(1992) 12 AHC CK 0007

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21375 of 1991

Kala Singh and Others APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 18-12-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198, 198(4)
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 173, 174, 78

Citation : (1993) 2 AWC 742 : (1993) RD 137

Hon'ble Judges : S.R. Misra, J

Bench : Single Bench

Advocate : V.S. Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Misra, J.—By means of this writ petition, the Petitioners have prayed for quashing the order of the Board of Revenue dated 5-2-1991 and 8-1-1982 passed by the Board of Revenue.

2. Affidavits have been exchanged in this case and with the consent of learned Counsel for the parties, the same is disposed of finally at the admission stage.

3. The brief facts giving rise to the present writ petition are that the Petitioners claim themselves to be valid patta holders of the land lying in village Konthalpur, Pargana Bidauli, Tehsil Kairana District Muzaffarnagar, allottee to them by resolution dated 2-5-1979. Details of the aforesaid Pattas are narrated in paragraphs 2 to 11 of the writ petition. According to the Petitioners, they were delivered possession over the plots allottee to them after approval by the Pargana Adhikari Kairana and Amaldaramad was made in July 1979. Since then the Petitioners are in possession over the disputed land. They also claim that all of them were allottee less then 3.125 acres of land. According to the Petitioners, they are landless agricultural labourers and residents of village Konthalpar where the land in dispute is situsted. They have no other land except the land in dispute

allottee to them by pattas. They also allege that on the basis of the aforesaid pattas, the Petitioners have obtained Bank loan. During consolidation operation In the village Knothalpur, C.H. Form 45 has been prepared finaly recording the names of the Petitioners over the land in dispute and they have also paid the costs of consolidation on 19-10-1985.

4. But, thereafter, the Additional Collector, Muzaffarnagar cancelled the pattas, aforesaid, on the ground that the fathers of some of the Petitioners had enough land and, therefore, the Petitioners could not be treated to be landless agricultural labourers. It was also held that the Petitioners were allottee mors than 3.125 acres of land and that they were not the residents of the village It was also observed that no list of deserving candidates was prepared.

5. Aggrieved, the Petitioners filed revision but the same was also dismissed by the Additional Commissioner Meerut. The Petitioners allege that their revision was dismissed mainly on the following three grounds:

(a) no Munadi was done within seven days, as required under the rules;

(b) father of the Petitioners had enough land; and

(c) the area was more than the prescribed limit.

6. The Petitioner felt aggrieved and they went in revision before the Board of Revenue but their revision also met the same fate as Board of Revenue dismissed the revision by its order dated 8-12-1982. Review petition filed by the Petitioners was also dismissed on 5-2-1991 and hence this writ petition.

7. Sri S.N. Misra, learned Counsel for the Petitioners vehemently urged that the order of the cancellation was wholly misconceived as there 18 no bar nor the rules provide that if the fathers of the allottees are having excessive land then they will not be entitled to such allotment. Thus, the authorities have committed apparent error in taking the aforesaid view. In his written argument, be has placed reliance in 1984 AWC 687. The other ground raised by him was that in accordance with Section 198(4) of the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act), an aggreived person can approach the Competent authority within six months from the date of allotment and such proceeding in the instant case, having been initiated by Asghar Khan much after the period of six months, which had already expired, the cancellation of pattas was absolutely illegal. Asghar Khan had initiated proceedings on 2-5-1980 whereas the pattas were allottee to the Petitioners on 2-5-1979. Therefore, the whole proceeding was barred by time and the decisions of the Board of Revenue are erroneous He also urged that in such cases, only Collector is empowered to decide the matter under Rule 78 (as Sub-clause (2) of the Rules framed under the Z.A. Act but admittedly in the instant case, the decision has been given by the Additional Collector. He next urged that once the approval was granted by the SDO. a certified copy of which has been filed before this Court the allotment of pattas could not be cancelled. Sri R.H. Zaidl vehemently opposed the filing of

Certified copy of the S.D.O.''s approval before this Court aS according to him, the same was not filed before the Additional Commissioner or the Board of Revenue and, therefore, the same cannot be looked into for the first time by this Court. As regards Munadi, seven days period is discretionary one. Reference was made to a reported decision in 1990 RD 365. In the Consolidation proceeding, on the basis of the resolution and allotment made in favour of the Petitioners, Chaks were carved out, Asghar Khan, who made objection was neither an aggrieved party nor had been authorised to make the complaint. He lastly contended that in the review petition, one of the grounds taken was that the case of one of the Petitioners, namely, Kala Singh was not at all considered by any of the three authorities.

