
(1952) 02 AHC CK 0012
In the Allahabad High Court
Case No : Writ Application No. 223 of 1950

Lala Ram Narain Lal and Others	Vs	APPELLANT
The Additional District Magistrate Kanpur and Others		RESPONDENT

Date of Decision : 06-02-1952

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1952) 22 AWR 174

Hon'ble Judges : Sapru, J;Agarwala, J

Bench : Division Bench

Advocate : Walter Dutt, for the Appellant;

Judgement

Sapru, J.—There are three applicants in this writ application, namely, Lala Ramniranjan Lal, Lala Mata Din and Lala Harinath. They pray for a writ, under Article 226 of the Constitution, quashing the order of the learned Additional District Magistrate of Kanpur, allotting a certain land to Sardar Kartar Singh, opposite party No. 2. and further prohibiting the learned Additional District Magistrate from allotting the said land to any other person.

2. The facts which have given rise to this application may be stated shortly-A piece of land nearly 40 acres was required by the father of present applicants, Lala Munna Lal, from the Government of India by a sale-deed dated the 9th July, 1946. It would appear that the land was, as a matter of fact, purchased in 1943, but the sale deed was not executed until the 9th July 1946. The applicants' contention in the application and the affidavit which they have filed before this Court is that from that date right up to the date on which they were ordered to be dispossessed by the learned Additional Collector" they were in cultivatory possession of the land in dispute. Their case was that as the land was of a cultivated character in the Rabi and Kharif immediately preceding 28th January 1948, the learned Additional Collector had no jurisdiction to allot it u/s 3 of U.P. Land Utilization Act, No. v. of 1948, to the opposite party No. 2 or for the matter of that, to any other person.

3. The order allotting the land to opposite party No. 2 is an ex parte order and was passed by the learned Additional Collector on the 8th April 1950. It was passed by the Additional Collector ex parte on the ground that notice had been issued to the zamindar applicants that they had taken the notice but had refused to endorse the acknowledgement. He regarded that as sufficient service and proceeded for with the case ex-parte.

4. The case has been argued very ably by Mr. Walter Datt on behalf of the applicants and by Mr. Dhawan on behalf of the opposite party No. 2. Learned Counsel for the parties have covered a wide ground but, in our opinion, the case can be decided on a short point-After the ex parte order had been passed, the application went up to the learned Additional Collector in review. The learned Additional Collector refused to review his order on the ground that, under the Act, he had no power to review or set aside the order passed by him. In this, he was undoubtedly right. Incidentally he went to the merits of the case and also based his order on his estimate of the merits of the case as presented by opposite-party No. 2. We think it was quite unnecessary for him, after having come to the conclusion that he had no jurisdiction under the Act to review his order, to go into the merits of the case.

5. The U.P. Land Utilization Act, No. v. 1948, (hereinafter called the Act) received the assent of the Governor on January 28, 1948 and was published in the U.P. Government Gazette dated February 7, 1948. Its main objective would seem to be to provide for powers to utilize uncultivated land in order that the production of foodstuffs might be increased. It, therefore, vests the Collector with vast powers. Possibly the legislature thought that it was in the social interest that the Collector should have powers of requiring by notice a landlord to let out his land or to arrange for its cultivation within 15 days thereof where that land is not grove land or land let out to or held by a tenant and has not been cultivated or, if previously cultivated, had not been cultivated in the Rabi and Kharif immediately preceding the commencement of this Act Section 2 of the Act lays down that the notice shall be served on the landlord by delivering or tendering to him a copy of such notice. It further indicates that if the landlord is not readily traceable or refuses to accept the notice, the service shall be effected by affixing a copy of such notice to the chaupal or some other public place in the village and thereupon the landlord shall be deemed to have been sufficiently served. The case of the applicants is that this is not a case in which the landlord was neither readily traceable nor had refused to accept the notice. What he had done was to take the notice but not to sign the acknowledgement. It is urged that the refusal to sign is not synonymous with refusal to accept the notice. It is contended that there was efficient compliance with the provisions of that section and that there is, therefore, no force in the plea that the applicants were not served with proper notice such as would justify them to get the ex parte order set aside.

6. The difficulty that we feel with this and the other cognate argument which have been advanced about the nature of service required for notice under the Act

is that in our opinion, there was no evidence of an admissible nature on which the learned Collector could record a finding that notice had been served on the landlord applicants in this case. The report of the process server which is dated the 27th February of 1950 is to the effect that he went to the house the three applicants respectively, that in the case of Lala Ramniranjan Lal the notice was thrown in the baithak and in the cases of Lala Mata Din and Lala Hari Nath the notice was taken by them but they refused to sign the acknowledgment. Now, the question whether a notice served in this manner could or could not in law be described as notice within the meaning of Section 3 of the Act and the other relevant provisions of law could only have arisen if the report submitted by the process server had been either verified by him or had been a sworn statement by him as correct. We have gone through the entire record of the case and are satisfied that the report submitted by the process server was not verified by him as required by Rule 78 of the Revenue Court Manual. Rule 78 of the Revenue Court Manual corresponds in effect with Order 5, Rule 19 of the Code of Civil Procedure. We may quote below Rules 18 and 19:

18. The serving officer shall, in all cases in which the summons has been served under Rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons a "return stating the time when and the manner in which the summons was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the summons.

19. Where a summons is returned under Rule 17, the court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.