
(2010) 02 AHC CK 0052
In the Allahabad High Court

Massa Singh and Others

APPELLANT

Vs

The Bhoodan Yagna Samiti Kheri and Another

RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Constitution of India, 1950 — Article 266

Uttar Pradesh Bhoodan Yagna Act, 1952 — Section 14, 14(4), 15

Citation : (2010) 02 AHC CK 0052

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Devi Prasad Singh, J.—Heard the parties' counsel.

2. Petitioner was allotted land on lease in pursuance to provision contained in U.P. Bhoodan Yagna Act, 1952 (in short hereinafter referred as Act). Section 14 of the Act deals with the grant of lease to landless person. For convenience Sub-section 4 of Section 14, which provides necessary condition for grant of lease to the landless person, is reproduced as under:

(4) in making grant of land under this section, the committee or other authority or persons as aforesaid or the collector, as the case may be, shall observe the following principles.

(a) At least fifty per cent of the land available for grant shall be granted to persons belonging to the scheduled castes, scheduled tribes and persons belonging to the Kol, Pathari, Khairwar, Baiga, Dharikar, Panika and Gond Tribes and such other tribes as the State Government on the recommendation of the committee may notify in this behalf,

(b) The land situate in one village shall, as far as possible be granted to persons residing in that very village.

Explanation-For the purpose of this section, the expression "landless agricultural

labourer" means a person whose main source of livelihood is agricultural labour or cultivation and who at the relevant time either holds no land or holds lands not exceeding 0.40468564 hectares (one acre) in Uttar Pradesh as a bhumidhar, 4(***) asami or government leasee.

3. In pursuance to aforesaid provision the petitioner was granted lease of the land in question in village Hansnagar, Pargana Palia, Tehsil Nighasan District Kheri. The Bhudan Yagna Samiti had taken suo moto action and submit a report before the District Magistrate, Lakhimpur Kheri for cancellation of lease in pursuance to Section 15 of the Act on the ground that the petitioner does not belong to said village. While moving the application for grant of lease of the land as landless person the petitioner had indicated that they belong to village namely Hansnagar pargan palia Tehsil Nighasan District Kheri. A notice was sent to petitioners but they didn't turn up, hence, by impugned order dated 23.9.1988 application was allowed and lease was cancelled. Thereafter, petitioner had moved an application for restoration of case on the ground that no notice was served. After perusal of record the Additional Collector by the impugned order dated 23.9.1988 had rejected the application on the ground that the notice was duly served. Feeling aggrieved the present writ petition has been preferred.

4. It has been vehemently argued by Shri Hari Om Singh learned Counsel for the petitioner that Additional District Magistrate was not competent to pass the impugned order. It has also been submitted that no notice was served on the petitioner and he belongs to same village.

5. Rebutting the submission of the petitioner's counsel, learned Counsel for the newly impleaded party has invited attention towards para 6 and 8 of the affidavit as well as the copy of notice served on the petitioners which shows that they have acknowledged the notice sent by the Additional District Magistrate. No reply by filing rejoinder affidavit has been given rebutting the submission that notice was duly served and acknowledge by the petitioner putting their thumb impression as well as they do not belong to same village. Though the statutory provision provides that as far as possible lands shall be allotted to landless person belonging to same village but while moving application the petitioner should have not given incorrect address.

6. Specific averment has been made in counter affidavit to the effect that the petitioners belonging to other village and not to the village Hansnagar which has not been denied.

7. Apart from above, in writ petition No. 8042/88 (MS) impleadment application was allowed in the year 2005 but till date petitioner has not incorporated the impleadment. This act on the part of petitioner, not implementing the order within the time provided by the rules of the Court, call for dismissal of writ petition without entering into merit of the case.

8. Attention of this Court has been invited towards the fact that the land in question has been allotted to other landless persons before filing of the present

writ petition.

9. So far as the submission of the learned Counsel for the petitioner that Additional District Magistrate was not competent to pass the impugned order is concerned there appears to be no specific pleading raising such ground in the writ petition. Though the question of law may be raised at any stage but for that it shall always be obligatory for the aggrieved party to come forward with specific pleading. While exercising power conferred by Article 226 of the Constitution of India it shall always be incumbent upon the court to decide the issue raised keeping in view the pleading on record and not otherwise vide *The State of Bihar Vs. Rai Bahadur Hurdut Roy Moti Lall Jute Mills and Another*, *Sri Venkata Seetaramanjaneya Rice and Oil Mills and Others Vs. State of Andhra Pradesh etc.*, and *Yadlapati Venkateswarlu Vs. The State of Andhra Pradesh and another*,

Though learned Counsel for the respondent submits that Additional Collector includes Collector keeping in view the definition given in Land Revenue Act but I decline to decide this question in the absence of any pleading in the writ petition. I leave it open for some other case.

10. Keeping in view the facts that the land has been allotted to other persons before filing of the writ petition and also in view of the fact that the averments contained in para 6 and 8 of the counter affidavit has not been rebutted, it is not a fit case where extraordinary power conferred by Article 226 of the constitution of India should be exercised. Accordingly, writ petitions are dismissed. No order as to costs.