

(1972) 12 AHC CK 0004

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5259 of 1970

Lakshmi Dhar

APPELLANT

Vs

State Government of Uttar Pradesh and others

RESPONDENT

Date of Decision : 14-12-1972

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 120B(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115(D)

Citation : (1973) 43 AWR 287

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Advocate : R.B. Mehrotra, for the Appellant;

Final Decision : Allowed

Judgement

Hari Swarup, J.—The Petitioner challenged through this writ petition the order of the--Collector passed u/s 120-B(2) of the UP ZA and LR Act read with Rule 115-(D) of the UP ZA and LR Rules. The proceedings were commenced Under Rule 115--(C) on the report of the Lekhpal that Lakshmi Dhar had illegally occupied the Gaon Sabha Sarselas land plot No. 73/1 and plot No. 213/(1) in the year 1376F. The Collector issued notice and on considering the evidence led by the Petitioner held that the Petitioner had failed to prove his possession to be of old. The Petitioner had led in support of his case oral and documentary evidence to prove his long possession.

2. The impugned order does not show that the Collector had recorded any finding that the land had ever vested in the Gaon Sabha. There is also no finding as to the date since when the Petitioner illegally occupied the land. The assessment of damages was also not made on any basis.

3. Section 120-(B)(1) casts a duty on the Land Management Committee to take steps for recovery of possession of the Gaon Sabha land together with the damages for dispossession if any body wrongfully occupies it. u/s 120(B)(2) the

Collector gets jurisdiction to take action only if the Land Management Committee fails to take action in : accordance with the provisions of Sub-section (1) within the time prescribed. Further the provisions of Section 120-(B)(2) apply only when the land is prima facie proved to be of Gaon Sabha. It is only when it is established prima facie that the property had at some time vested in a Gaon Sabha that the question of its illegal occupation by a person without authority of law can arise and only then the matter can become open to summary action by the Collector. Action is permissible only when the title of Gaon Sabha cannot ex faoie be questioned, i.e. when there is no bonafide dispute in respect of Gaon Sabha's title. Hence, before the Collector can pass an order for eviction of damages, he must record a finding that the land had vested in the Gaon Sabha and that there was in existence no bonafide dispute about its title and that the Land Management Committee had failed to take steps to recover possession within the time mentioned in the section. The Collector does not get jurisdiction either to order ejectment of a person from any land or to require him to pay damages without first arriving at such conclusions. For determining the quantum of damages also the Collector has to give facts and reasons to justify the assessment. The impugned order does not contain any of the findings necessary for making of the order u/s 120(B)(2) read with Rule 115-D. The order, therefore, cannot be said to have been passed in accordance with law.

4. In the result the petition is allowed and the impugned order dated 7-11-1969 passed by the Assistant Collector Kalpi Under Rule 115-D of the UP ZA and LR Rules is quashed. This order will not, however, debar the Collector from passing, in accordance with law, a fresh order in the proceedings already initiated before him, which shall for purposes of Rule 115(D) be deemed to be still pending. In the circumstance of the case the parties shall bear their own costs.