

(2005) 04 AHC CK 0050

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 6415 of 1998

Om Nath and Baij Nath

APPELLANT

Vs

Additional Commissioner, Azamgarh Region and Others

RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122C, 122C(3), 122C(4), 122C(6), 122C(7)

Citation : (2006) 1 AWC 204 : (2005) 99 RD 600 : (2005) 2 RD 600

Hon'ble Judges : Sanjay Misra, J

Bench : Single Bench

Advocate : Rajesh Yadav, for the Appellant; V.K. Ojha, Ramji Srivastava and V.B.L. Srivastava and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Misra, J.—List has been revised .No-one has appeared on behalf of the petitioners. Sri V.K.Ojha, Advocate holding brief of Sri Ramji Srivastava learned counsel appearing on behalf of the respondents no. 4 and 5 is present. It has been submitted by the learned counsel for the respondents that he has filed counter affidavit as back as in the year 1998 but no rejoinder affidavit has been filed by the petitioner till date and the matter is pending before this Court wherein interim order of status quo dated 2.3.1998 is operating.

2. The averments as made in the writ petition indicate that it is the case of the petitioner that on 15.1.1998 ,a patta was allotted to the respondents no.4 and 5 and it was duly approved by an order dated 6.5.1998. It is alleged that the petitioner moved an application for cancellation of the said patta u/s 122-C (6) of the U.P. Zamindari Abolition and Land Reforms Act on the ground that the disputed plot is his Sirdari and he has been in possession over the same since before 1985. The Chief Revenue Officer rejected the said application of the petitioner on 9.12.1997 where after the petitioner had filed review application before the same authority which was also rejected by the order dated 9.1.1998.

Feeling aggrieved the petitioner filed a revision before the Additional Commissioner which was also rejected on 27.1.1998 on the ground of maintainability. The petitioner has averred in the writ petition that no Munadi was done before the patta was allotted to the respondents and further that one of the allottee namely Shiv Prasad was a minor on the date of the said Patta. Apart from claiming possession over the said plot prior to the date of allotment, the petitioner has stated that he has planted trees and constructed his hut thereon. It is also eaded that the respondents did not come under the priority list for the / purpose of allotment of such patta. On the aforesaid pleadings it has been stated that the order of the Additional Commissioner impugned in this writ petition is arbitrary and against the law . Since the Munadi was not done and the respondents were not in the priority list therefore, the said allotment is liable to be set aside.

3. In the counter affidavit filed on behalf of the respondents no.4 and 5 it has been stated that all the procedure as prescribed by law were followed prior to allotment of the patta in their favour. It has also been stated that respondents have been put in possession over the land in dispute. The averments made by the petitioner that allottee was minor at the time of allotment has also been controverted and that the respondents were within the priority list as prescribed. It has been stated that the petitioners belong to Gaund communityt and as such are not in purview of Schedule caste category. The respondents further state that the documents filed by the petitioner pertaining to the respondents age and possession of petitioners as shown in Misil Band Register are forged and fake. The respondents have filed certificate of Gram Pradhan relating to their possession

4. Having perused the impugned order dated 27.1.1998 ,this Court finds that no error can be said to have been committed in the same. The Chief Revenue Officer in his order dated 9.12.1997 has recorded that Munadi was done. No such fact is on record of the petition to indicate to the contrary. That Shiv Prasad was minor at the relevant time has been denied by the Respondents and the Respondent No.5 has shown his age as 40 years in the counter affidavit.

5. The provision of 122C relate to allotment of land for housing site for members of schedule caste, agricultural labour etc. Sub-section 7 of Section 122C is quoted hereunder :-

"122C(7) "Every order passed by the Assistant Collector under Sub-section (4) shall, subject to the provisions of Sub-section (6) shall be final, and the provisions of (Section 333 and 333A) shall not apply in relation thereto."

6. By an amendment the provisions of Section 333 Section 333A of the /Act have been made not applicable to orders passed under Sub-sections (4) and Sub-section (6). The provisions of Sub-section (4) relate to the power of the Assistant Collector to make allotment in accordance with the provisions of Sub-section (3) in the event he is satisfied that the Land Management Committee has failed to

discharge its duties or to perform its function under Sub-section (2). Sub-section (6) is quoted here under :

122C (6)"The Collector may of his own motion and shall on the application of any person aggrieved by an allotment of land under this section inquire in the manner prescribed in to such allotment and If he is satisfied that the allotment is irregular , he may cancel the allotment and thereupon the right , title and interest of the allottee and of every other person claiming through him in the land allotted shall cease."

7. Provisions of Section 333 shall not apply to orders passed u/s 122C (4) and Section 122C (6) by virtue of the provisions of Section 122C (7) of the Act. Such Sub-section was substituted by U.P. Act No. 24 of 1986. In light of the aforesaid provisions it is clear that the decision as reported in 1980 AWR 437 as referred by the petitioner before the Court below was prior to the amendment of such sub-section by U.P. Act No. 24 of 1986. It has been held in Ram Yag v. Additional Commissioner Varanasi 1991 RD 51 that in view of Section 122C(7) of the Act ,the order passed u/s 122C(6) of the Act is not revisable. Section 122C of the Act relates to allotment of Abadi sites for purpose of building of houses only. Therefore, the impugned order dated 27.1.1998 holding that the Revision u/s 333 of the Act against the order passed u/s 122C (6) of the Act is not maintainable does not suffer from any error whatsoever.

8. The writ petition is devoid of merits and is therefore, dismissed. No order is passed as to costs.