
(2012) 03 AHC CK 0065

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44338 of 2006

Kanhai (Now Deceased) and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 122C, 171, 172, 173

Citation : (2012) 4 ADJ 767

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : Anil Bhushan and S.K. Das, for the Appellant; M.M. Tripathi, S. Mandhyan, S.P. Yadav and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Sunil Hali, J.—Petitioners, who claim to be in possession of the land situated at Aarazi No. 282/1 area 4 biswa and Aarazi No. 282/2 area 4 Biswa, out of 16 biswa of Aarazi No. 282 recorded at "usar" situated at Village Pyarepur, District Allahabad questioned the allotment made in favour of the respondents under the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1950 (hereinafter referred to as UPZA & LR Act). Having failed to convince the Courts below present writ petition has been filed against the order dated 5.6.2006 passed by Addl. Commissioner, (Administration) Allahabad Region, Allahabad. Ground of challenge in the writ petition is that the respondent Nos. 6 and 7 are entitled to inherit the land owned by their father who is Bhumidhar as such are not entitled to allotment made in their favour under the UPZA & LR Act. At the time of allotment of the land in favour of respondent Nos. 6 and 7, petitioners were in possession of the land. On an application being filed by the petitioners u/s 198(4) of the UPZA & LR Act the Collector ordered an enquiry to be undertaken by the Tehsildar concerned. The report suggests that the petitioners were in possession of the land. On the basis of the report, the patta allotted in favour of

the petitioners was cancelled vide order dated 31.8.1992. Aggrieved by this order revision was preferred by respondent Nos. 6 and 7, which was allowed and recommendation was made to the Board of Revenue who on reference remanded the case back to the Collector vide order dated 11.6.2000. On remand the Collector dismissed the application filed by the petitioners vide order dated 31.8.2004 against which a revision was preferred by the petitioners which was also dismissed vide order dated 5.6.2006. Case of the petitioners was rejected by the Courts below on two grounds;

(a) that the respondent Nos. 6 and 7 did not own any land at the time of allotment and; (b) their father was registered as Bhumidhar and was alive as such it would not disentitle them to seek allotment of the land in then-favour.

2. On the other hand stand of the respondents is that the petitioners are trespassers and had no right to question the allotment made in their favour. It is contended that the petitioners have no locus to question this order of allotment as none of his right has been violated. He has not suffered any personal legal injury. It is further contended in the counter-affidavit that the land had vested in the Gaon Sabha as such the petitioners could not claim to be in possession of the land. The father of the petitioners has agricultural land in village but the respondents were living separately from their father as such they could not be held to be Bhumidhars of the land owned by their father.

3. Heard learned counsel for the parties and perused the material on record.

4. Petitioners claim to be in possession of the land which has vested in the Gaon Sabha. A detailed procedure for allotment of land has been prescribed by Section 198 of the Act. It provides various categories to whom the allotments should be made in order of preference. For the sake of convenience sub-section (1) of Section 198 of the U.P.Z.A. & L.R. Act is reproduced below:

Section 198 -- "In the admission of persons to land as [Bhumidhar with non-transferable rights] or asami u/s 195 or Section 197 (hereinafter in this section transferred to as allotment of land) the Land Management Committee shall subject to any order made by a Court u/s 178 observe the following order of preference :

(a) landless widow, sons unmarried daughters or parents residing in the circle of a person who has lost life by enemy action while in active service in the Armed Forces of the Union;

(b) a person residing in the circle, who has become wholly disabled by enemy action while in active service in the Armed Forces of the Union;

(c) 1a landless agricultural labourer residing in the circle and belonging to a 2[Schedule Caste, Schedule Tribe, other backward class or a person of general category living below poverty line];

(d) any other landless agricultural labourer residing in the circle;

(e) a Bhumidhar, 3[***] or asami residing in the circle and holding land less than 1.26 hectares (3.125 acres);

(f) landless person residing in the circle who is retired, released or discharged from service other than service as an officer in the Armed Forces of the Union;

(g) a landless freedom fighter residing in the circle who has not been granted political pension;

(h) any other landless agricultural labourer belonging to a 1 Subs, by U.P. Act No. 30 of 1975.

5. The Gaon Sabha has competence to allot the said land in terms of Section 198 of the UPZA & LR Act to class of persons defined therein. While making allotment provision of Section 198 of the Act are required to be complied with. Section 198 of the Act stipulates allotment to be made on the basis of preference to be given to a particular Class. A person who seeks to question the allotment has to show that he had preferential right for the said allotment. Seeking cancellation of allotment order without showing preference cannot be questioned except on the intervention of the Gaon Sabha. Petitioner claims that the land has been wrongly allotted to the respondents without claiming that they have right to seek allotment of the said land under the Act.

