

(2006) 12 UK CK 0026
In the Uttarakhand High Court
Case No : Writ Petition No. 11 T.B. of 2000

Mahesh Chandra and Another	Vs	APPELLANT
Board of Revenue and Others		RESPONDENT

Date of Decision : 06-12-2006

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115Q

Citation : (2007) 2 UC 982

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : V.N. Agarwal, for the Appellant; Ramji Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—Heard Sri V.N. Agarwal, counsel for the Petitioners and Sri Ramji Srivastava, counsel for the Respondents.

2. By the present writ petition, the Petitioners have prayed for a writ of certiorari quashing the order-dated 11-6-1990, passed by the Respondent No. 1.

3. According to the Petitioners plot No. 168 area 1.03 acre situated in village Phasiapur, Tehsil Kashipur was allotted to them in the year 1953 by the Land Management Committee. The patta was executed in favour of the Petitioners on 17-6-1953. Respondent No. 2 got his name mutated over the said property in the municipal records vide order dated 30-12-1978. When the Petitioners brought this fact in the notice of Municipal Board, the entry in favour of the Respondent No. 2 was struck down by the order of S.D.M. who was Officer Incharge of the Municipal Board.

4. Respondent No. 2, filed a suit for permanent injunction against the Petitioners restraining him (sic) from interfering in his possession over the land, before the Munsif, Kashipur being suit No. 216 of 1979. The suit was dismissed by the Munsif vide judgment and decree dated 29-4-1981. Against the aforesaid order

Respondent No. 2 filed appeal before the 1st Additional District Judge, Nainital, which was also dismissed on 25-11-1981. Against the said order the Respondent No. 2 filed a second appeal before the High Court, which is still pending.

5. In the mean time the Respondent No. 2 moved an application u/s 198 of U.R.Z.A. and L.R. Act, before the Collector, Nainital for cancellation of Patta in favour of the Petitioners on 24-7-1981. The application of the Respondent No. 2 was dismissed vide order dated 23-7-1983. Against the aforesaid order the Respondent No. 2 preferred an appeal before the Commissioner, Kumaun Division. The appeal was also dismissed vide order dated 6-5-1985. Against the order of the Commissioner, Respondent No. 2 preferred a revision before the Board of Revenue, U.P. The Board of Revenue allowed the revision vide order dated 18-6-1990 and set aside the orders passed by the Collector as well as by the Commissioner Kumaun Division.

6. Feeling aggrieved by the order dated 18-6-1990 passed by the Board of Revenue, the Petitioners have preferred the present writ petition.

7. Respondents have filed counter affidavit. It has been submitted in the counter affidavit that the patta alleged to have been executed in favour of the Petitioners is only for an area of 62 acres of new plot No. 168. The Respondent No. 2 has claimed possession over the land in dispute since 1947, over the entire plot total area of which is 1.03 acres. It has been alleged that the land in dispute was taken under the Municipality in the year 1978 and since then the Respondent No. 2 has been continuously paying house-tax and water-tax. The Respondent No. 2 has submitted that the Petitioners never came into possession over the disputed land nor the patta was produced before any court. The patta was for abadi land for the purpose of constructing house, which should have been done within two years from the date of allotment but construction has not been made by the Petitioners. Since, no construction has been made within two years, whatever rights the Petitioners claimed under the patta, extinguished after two years.

8. Suit No. 216 of 1979 was filed by the Petitioners (sic) for injunction and in that suit, the Respondent No. 2 for the first time came to know about the alleged patta. The second appeal No. 615 of 1982 is still pending and the judgment and decree of the courts below have not become final. The findings of the civil courts which have not become final, would not be binding in the proceedings for cancellation of the lease-deed, which is exclusive jurisdiction of the revenue courts.

9. The most important provision for the present case is Rule 115-Q which provides that the person to whom an Abadi site is allotted shall be required to built a house either Kachha or Packka. Rule 115-Q is quoted below:

115-QThe person to whom an abadi site is allotted shall be required to build a house, either Kachcha orpucca and begin to reside in it or use to for the purpose for which it was built within two years from the date of allotment If he fails to do so, his rights shall be extinguished and the site may be re-auctioned.

10. It is an admitted fact that the Petitioners have raised no building over the disputed land as yet and their contentions are that they raised wooden pillars on the boundary and the land has been used for tractor to stand over the land. The fact that no building has been constructed has clearly been admitted by the Petitioners. Thus the Petitioners have clearly violated the provisions of Rule 115-Q and the only consequence is that the Petitioners allotment shall be deemed to have extinguished.

11. I have gone through the judgment and order dated 11-6-1990 passed by the Board of Revenue, Allahabad and I find no illegality or impropriety in the order passed by Board of Revenue.

12. The writ petition lacks merit and is hereby dismissed.

13. Accordingly, writ petition is dismissed. No order as to costs.