation : (2011) 7 ADJ 891 : (2011) 6 AWC 5658 : (2011) 114 RD 106

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri S.K. Rai, learned Counsel for the Petitioner, Sri R.K. Chaubey, learned Counsel for the Respondent No. 4. The Respondent Nos. 5 and 6 are collateral of the Petitioner, who have not put any contest. Sri M.N. Singh, learned Counsel has ably assisted the Court on behalf of Respondent No. 3. Learned Standing counsel appears for the Respondent Nos. 1 and 2.

2. The challenge in this petition is to the order dated 14th March, 1997, passed by the Additional Collector, Gorakhpur, in a revision filed by the Gaon Sabha, Respondent No. 3 holding, that the memo of revision as presented was competent, and that the revision could be entertained even it was signed by a private person, namely, Respondent No. 4. The Revising Authority relied on the decision in the case of Gaon Sabha v. Ram Karan Singh reported in 1981 RD 1 to support the said legal proposition inferred by him.

3. Sri S.K. Rai, learned Counsel for the Petitioner submits that the inference so drawn by the learned Additional Collector is erroneous in law without considering the provisions of Paragraph-131 of the Gaon Sabha Manual as contained in Chapter-6 thereof, and that a private person had No. authority under law to sign the memo of revision and get it presented through the District Government Counsel. He contends that it has been time and again held by this Court that the

procedure prescribed in law has to be followed and that it should have been done in that manner alone for which reliance is placed on a Division Bench judgment in the case of Babu Ram Verma v. Sub Divisional Officer and Ors. reported in 1996 AWC 1035, followed by another Division Bench judgement in the case of Gram Panchayat, Pusawali Block-Junawai of etc. v. State of U.P. and Ors. reported in 2007 (2) ALJ 175.

4. He has further relied on the decision of a learned Single Judge in the case of Vrindaban and Others Vs. Gaon Sabha Omri Kalam, and the decision in the case of Gaon Sabha v. Dy. Director of Consolidation Gyanpur, varanasi and Ors. reported in 1983 RD 75 to support his submission.

5. The contention in short is that the impugned order is unsustainable as it has totally over looked the law propounded in the decisions aforesaid and that it has erroneously placed reliance on the judgment in the case of Gaon Sabha v. Ram Karan Singh (Supra) which is not a direct authority on the proposition that was to be taken into consideration for deciding the instant case.

6. Sri Chaubey on the other hand relying on the same decision in the case of Gaon Sabha v. Ram Karan Singh (Supra) submits that the answering Respondent No. 4 being a villager is entitled to use the road which is the subject matter of encroachment and, therefore, he has every right to contest the claim on behalf of the Gaon Sabha not only collectively but also individually. He contends that the memo of revision was, therefore, signed in that capacity, moreso, when the Gram Pradhan has refused to sign the memo of revision. He further contends that the revision was signed in his individual capacity and the District Government Counsel is entitled to represent the Gaon Sabha as held in the decision which has been relied upon by the learned Additional Collector. There being No. legal infirmity, a minor irregularity cannot be fatal for the revision to be maintainable and hence the impugned order does not require any interference.

7. Learned Counsel for the Gaon Sabha Sri M.N. Singh has assisted the Court by inviting the attention of the Court to Paragraph 131 of the Gaon Sabha Manual which is to the following effect:

131. Lawyers have been appointed who shall represent the Bhumi Prabandhak Samiti (Land Management Committee) and give it legal advice where necessary. The Committee shall not engage any lawyer other than the penal lawyer appointed. In important cases, however, special lawyers can be engaged with the specific provision of the Collector in writing.

There is a Vakil or Mukhtar in each tehsil and one civil and one revenue lawyer at the district headquarters. The District Government Counsel is incharge of the whole work.

The Bhumi Prabandhak Samiti (Land Management Committee) requiring the advice of a lawyer should request the Tahsildar or the Sub-Divisional Officer to arrange for it.

The chairman of Bhumi Prabandhak Samiti (Land Management Committee) shall consult the penal lawyer in all cases in which he is summoned or is impleaded as Defendant.

If in any case the Bhumi Prabandhak Samiti (Land Management Committee) refuse to sign a plaint or to defend a case, as advised by the panel lawyer or the special lawyer, if engaged, as the case may be, or as instructed by the Tahsildar or the Sub-Divisional Officer, the Lekhpal as Secretary of the Bhumi Prabandhak samiti (Land Management Committee) shall act for the Bhumi Prabandhak Samiti (Land Management Committee) under orders of the Tahsildar for the above purpose only.

