

(2005) 05 AHC CK 0114

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 41846 of 2005

Munnu Lal

APPELLANT

Vs

Addl. Commissioner, (Administration), Kanpur Division and
Others

RESPONDENT

Date of Decision : 24-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117,
122B(4F), 123, 132, 195

Citation : (2005) 4 AWC 3267

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : B.K. Srivastava and D.K. Misra, for the Appellant; V.K. Singh, S.C.
and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—This writ petition is directed against the judgments dated 2.12.2003, passed by the Assistant Collector/ Up Zila Adhikari, Bilhaur, Kanpur Nagar by which the ex parte order dated 7.5.2003 was recalled and it was directed that the land in dispute may be recorded as Gaon Sabha land. In Revision said order was affirmed.

2. Heard learned counsel for the petitioner, learned Standing Counsel and learned counsel for Gaon Sabha.

3. Learned counsel for the petitioner raised three arguments (i) that there is no provision under the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act) for review by Subordinate authorities and as such the impugned order is without jurisdiction, (ii) that as the impugned order was passed without any notice to the petitioner, same is unsustainable in law and (iii) that the findings are perverse and not borne out from the record and the matter requires reconsideration.

4. Considered arguments of learned counsel for the petitioner and also carefully considered the materials on record.

5. Petitioner is claiming rights u/s 122-B(4-F) of the U.P.Z.A. & L.R. Act, same is being quoted below:-

"122-B(4-F) Notwithstanding anything in the foregoing sub-sections, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha u/s 117 (not being land mentioned in Section 132) having occupied it from before [May 1, 2002], and the land so occupied together with land, if any, held by him from before the said date as Bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and it shall be deemed that he has been admitted as bhumidhar with non-transferable rights of that land u/s 195.

Explanation.- The expression "agricultural labourer" shall have the meaning assigned to it in Section 198."

6. Explanations (1) & (2) to Section 198 of the U.P.Z.A. & L.R. Act defines landless agricultural labourer, same are being quoted below:-

"Explanation (1) "landless" refers to a person who or whose spouse or minor children held no land as bhumidhar or asami and also held no land as such within two years immediately preceding the date of allotment; and

Explanation (2) "agricultural labourer" means a person whose main source of livelihood is agricultural labour."

7. Learned counsel for the petitioner relied upon the report of the Tehsildar to support his contention that the petitioner is an agricultural labourer.

8. From perusal of the record and the ex parte order dated 7.5.2003, it is clear that no notices were issued to the Gram Panchayat or Land Management Committee before passing the said order. It is further apparent that this ex parte order was based on an ex parte report of the Tehsildar. Neither the report of the Tehsildar nor the ex parte order dated 7.5.2003 mentions that petitioner was an agricultural labourer. The ex parte order dated 7.5.2003 was passed on the ground that as petitioner had less than 3.16 acres of land on the relevant, he is landless and is entitled to get benefit of Section 122-B(4-F) of the Act, but learned counsel for the petitioner is not able to show any material that petitioner was an agricultural labourer on the relevant.

9. For admission of a person as a Bhumidhar u/s 122-B (4-F) of the Act, the first condition to be satisfied is that the person must be an agricultural labourer. In order to prove that he is an agricultural labourer; applicant claiming benefit u/s 122- B(4-F) of the Act will be required to prove that his main source of livelihood is agricultural labour. For this purpose he will also have to prove the name in

whose field he is working as an agricultural labour. What is the total income received, by him and various other factors. In the present case neither there was any evidence on record to show that petitioner was an agricultural labour nor the report of the Tehsildar which is the sole basis of the ex parte order dated 7.5.2003 mentions that petitioner was an agricultural labourer on the relevant date and as such no such order could be passed.

10. At this stage it is necessary to observe here that in every case instituted on an application of a person who is claiming benefit u/s 122-B(4-F) or Section 123 of the Act Gram Panchayat, Land Management Committee or recorded Bhumidhar are necessary parties, Personal service is necessary before proceeding to pass any order under the aforesaid provisions. Any member/ resident of the Gram Panchayat may also be impleaded in case he moves any application to bring correct facts to the notice of the: authority concerned.

11. Aims and Object of the U.P. Z.A. & L.R. Act clearly shows intention of the legislature while enacting U.P.Z.A. & L.R Act in the matter of properties vested in Gaon Sabha. Relevant portion of Aims and Object of U.P.Z.A. & L.R. Act is being quoted below: -

"All lands of common utility, such as abadi sites, pathways, waste-lands, forests, fisheries, public wells, tanks and water channels, will be vested in the village community or the Gaon Samaj consisting of all the residents of the village as well as the pahikasht cultivators. The Gaon Panchayat acting on behalf of the village community has been entrusted with wide powers of land management. This measure which makes the village a small republic and a co-operative community is intended to facilitate economic and social development and to encourage the growth of social responsibility and community spirit."

