

(1997) 02 AHC CK 0089

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5122 of 1982

Noor Ali and others

APPELLANT

Vs

Additional District Magistrate (Executive), Varanasi and
others

RESPONDENT

Date of Decision : 03-02-1997

Acts Referred:

Constitution of India, 1950 — Article 38
Uttar Pradesh Bhoodan Yagna Act, 1952 — Section 14, 14(1), 15, 15
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4(2), 49, 52, 52
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 195,
198(2), 4

Citation : AIR 1997 All 347 : (1997) 2 AWC 1190 : (1997) RD 456

Hon'ble Judges : R.K. Mahajan, J; Palok Basu, J

Bench : Division Bench

Advocate : R.N. Singh and D.S.P. Singh, for the Appellant; Standing Counsel,
S.K. Singh, V.K. Rai and S. Rai, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Mahajan, J.

Sri Vinoba Bhave, the known non-violent revolutionary saint started a campaign for donation of land from rich landlords for distribution to the landless agricultural labourers. K is popularly known as "Bhoodan Yagna". He travelled various parts of India to persuade the landlords who had surplus land so that it could be distributed to the landless agricultural labourers. It was in fact parting of land by persuasion on the part of the landlords to the Bhoodan movement. It was also to counteract the violent movement of land reforms i.e. nexatism and he believed in non-violent movement as a true disciple of Mahatma Gandhi. His appeal to donate the land succeeded to a major extent and land donated under Bhoodan Yagna scheme was invested in committees constituted under the Bhoodan Yagna Act to distribute the land or authorities constituted for that purpose and the various States passed enactments. U.P. Bhoodan Yagna Act,

1952, was also enacted.

2. The question in this case is whether the land could be allotted to the petitioners by the committees constituted under the U.P. Bhoodan Yagna Act 1952 (hereinafter referred to as the Act) to the petitioners who are not landless labourers. The land was allotted to them but later on Collector exercised the powers u/s 15-A of the Act after giving them the opportunity to be heard and passed the order dated 26-4-1982 recalling his order dated 31-8-1976 on the ground that the petitioners are not agricultural landless labourers.

3. The petitioners have prayed for a writ of certiorari quashing the order dated 26-4-1982 (Annexure No.6).

4. It may be mentioned that the land was vested in Bhoodan Yagna Samiti and on 21-7-1954 grant was made in favour of Noor Ali and others by Daya Shanker. Sanyojak Zila Bhudan UP Samiti, Varanasi. Later on it appears that an application was filed by the respondent Nos. 2 to 7 for cancellation on the ground that the petitioners are not entitled for allotment of the land as they are not agricultural landless labourers. It was also mentioned in the application submitted by the respondents that the land has not been distributed according to Section 14 of the Act to the extent of 50% 10 S.C. and S.T. and the petitioners are also not resident of the village where the land is situated and as such they are not entitled. It is also mentioned in the Annexure No. 1 that the land belongs to Guon Sabha. The Additional Collector, Varanasi sent that application for enquiry to Naib Tahsildar and also conducted himself an enquiry and gave opportunity to both the parties to lead evidence. The Naib Tahsildar in his report mentioned that there is no evidence that Harijans have been deprived of the land. He also mentioned in his report that the petitioners are not agricultural labourers. The Collector has passed a very detailed order, who has given clear finding that it cannot be ascertained that the land has been given to the petitioners by way of grant after keeping 50% area reserved for scheduled Caste and Scheduled Tribe and the respondents are Scheduled Caste and who have not been given land. He is also very explicit and unequivocal in its finding that the petitioners are not agricultural landless labourers as they according "pheri" business i.e. people who sell clothes etc. from door to door. He left open the question regarding decision of the ownership of the land vis-a-vis the Gaon Sabha as he had no jurisdiction. On this finding the grant was revoked by the Collector.

5. Learned counsel for the petitioners has submitted that the order of the Collector is illegal and arbitrary on the following grounds.

