

(2015) 07 AHC CK 0070
In the Allahabad High Court
Case No : Writ-C No. 3715 of 2015

Mulayam Singh and Others

APPELLANT

Vs

Addl. Commissioner, Kanpur and Others

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 195, 197, 2(e), 202, 204

Citation : (2015) 128 RD 493

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : P.K. Dixit, for the Appellant; Brij Kumar Yadav, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anjani Kumar Mishra, J—Heard Sri P.K. Dixit learned Counsel for the petitioners, Sri Brij Kumar Yadav for the Gaon Sabha, respondent No. 3 and learned Standing Counsel for the State respondents. By means of this writ petition the petitioners have sought quashing of the order dated 16.10.2014 passed by the respondent No. 1 whereby their revision has been dismissed. This revision was directed against the order dated 31.12.2013 passed by the respondent No. 2 whereby the names of the petitioner were ordered to be expunged in proceedings under Rule 176-A(2) of the Rule framed under the U.P.Z.A. & L.R. Act.

2. The dispute in the writ petition relates to Plot Nos. 630 area 0.1660 and 334 Kha area 0.0440 of Village Sarai Ek-dil, Pargana and District Etawah which are admittedly a pond on the spot and the petitioners were recorded thereon under Class III namely an Asamis.

3. The case of the petitioners is that their grand-father Kunji was allotted this land for growing Singharas prior to the abolition of the zamindari. On the abolition of zamindari the said Kunji is stated to have been recorded as Asami over the land in question under section 2(e) of the U.P.Z.A. & L.R. Act.

4. The proceedings under Rule 176-A(2) were initiated on the basis of a report of the Tehsildar. The petitioners filed their objection alleging therein that since their ancestors had acquired Asami rights under section 21 of the Act, the provisions of Rule 176-A were not attracted and the proceedings, therefore, were illegal.

5. The respondent No. 2 vide order dated 31.12.2013 directed that the name of the petitioners be expunged and the pond in question be entered in the name of Gaon Sabha without adverting to this aspect of the matter. Even the revisional Court while dismissing the revision by means of the order dated 16.10.2014 has failed to advert this aspect. The impugned order therefore, are vitiated and are liable to be set aside.

6. In paragraph 3 of the writ petition there is a categorical averment that documentary evidence was filed to show that the name of the petitioners had been recorded under section 21 of the U.P.Z.A. & L.R. Act and therefore Rule 176-A was not attracted. The said Rule applies only to allotments made by the Gaon Sabha or the Land Management Committee under section 195/197 of the Act. It is therefore, been submitted that the petitioners ejectment could only had been ordered under section 202 of the Act.

7. Learned Counsel for the petitioners have placed reliance on the judgment rendered in the case of Dod Raj and Others Vs. Commissioner, Bareilly Division and Others, (2010) 2 AWC 1299 in support of his contentions.

8. Sri Brij Kumar Yadav as also learned Standing Counsel appearing for the State respondents have supported the impugned orders and have placed reliance upon a judgment of this Court in the case of Ram Deo and Others Vs. State of U.P. and Others, (2008) 3 AWC 2723 : (2008) 105 RD 283 and Ram Naresh Vs. State of U.P. and Others, (2012) 5 ADJ 522 : (2012) 116 RD 99 .

9. I have considered the submissions made by learned Counsel for the parties and have perused the record.

10. It is clear from the objection filed by the petitioner, copy whereof is available on record as annexure 4, that a specific case was set up that the petitioners had acquired Asami rights as they were in occupation of the ponds from before the abolition of the zamindari, in view of section 21(e) of the Act. However, both the Courts below have failed to advert to the question as to whether the Asami rights were liable to be cancelled in exercise of powers conferred by Rules 176-A. It therefore, prima facie appears that the petitioners were not allottees of the Gaon Sabha or the Land Management Committee. Moreover, there is no material available on record to show that the Asami rights were conferred upon the petitioners for a fixed term. In such view of the matter, and in the absence of such material it would be deemed that the petitioners were Assamese from year to year. Therefore, the case of the petitioners is squarely covered by the decision rendered in the case of Dod Raj (supra) wherein it has been held that if a person is recorded as Asami at the time of abolition of zamindari there is no question that they might have been granted Asami lease by the Gaon Sabha under section

197 of the Act. Apart from leases granted by the Land Management Committee/ Gaon Sabha every other Asami lease can be cancelled by following the procedure provided under sections 202 and 204 of the Act. The submissions made by learned Counsel for the petitioners therefore have substance.

11. Insofar as the judgments relied upon by learned Counsel for the respondents are concerned, they both pertain to matters where an Asami lease was granted under section 197 of the Act. Such allotments were made by the Land Management Committee. Although it has been held that such an Asami lease can be cancelled in exercise of powers conferred by Rule 176-A, however, in view of the above discussion and since the allotment in favour of the petitioners, prima facie was not made by the Land Management Committee, in my considered opinion reliance upon the cases cited by the respondents is not justified. Rule 176-A pertains only to cancellation of Asami pattas granted by the Land Management Committee and therefore, the case cited are clearly distinguishable on facts.

12. Accordingly and in view of the above discussion I allow this writ petition and set aside the order dated 13.12.2013 passed by the respondent No. 5 and order dated 16.10.2014 passed by the Additional Commissioner, Kanpur Division, Kanpur and remand the matter back to the respondent No. 2, Additional Magistrate, Etawah to pass fresh orders in accordance with law after considering the objections raised by the petitioners as regards the applicability of Rule 176-A. In the facts and circumstances, there will be no order as to costs.