
(2010) 08 AHC CK 0287

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 92 of 1989

Municipal Board

APPELLANT

Vs

Vth ADDL.DISTT. and Sessions Judge and Others

RESPONDENT

Date of Decision : 03-08-2010

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 184, 3, 5
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 3

Citation : (2010) 08 AHC CK 0287

Hon'ble Judges : Sanjay Misra, J

Final Decision : Dismissed

Judgement

Sanjay Misra,J.

Heard Sri S.K. Srivastava, learned counsel for the petitioner which is Municipal Board, Chandausi, Sri R.K. Saxena, learned counsel appearing on behalf of Respondent No.6 namely Smt. Maya Devi and learned Standing Counsel for the Staterespondents.

Learned counsel for petitioner submits that by the impugned order dated 09.09.1988 passed by the Vth Additional District & Sessions Judge, Moradabad (Annexure No.3 to the writ petition) the appeal filed by the father of Respondent No.6 namely Khem Pal Singh has been allowed and the notice issued to Khem Pal Singh under the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 has been discharged. According to learned counsel for the petitioner the only reason given in the impugned order for discharging the notice issued by the petitioner is that the petitioner Municipal Board had sanctioned the building plan of Khem Pal Singh and hence now it cannot claim title over the land in question. He says that reference to Section 115 of Indian Evidence Act was wrongly made in the impugned order which is otherwise governed by the provisions of U.P. Municipalities Act, 1916. He refers to Section 184 of the U.P. Municipalities Act to state that a sanction for building given by the Municipal Board will not confer or

extinguish any right or disability or operate as an estoppel or admission or affect any title to property or have any other legal effect whatsoever.

According to him the notification under Section 3 of the U.P. Municipalities Act was issued on 03.02.1969 and the petitioner's claim of having been granted a lease/patta from the Gaon Sabha, Maulagarh is of 10.05.1970 and, therefore, also the notice could not have been discharged.

Sri R.K. Saxena, learned counsel appearing on behalf of the Respondent No.6 submits that in consolidation proceedings the land in question was renumbered as Plot No.176 in the name of Gaon Sabha, Maulagarh, district Moradabad and it was the Gaon Sabha which had granted lease/patta to Khem Pal Singh and, therefore, after the building map was approved by the Nagar Palika, Chandausi and house tax and other assessments had been made the Municipal Board cannot now require the Respondent No.6 to be evicted from the land in question, more particularly, till the lease/patta executed in favour of the Respondent No.6 by the Gaon Sabha subsists and is not cancelled.

Having considered the submission of learned counsel for the parties and perused the record, insofar as the impugned order is concerned, clearly the notice issued under Section 3 of the U.P. Public Premises (Eviction of Unauthorized Occupants) Act, 1972 has been discharged by the Appellate Court on a wrong assumption in law. When there is a specific provision of Section 184 under the U.P. Municipalities Act which clearly states that mere sanction or permission given for making construction will not confer or extinguish any right than the grant of sanction for the building map cannot confer any title on Respondent No.6 against the Municipal Board. It is not denied that the notification under Section 3 of the U.P. Municipalities Act was issued on 03.02.1969 whereas the Gaon Sabha executed the lease/patta in favour of Respondent No.6 on 10.05.1970. Consequently, the claim made by the Municipal Board, if any, cannot be extinguished only on the ground that it has sanctioned the building map of the Respondent No.6.

For the aforesaid reason the impugned order cannot be sustained and it is, accordingly, set aside.

The writ petition is allowed.

No order is passed as to costs.