The Naib Tahsildar made an ex parte enquiry and the petitioners were not associated. He has further submitted that the main source of the petitioners is agriculture and pheri work is casual when they are free from the agricultural operations. Learned counsel for the petitioners has further submitted that the evidence has not been appreciated correctly regarding the finding on agricultural landless labourers. He further submitted that this land was subject matter of

consolidation proceedings and the matter cannot be reopened u/s 52 of the U.P. Consolidation of Holdings Act, 1953.

6. Learned counsel for the respondents Shri Sankatha Rai rebutted the arguments of the learned counsel for the petitioners. It is also submitted that the matter cannot be opened after consolidation proceedings.

7. We would like to quote Section 14 of the Act: --

" 14. Grant of land to landless persons =

(1) This Committee or such other authority or person, as the committee may, with the approval of the State Government, specify either generally or in respect of any area, may, in the manner prescribed, grant lands which have vested in it to the landless agricultural labourers, and the grantee of the land shall -

(i) Where the land is situated in any estate which has vested in the State Government under and in accordance with Section 4 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, acquire, in such land the rights and the liabilities to a bhumidhar with non-transferable rights, and

(ii) where it is situated in any other area, acquire therein such rights and liabilities and subject to such conditions, restrictions and limitations as may be prescribed and the same shall have effect, any law to the contrary notwithstanding.

(2) Where the committee or other authority or person as aforesaid fails to grant any land in accordance with sub-section (1) within a period of three years from the date of vesting of such land in the committee or from the date of commencement of the Uttar Pradesh Bhoodan Yagna (Amendment) Act, 1975, whichever is later, the Collector may himself grant such land to the landless agricultural labourers in the manner prescribed and thereupon on the grantee shall acquire the rights and liabilities mentioned in sub-section (1) as if the grant were made by the committee

(3)

(4) In making grant of land under this section the "Committee or other authority or person 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 situated in one village shall, as far as possible be granted to persons residing in that very village.

Explanation-For the purposes 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 exceeding 0.40468564 hectares (one acre) in Uttar Pradesh as a Bhumidhjarasami, or Government lessee."

8. For advantage Section 15 of the Act is also quoted in extenso:--

"15. Grants to be made in accordance with Bhoodan Yagna Scheme -- All grants shall be made as far as may be in accordance with the scheme of Bhoodan Yagna.

15 -A Cancellation of certain grants -- (f) The Collector may of his own motion and shall on the report of the committee or on the application of any person aggrieved by the grant of any land made u/s 14, whether before or after the commencement of the Uttar Pradesh Bhoodan Yagna (Amendment) Act, 1975, inquire into such grant, and if he is satisfied that the grant was irregular or was obtained by the grantee by misrepresentation or fraud, he may-

(i) cancel the grant, and on such cancellation, notwithstanding anything contained in section 14 or in any other law for the time being in force, the rights, title, and, interest of the grantee or any person claiming through him in such lands shall cease, and the land shall revert to the committee; and

(ii) direct delivery of possession of such land to the committee after ejectment of every person holding or retaining possession thereof, and may for that purpose use or cause to be used such force as may be necessary.

(2) Notice of every proceeding under subsection (1) shall be given to the committee, and any representation made by the committee in relation thereto shall be taken into consideration by the Collector,

(3) No order shall be passed under sub-section (I) except after giving an opportunity of being heard to the grantee or any person known to the Collector to be claiming under him.

(4) The order of the Collector passed under sub-section (I) shall be final and conclusive."

9. The intention of the legislature is to grant land to the landless agricultural labourers who are bedded to the soil or who have attachment with the soil in any form and who have know how about the soil. Philosophy that the land must go to the tiller has been implemented in so many countries and reasonably in India to implement preamble of the Constitution i.e. to achieve social justice and to secure distributive justice under Article 38 of the Constitution of India.