12. From the record it is clearly borne out that the order dated 7.5.2003 was passed ex parte, without impleaded Gram Panchayat or Land Management Committee. In these circumstances an application in order to protect interest of Village community was rightly moved to recall order dated 7.5.2003 by a member of the Gram Pradhan and the authority below rightly recalled that order. This Court in 1982 (8) A.L.R 23 Laraiti Devi Vs. Sia Ram, Laraiti Devi v. Sita Ram 1959 A.L.J. 818 Uttar Pradesh State v. Sheo Saran Agrawal 1974 RD 298 Sukhdeo v. Jagdhari 1976 A L.R. 216 The Weavers Mills Ltd., Rajapalayam Vs. Balkis Ammal and Others, , The weavers Mills Ltd. Rajapalayam v. Balkis Ammal and Ors. 1955 R.D. 335 Rash Behari Mazumdar Vs. Kasum Kumari Guha and Others, Ras Bihari Majumdar v. Kusum Kumari Guha and Ors. I.L.R 1949 1 Cal. 153 Mahmud Ismail Salehji v. Ahmad Ismail Salehji has held as follows:--

"Placing reliance upon the aforesaid observations, I think that in the present case the petitioner was vitally interested in the decree passed in favour of the contesting opposite parties which he wants to be vacated. If the decrees in favour of the contesting opposite parties remain intact, the petitioner's right of irrigating his fields from the disputed land shall be vitally affected. In such a

circumstance even if the petitioner is assumed to have no locus standi to move the application for setting aside the ex parte decrees in favour of the contesting opposite parties, it cannot be said that the trial Court had no jurisdiction to set aside the ex parte decrees which were against the provisions of law and were result of collusion and fraud practised by the plaintiff and the defendants in the suits in which decrees recognizing the claim of the contesting opposite parties in the disputed land as Sirdari were passed. I have a strong feeling that the trial Court while passing decrees in favour of the contesting opposite parties had blatantly ignored the provisions of Section 132 read with Section 195 of the U.P.Z.A & L.R. Act, hence it acted rightly in setting right its own wrong through the order dated 10.6.1969."

13. Learned Single Judge of this Court has held that Section 151 of the C.P.C. could be invoked and under the inherent powers the Court may permit a person who feels vitally affected to file an application u/s 151 of the C.P.C. and as such ex parte orders could be set aside.

14. In view of the above, impugned orders setting aside ex parte order dated 7.5.2003 were rightly passed in accordance with law.

15. Accordingly, the first argument raised by the learned counsel for the petitioner has no force.

16. Second argument of learned counsel for the petitioner that petitioner was not given any notice before passing the impugned order by the authority concerned is also untenable in law.

17. From the materials on record it is clear that the only ground for ex parte order dated 7.5.2003 was that petitioner having less than 3- 1/8 acres of land is a landless person. The report of the Tehsildar does not mention that the petitioner is an agriculture labourer. Perusal of the impugned order of the Sub Divisional Officer also makes it clear that there is no finding that petitioner was an agricultural labourer. In spite of the opportunity given to the learned counsel for the petitioner, he could not bring to the notice of this Court a single material produced by the petitioner before the authorities below by which he could have been considered as an agricultural labourer. The material on record does not show that petitioner was an agricultural labourer and was doing work of agriculture labour in the fields of others. Besides, the fact that petitioner was given an opportunity of personal hearing by the Revisional authority, though not statutorily provided, where also petitioner could not show that any prejudice was caused to him.

18. In view of the above, as no prejudice was caused to the petitioner and unless there is a failure of justice occasioned or it would not be in the public interest on the facts of the present case, this Court may refuse to entertain the writ petition on this ground, particularly, when it has come on record that petitioner-Munnu Lal is a near relative of Gram Pradhan and, therefore, the Lekhpal, Kanunago and Pradhan in collusion with each other submitted a false report and obtained order

of allotment of Gaon Sabha land. In the facts and circumstances of the case where the petitioner was given full opportunity of hearing by the Revisional authority and no prejudice is caused to him and in the admitted facts of the case that neither in the report of the Tehsildar which was the sole basis of the order nor in the impugned order there was any finding that petitioner was a landless agricultural labourer and no case of prejudice or failure of justice has been made out by the petitioner, I am not inclined to interfere in the impugned order. In this regard, Paragraph-23 of the judgment of the Apex Court in Canara Bank and Ors. v. Shri Debasis Das and Ors. AIR 2003 SCW 1561 is relevant, same is being quoted below:-

"23. As was observed by this Court we need not go into "useless formality theory" in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellants unless failure of justice is occasioned or that it would net be in public interest to dismiss a petition on the fact situation of a case, this Court may refuse to exercise said jurisdiction (see Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others,"

19. The third argument of learned counsel for the petitioner that the findings of the authorities below are perverse is also not acceptable in view of the fact that there was no evidence or material before the authorities below that the petitioner was entitled to get benefit of Section 122-B(4-F) of the Act. Therefore, the finding of the authorities below that petitioner was not entitled to get benefit of Section 122-B (4-F) of the Act does not suffer from any perversity.

20. In view of the discussions made above, writ petition lacks merits and is dismissed. No order as to cost.