

(1987) 03 AHC CK 0107

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4544 of 1977

Noor Mohammad Teli

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 23-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115

Citation : (1987) 03 AHC CK 0107

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : Raj Kumar Jain, for the Appellant; G.N. Verma and Mohd. Iqbal, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Singh, J

1. This writ petition has been directed against the order of the Additional Collector, Muzaffamagar, dated 31.10.1975 Under Rule 115P of the UP ZA and LR Act. Against the aforesaid order a revision petition had been filed which was rejected by the Additional Commissioner, Meerut, through his Order dated 24.2.76. The orders of the trial court and the Additional Commissioner were confirmed by the learned Member, Board of Revenue through his judgment dated 13.03.1977 (See Annexure-3 attached with the writ petition). Aggrieved by the orders of the revenue courts the Petitioners have approached this Court Under Article 226 of the Constitution.

2. The learned Counsel for the Petitioners contends that if the allotment to the Petitioners was not under the provisions of Rule 115L of the UP ZA and LR Act no proceeding could be taken by the Collector under the provisions of Rule 115P of the aforesaid Act. Therefore, the impugned orders being without jurisdiction should be quashed.

3 The learned Counsel for the contesting opposite parties has submitted in reply that the allotment relied upon by the Petitioners purported to be Under Rule 115L, therefore, the proceedings Under Rule 115P were correctly entertained by the Collector and the impugned orders do not suffer from any patent error of law and those should not be quashed. It has also been contended that in the facts and circumstances of the present case the Petitioners have no right and claim to the disputed land in their occupation and, therefore, the writ petition should be dismissed on the ground that the Petitioners being unauthorised occupiers of the land do not deserve any consideration at the hands of this Court in the exercise of powers Under Article 226 of the Constitution. It has also been stressed that there is no order for demolition and eviction of the Petitioners through the impugned orders, therefore, the arguments advanced by the learned Counsel for the Petitioners in this behalf should be ignored.

4. It is not disputed before me that on the date when the disputed land was allotted to the Petitioners there did not exist any valid Land Management Committee. This contention raised on behalf of the Petitioners that no proceedings could be taken Under Rule 115P of the UP ZA and LR Act because the alleged allotment was not by the Land Management Committee and the provisions of Rule 115P were not attracted, therefore, the provisions of Rule 115P could not be pursued. If the contentions raised on behalf of the Petitioners are assumed to be correct, it is evident that the allotment in favour of the Petitioners could not be a legal and valid allotment in view of the provisions contained in Uttar Pradesh ZA and LR Act with regard to allotment of the disputed land. For the sake of arguments even if it is assumed that the revenue authorities had no jurisdiction to proceed against the Petitioners because there was no valid allotment in favour of the Petitioners by a validly constituted Land Management Committee I think that quashing the impugned orders on this technical ground would mean nothing but to restore a wrong and illegal position which is not the purpose of the exercise of powers Under Article 226 of the Constitution. In my opinion it is not a fit case where interference should be made with the impugned orders at the instance of the Petitioners.

5. During the course of arguments a submission has been made on behalf of the Petitioners that the allotment of the disputed land to the Petitioners would be under the purported exercise of powers by the old Land Management Committee, therefore, the allotment in favour of the Petitioners should be held as valid. Reliance has been placed upon the ruling reported in 1986 ALR 556 Bhopal Singh v. Managing Director UPSRTC. To my mind, the aforesaid case is not at all applicable to the facts and circumstances of the present case. On the submissions made by the learned Counsel for the Petitioners it is evident that the Land Management Committee had ceased to function before the date of allotment of the disputed land to the Petitioners, therefore, no question of exercising powers under the purported powers arises in the facts and circumstances of the present case. Since the allotment of the disputed land to the Petitioners is not in accordance with law, the Petitioners do not get any valid

right and title to the disputed land.

6. As regards the submission of the learned Counsel for the opposite party that the powers Under Article 226 of the Constitution should not be exercised at the instance of an illegal occupier of the disputed land, I think that even a trespasser has got a right to stick to the disputed land till he is evicted in accordance with law. It is not disputed that the Petitioners have occupied the disputed land in pursuance of an alleged allotment which has been termed as invalid in the facts and circumstances of the present case on a technical ground that the Land Management Committee had ceased to function on the date of the allotment. The ends of justice demand that the authorities should not evict the Petitioners from the disputed land without taking recourse to valid and legal proceedings.

7. It has been submitted on behalf of the opposite parties that only allotment of the disputed land to the Petitioners has been cancelled and no specific order regarding demolition of constructions of the Petitioners or eviction of the Petitioners has been specifically passed. Rather, it has been indicated through the impugned orders that legal action would be taken against the Petitioners for eviction. In my opinion, the submissions made on behalf of the contesting opposite parties are not quite correct. If the allotments are cancelled the natural result would be that the Petitioners would be evicted from the disputed land. The orders passed by the revenue authorities Under Rule 115-P of the UP ZA and LR Act would be treated as final between the parties in view of the provisions of Rule 115P(5) of the Act.

8. The ends of justice demand that if the Petitioners have occupied the land allotted to them by raising constructions over the disputed land those constructions should not be demolished nor by demolishing the constructions the Petitioners should be evicted from the disputed land unless a validly constituted Land Management Committee takes appropriate proceedings against the Petitioners before a competent court.

9. In view of the foregoing discussions the writ petition is dismissed but it is expected that the contesting opposite parties shall not demolish the constructions of the petitioners if any existing on the disputed land without taking recourse to law as mentioned above. Parties are directed to bear their own costs.