
(2011) 07 AHC CK 0211
In the Allahabad High Court
Case No : Writ C. No. 46121 of 1999

Laxmi Shanker and Others

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

Uttar Pradesh Bhoodan Yagna Act, 1952 — Section 15A

Citation : (2012) 4 AWC 3756 : (2011) 113 RD 777

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—In spite of sufficient service as per the office report dated 04.05.2011 no one appeared on behalf of Respondents No. 4 and 5 Sri Khurdhan and Sri Lal Charndra the complainants.

2. Heard learned Counsel for the Petitioners and learned standing counsel for Respondents No. 1 to 3.

3. Through gift deed dated 10.10.1955 Bhoodan Yagya Samiti allotted about two acres land to the Petitioners who are real brothers and three in number. Thereafter names of the Petitioners were also mutated in the revenue records in the year 1961. Number of allotted plot is 1961/2 area 2.05 acre.

4. One Guari Shankar and another person instituted O.S. No. 270 of 1964 against the Petitioners for cancellation of the patta/gift deed. In the said suit State of U.P. and Bhoodan Yagya U.P. Samiti were also Defendants who supported the Petitioners and the allotment in their favour. The suit was dismissed by City Munsif, Varanasi, through detailed judgment on 09.09.1971. Against the said judgment and decree First Appeal was filed, however during the pendency of appeal before Ist temporary Civil Judge, Varanasi (Civil Appeal No. 27 of 1972) consolidation proceeding started in the area in question hence appeal was dismissed as abated.

5. Thereafter, Respondents No. 4 and 5 in this petition and seven others filed objections before Consolidation Officer against the Petitioners regarding the same allotment. The objections were rejected on 04.12.1986 in default by Assistant C.O., Varanasi.

6. Thereafter, Respondents 4 and 5 filed application before the Collector Varanasi for cancellation of the patta. Petitioners filed reply to the said application, copy of which is Annexure-14 to the writ petition. In the reply they mentioned the fact that earlier suit had been decreed by the Civil Court and objections filed before the A.C.O. by applicants and others were also dismissed.

7. The cancellation application was registered as case No. 14/2/3 u/s 15-A U.P. Bhoodan Yagya Adhiniyam. Collector/D.M., Varanasi through order dated 26.03.1999 allowed the cancellation application and cancelled the allotment/gift deed executed in favour of Petitioners, copy of the said order is Annexure-2 to the writ petition. Thereafter, Petitioners 2 and 3 Kripa Shanker and Vidya Shanker filed a review/recall application which was rejected by the D.M. on 30.08.1999. Both these orders have been challenged through this writ petition.

8. As far as order dated 30.08.1999 is concerned, there is no error in the said order. The plea taken by the Petitioner Nos. 2 and 3 was that Petitioner No. 1 was doing pairvi, who did not take proper care of their interest. However, in the instant writ petition all the three are Petitioners jointly.

9. However, as far as Annexure-2 order of cancellation dated 26.03.1999 is concerned, it cannot be sustained. In five and half pages, the D.M. has mentioned the facts but only in four and half lines has held that patta was illegal.

10. Actually the fault is not of the D.M./Collector, who is Executive Officer. Executive Officers cannot be expected to perform the duties of a Doctor or Engineer as neither they are qualified nor trained in the said discipline. Similarly they can also not be expected to perform judicial duties.

11. Learned Counsel for the Petitioners has cited following authorities in support of his case.

1. Smt. Mubarakunisha v. Additional District Magistrate (Rural), Allahabad 1989 All. L.J. 646

2. Matoley v. State of Uttar Pradesh 1986 AWC 666

The matter, therefore, requires remand.

12. Writ petition is accordingly allowed. Order dated 26.03.1999 is set aside. The matter is remanded back to the D.M./Collector to decide the same again by giving detailed reasons. The effect of earlier judgment of the Civil Suit and dismissal of the objections before A.C.O. shall be considered, it must also be decided as to whether in the year 1955 when allotment was made, Petitioners were deserving persons or not? The effect of inordinate delay in applying for cancellation by Respondents No. 4 and 5 should also be considered.

13. Petitioners are directed to appear before the D.M/Collector Varanasi on 18.08.2011 along with certified copy of this judgment failing which this writ petition shall be deemed to have been dismissed.