8. Sri R.H. Zaldi, learned Counsel for the Respondents has tried to Justify the cancellation of the pattas of the Petitioners and further urged that after the cancellation, the Respondents have been allotted new pattas and they are in actual physical possession. Ashgar All has also filed Counter affidavit. In paragraph 5 of the Counter affidavit, he has stated that on the relevant, date, he was member of the Gaon Panchait and he was also member of the Gaon Sabha and, therefore, he was legally entitled to agitate the matter as the land in dispute was illegally settled and grabbed by the Petitioners. Sri Zaidi further contended that as the correct facts conclusively proved that there was no Munadi within seven days and the provisions were mandatory the allotment of pattas was liable to be cancelled. For this submission, he placed reliance on Rules 173 and 174 of the Rules and urged that once the Court of fact was satisfied that there has been illegality and irregularity in the matter of allotment, and the reasons mentioned in the order of Additional Collector, which has been affirmed by the two provisional courts, are sound as well as perfectly Just and correct, the review was rightly dismissed and no case has been made out by the Petitioner for the interference under Article 226 of the Constitution of India.

9. From the perusal for the writ petition, counter affidavit and the rejoinder affidavit, it is clear that so far as the plea of consolidation is concerned, it was not pressed before the Board of Revenue and even otherwise the allotment and cancellation of patta by the Gaon Sabha was not to be considered by the consolidation authorities, As such, the continuance of the names of the Petitioners in the revenue papers will not stand as a bar from considering the allotment on merits u/s 198 of the Act. During the pendency of the writ petition, number of affidavits have been filed by the respective parties in the matter of actual physical possession and both the parties have alleged that they have sown the crops over the land in dispute. Sri Zaidi has also contended that after the cancellation of pattas in favour of the Petitioners, there has been fresh settlement in their favour (in favour of the contesting Respondents) and they are actually in physical possession and, so, they are entitled to remain in possession and harvest the crops in question.

10. A perusal of the order of the Addl. Collector would go to show that on the

date of the Order, i.e., 28-11-1992, the following orders were passed:

YAHA BHUMI GRAM SABHA WE NIHIT HOGI BIPAKSHI GAN KO BEDAKHAL KIYA JAYEGA. BHUMI PRABANDH K SAMITI ISKA KABJA PRAPTA KAREGI.

The Additional Collector also considered the validity of the allotment in favour of the Petitioners. The Board of Revenue has alone considered the effect of the order of Additional Collector and the Additional Commissioner. The effect of the same will be that the only question that was required to be considered by this Court is whether the cancellation of pattas in favour of the Petitioners were done in accordance with the procedure prescribed and whether the reasons which have been mentioned, are, good reasons to cancel the pattas A perusal of their orders would go to reveal that one of the grounds taken was that the fathers of the allottees were having land and therefore, no allotment could have been made in their favour. This point was considered by this Court in 1984 A.W.C 687 and this could not be a ground for cancellation. The other ground was that the area allottee was more than the prescribed limit. This also appears to be incorrect The last ground was that there was no Munadi and Rules 173 and 174 of the Rules were not followed, and, that there was no approval of the SDO with regard to the allotment made in favour of the Petitioners, A certified copy of the order of approval by the SDO was filed before this Court, but this was not available before the subordinate authorities Question is this that if the competent authority, namely, she Additional Collector, who was exercising powers of the Collector has cancelled the pattas taking into consideration a number of grounds and if some of the grounds are said to be bad, whether suds an order can be sustained? In this regard, the true legal position is that if the findings can be sustained on any of the grounds mentioned in the order of the Addl Collector, then this Court may not exercise its Jurisdiction under Article 226 of the Constitution. Although, the Addl. Collector, Additional Commissioner and the Board of Revenue have erred in making mention of ground for cancellation, some of them are wrong on the face of it. About the period of limitation, there is no mention a? to whether the proceedings are within limitation or not, and, this point was vehemently argued by Sri Misra that the proceedings having been initiated at the instance of Sri Asghar Khan, it could have been looked into after 6 months of the allotment and it was not a case of suo muto exercise, but this plea appears to have not been pressed or taken by the Petitioners before the courts below as such I decline to consider this aspect of the matter for the first time in the writ jurisdiction.

11. After having given consideration to the arguments raised by the parties and on perusal of the judgment of the subordinate authorities, I do not find any good ground for Interference in the orders of the Respondent Nos. 1 to 3. However, it is made clear that 1 am not expressing any opinion as to whether there was a valid allotment in favour of the contesting Respondent or not sad whether the Petitioners were dispossessed after cancellation of pattas in their favour; although affidavits have been exchanged in this regard, but as Sri Zaidi contested the matter with entirely a new material, namely, the approval of the

patta by SDO the same cannot be gone Into at this stage. The same principle applies with regard to the new point raised in the writ petition by the Respondents that they have been allottee patta after ejectment of the Petitioner, which fact has been vehemently denied by the Petitioner. If law permits, the matter regarding possession or the subsequent allotment may be considered by the appropriate authority at an appropriate stage.

12. In the result the writ petition fails and is dismissed. Stay order, if any, is hereby vacated. The parties are, however, directed to bear their own costs.