6. Rules with regard to locus standi is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legal protected interest by the impugned action of the State or a public authority. Aggrieved person must show that he had suffered a legal grievance against whom a decision which has been pronounced which has wrongfully refused him of something, which he had a right to demand. It is within this precincts that the aggrieved person can seek redressal of his grievance under Article 226 of the Constitution of India.

7. The Apex Court in a recent decision of Manohar Lal (D) by Lrs. Vs. Ugrasen (D) by Lrs. and Others, , has after consideration of its earlier judgment with regard to the point as to when the discretionary jurisdiction under Article 226 of the Constitution of India should be exercised, has held as follows :

.....When a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under Article 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective. "Equally, the judicial process should never become an instrument of appreciation or abuse or a means in the process of the Court to subvert justice." Who seeks equity must do equity. The legal maxim "Jure naturaw aequum est neminum cum alterius detrimento et injuria fieri locupletioem", means that it is a law of nature that one should not be enriched by the loss or injury to another.

8. In the present context, it be seen that the petitioners claim to be in possession of the property without disclosing their title to the same. Under the

scheme of UPZA & LR Act as provided by Section 117 of the Act, Govt. may by notification declare that any land vested in the Gaon Sabha must have been vested in the State on coming into force of the UPZA & LR Act 1950. After vesting of the land, the Land Management Committee constituted by the Gaon Sabha be charged for and on behalf of Gaon Sabha with the General superintendence, management, preservation and control of all such land within the precincts of said village. u/s 122-C of the Act the Collector is empowered on his own motion or on the resolution of Land Management Committee to earmark any class of land for Aabadi site for persons of Scheduled Caste and Scheduled Tribe and other Backward classes and persons of general category living below the poverty line and agricultural labourers and village artisans.

9. Section 195 of the Act provides that the Land Management Committee with the previous approval of the Incharge shall have right to admit any person as bhumidhar with non transferable rights to any land. Once a person is admitted as Bhumidhar with Non Transferable Rights same shall be done in accordance with the order of preference indicated in Section 198 of the Act. Petitioner nowhere claims that he has a preferential right over the respondents. His only contention is that petitioners are in possession of the land as such no allotment can be made in favour of the respondents. It is not his case that the land has not vested in the Gaon Sabha who have right to control and manage the said land.

10. The Zamindari Abolition and Land Reforms Act has been enacted with a purpose and object to abolish the Zamindari system and settle the land with the tillers of soil. The Act has also taken care to provide land to landless labourers and other weaker member of society to enable them to earn their livelihood and lead a decent and respectable life. The idea and purpose is to provide land to needy persons for their upliftment. Relevant portion of Aims and Object of U.P.Z.A. & L.R. Act is being quoted below: -

All lands of common utility, such as abadi sites, pathways, waste-lands, forests, fisheries, public wells, tanks and water channels, will be vested in the village community or the Gaon Samaj consisting of all the residents of the village as well as the pahikasht cultivators. The Gaon Panchayat acting on behalf of the village community has been entrusted with wide powers of land management. This measure which makes the village a small re-public and a co-operative community is intended to facilitate economic and social development and to encourage the growth of social responsibility and community spirit."

11. Having failed to disclose their right to possess the land petitioners cannot have any locus to question the order made in favour of the respondent Nos. 6 and 7 which they can do only after disclosing that they have preferential right then the respondents for such allotment.

12. On this ground alone the writ petition is not maintainable. Second contention raised by the petitioners is that the land was not vacant at the time of allotment. Once the land has vested in the State and has been notified that the land shall

vest in the Gaon Sabha, presumption is that the land is vacant. Any person who has occupied the land unauthorisedly, it cannot be said that the land in question is not vacant. Mere claim to the possession in itself does not create a right in the person to occupy the land unless he discloses some legal right to hold that property. Petitioner's only right in the land if accepted is that of unauthorised possession. In such a situation it can never be presumed that the land was not vacant. The term vacant land has not been defined in the Act but it does carry certain statutory implication. The land held by Bhumidhar, Sirdari and Aasami means the land in which the right and title or interest of the tenure holder is extinguished under the provisions of the Act 1950 and such Land vests in the Gaon Sabha which had power to admit any person as Sirdar now as Bhumidhari with Non Transferable Rights or Aasami. So any land which by virtue of the operation of the Act vests in the State extinguishes the right of erstwhile title holder and shall always deemed to be a land which is vacant. Any person claiming right over the property on the basis of his possession as trespasser it cannot be said that the land is not vacant. The last ground taken by the petitioners is that the father of the petitioners is Bhumidhar and after his death property is likely to vest in succession as contended in Sections 171 to 176 of the Act. Categorical stand of the respondents is that they are living separately from their father and as on date of allotment their father was alive. It did not create any bar for allotment in favour of the respondents as admittedly they were not in possession of any land at that time. These plea have been rightly dealt with by the Courts below. In the result, I find no force in this writ petition. The writ petition fails and is hereby dismissed.