8. Sri M.N. Singh submits that if the Land Management Committee or its authority refuses to sign a plaint on behalf of the Gaon Sabha or to defend the case as advised by its counsel then the instructions have to be obtained from the Tahsildar and it would be the obligation of the Lekhpal of the village concerned to sign the memo of plaint/appeal/revision on behalf of the Gaon Sabha being the Ex-Officio Secretary of the Bhumi Prabandhak Samiti (Land Management Committee). It is, therefore, contended that the Gaon Sabha has to be represented appropriately in the manner prescribed therein and not otherwise. Sri Singh has invited the attention of the Court to the decision in the case of Sahdeo v. Roshal Ali reported in 1976 RD 400 and in the case of Gaon Sabha v. Deputy Director of Consolidation (Supra) to contend that an appropriate authorization is mandatory and not directory and the previous view taken by the High Court in the case of Land Management Committee v. Board of Revenue U.P. Allahabad reported in 1965 RD 349, is No. longer good law. He has invited the attention of the Court to paragraph-6 of the decision in the case of Babu Ram (Supra) where the Division Bench has approved the earlier decision of Sita Ram's case (Supra) holding that the provisions of Paragraph-128 of the Gaon Sabha Manual are mandatory and not directory. He extends the said arguments in respect of paragraph-131 of the Gaon Sabha Manual and submits that there is a remedy provided and in view of this, the same has to be followed and the Gaon Sabha is bound by the same.

9. Having heard learned Counsel for the parties. The prime issue which requires consideration is as to whether the memo of revision that was presented by the District Government Counsel signed by the Respondent No. 4, was a competent revision or not.

10. The judgment in the case of Gaon Sabha v. Ram Karan Singh (Supra) on which reliance has been placed holds that an appeal filed in terms of Para 128 of the Gaon Sabha Manual did not require passing of a resolution by the Land Management Committee as a condition precedent and that the appeal so filed on behalf of the Gaon Sabha through its counsel was competent. It was further held that even if a Vakalatnama had not been executed in favour of the Gaon Sabha then too even the empaneled counsel was entitled to represent the appeal and, therefore, the appeal cannot be held to be incompetent.

11. In the instant case, the facts are entirely different as involved in the decisions aforesaid. Here it is the admitted case that the memo was not signed by the Gram Pradhan and that he had, as a matter of fact, refused to sign the said memo of revision. The Respondent No. 4 Sri Komal was never authorized either by the Gaon Sabha or by the Land Management Committee to sign the memo of revision. The decision, therefore, in the case of Gaon Sabha v. Ram Karan Singh (Supra) does not apply on the facts of the present case as the same is clearly distinguishable. Learned Counsel for the Gaon Sabha Sri M.N. Singh invited the attention of the Court to the decision of the Board of Revenue which though may not be a precedent for the High Court to follow straightway but is of great persuasive value. After having threadbare discussed the provisions of the Gaon Sabha Manual it was clearly held that the procedure prescribed for presentation of such appeals and revisions does not allow any deviation from the Rules as prescribed under the Gaon Sabha Manual. If para-131 as relied by the learned Counsel for the Petitioner and by the learned Counsel for the Gaon Sabha is applicable then in that view of the matter there can be No. doubt that if the officials of the Land Management Committee or the Gram Pradhan has refused to sign the memo of revision, the Secretary of the Land Management Committee has to carry out the procedure upon an order to be passed by the Tehsildar.

12. In the instant case, it is admitted on record that the Gram Pradhan had refused to sign the memo of revision. On the contrary, the Respondent No. 4, Komal in his individual capacity signed the same. The Respondent No. 4 had No. authority to do so and be a substitute of the Lekhpal, who is enjoined with this duty. Under the provisions of paragraph-131, the District Government Counsel ought to have called upon the Tehsildar to send the Lekhpal for appropriate signatures in order to file a memo of revision and that having not been done, the District Government Counsel failed to apply the provisions of paragraph-131. He could not have made Sri Komal a substitute in place of the Lekhpal of the village.

13. The provisions of Para 131 appear to be binding and peremptory in nature. The procedure therein cannot be bypassed or else it would lead to a chaos. If any person or villager is allowed to sign documents the same would be not only inappropriate but also illegal as such a person will have No. authority to represent a Gaon Sabha. The said provision cannot be wished off merely as directory in view of the language employed therein.

14. In view of the aforesaid conclusions drawn, the order impugned dated 14th March, 1997 is unsustainable and is hereby quashed. Consequently the revision which has been decided by the order dated 28th April, 1997 was also an incompetent order and the same is also set aside.

15. This, however, does not denude either the Gaon Sabha or the Respondent No. 4 to initiate appropriate proceedings in accordance with law which might be permissible keeping in view the nature of the property of the Gaon Sabha.

16. A debate was also canvassed before the Court in relation to Plot No. 186 which was being claimed by the Respondent No. 4 himself. The said issue relating to the exact plot number and the claim of the Respondent No. 4 is not required to go into by this Court in view of the conclusions made hereinabove.

17. Accordingly, the writ petition is allowed. No. order as to cost.