10. The contention of the learned counsel for the petitioners that the petitioners are landless agricultural labourers is also not accepted as evidence on record and finding given by the Collector shows that their main source of livelihood is not agricultural work. How a person working in Tea Stall or as domestic servant and who does not know operation of agriculture mainly can become landless agricultural labourers all of a sudden? He further made emphasis that the main source of livelihood of the petitioners is agricultural labourers, or cultivation as

labour. The petitioners do not satisfy the fundamental conditions of Explanation of Section 14 of the Act. It is also not clear that whether their holding does not exceed 1 acre in Bhoodan Yagna. So land was granted in ignoring the basic/fundamental condition of statute and the Collector was right within his power to the grant. It is not a case of no evidence where the Collector has given its finding. The Collector has exercised the power after giving an opportunity of hearing.

11. The respondents has placed on record the entire statements including cross-examination. The petitions replaced on record examination part of the evidence. This also shows the dishonest conduct of the petitioners.

12. A matter on this subject has come up for consideration before Hon"ble Supreme Court regarding landless labourers and the judgment in this Court was set aside. The case is reported in U.P. Bhoodan Yagna Samiti, U.P. Vs. Braj Kishore and Others, . The order of cancellation of Collector was restored. The Hon"ble Supreme Court has traced the history of the movement and purpose of the Act at pages 366 and 367. The movement was also vigorously pursued by Shri Jaya Prakash Narain. 13. There is mention of a quote from a book namely "Vinoba And His Missions" by Shri Stish as it finds reference in Supreme court judgment U.P. Bhoodan Yagna Samiti, U.P. Vs. Braj Kishore and Others, :-

"The fundamental principle of the Bhoodan Yagna Movement is that all children of the soil have an equal right over the Mother Earth, in the same way as those born of a mother have over her. It is, therefore, essential that the entire land of the country should be equitably redistributed a new, providing roughly at least five acres of dry land or one acre of wet land to every family. The Sarvodaya Samaj by appealing to the good sense of people, should prepare their minds for this equitable distribution and acquire within the next two years at least 25 lakhs of village. This land will be distributed to those landless labourers who are versed in agriculture, want to take to it, and have no other means of subsistence."

14. The Government introduced Section 15 (ISA) of the Act as fraudulent and irregular transfers were being made and the very purpose of the movement was being defeated and the Collector was given power to see that unscrupulous and under serving persons do not get benefit of the land subject matter of the Act otherwise the very purpose of the movement started by Vinoba Bhave and Shri Jai Prakash Narayan would be defeated. Regarding other aspect of the case the matter cannot be opened after consolidation proceedings. There is no substance as it has no relevancy with the consolidation proceedings.

15. We would like to again go into the arguments of the learned counsel" for the petitioners. Section 49 of the U. P. Consolidation of Holdings Act deals with the declaration and adjudication of the right of the tenure holder in respect of land lying in the area for which a notification has been issued u/s 4(2).

16. Similarly the question which has been raised by the counsel for the petitioner came for interpretation under U. P. Zamindari Abolition & Land Reforms Act. It

related to the cancellation of the allotment made u/s 198(2) of the U. P. Zamindari Abolition and Land Reforms Act. The question arose whether consolidation authorities have jurisdiction for cancellation of the allotment of grant or not as held in 1984 All LJ 453; Arjunv.Boardof Revenue U.P. at Allahabad; There is also similar provision regarding cancellation of allotment in favour of landless Agricultural labourers u/s 195 of U .P. Zamindari Abolition and Land Reforms Act. Section 198 (2) of the Act deals with the cancellation of allotment. It was held that the power of cancellation of allotment is with the Collector and not with the consolidation authorities.

17. We are of the considered view that there is no jurisdictional error committed by the Collector either on facts or law. The finding of the Collector is based on reasonable appreciation of evidence and it was correctly taken into consideration matters or material which were necessary for the finding and he found lack of conditions for impugned grant and cancelled it.

18. Before parting with the judgment we would like to observe that a copy of this judgment be sent to Secretary (Revenue), Government of U. P. for information and necessary action that the Government may like to survey whether proper utilisation of the land under Bhoodan Movement has been made and it has been given to persons entitled and not to unscrupulous and undesirable persons who were not entitled.

19. We are unable to agree with the submissions of the learned counsel for the petitioners and the writ petition is dismissed. The stay order dated 5-5-1982 stands vacated.

20. Petition dismissed.