

(1993) 01 AHC CK 0074

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18644 of 1986

Om Prakash and Another

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 12-01-1993

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115(4),
115L, 115L(1), 115L(2), 115L(3)

Citation : (1993) 2 AWC 758 : (1993) RD 242

Hon'ble Judges : R.K. Gulati, J

Bench : Single Bench

Advocate : N.A. Khan, for the Appellant;

Final Decision : Dismissed

Judgement

R.K. Gulati, J.—This petition is directed against the proceedings arising from cancellation of a Patta in favour of the Petitioners in respect of plot No. 4269 measuring 0-1-16 vested in Gaon Sabha Dildar Nagar, Ghazipur.

2. Briefly, the facts are that the proceedings for cancellation of the Patta commenced on the report of Naib Tahsildar. The Petitioners were afforded full opportunity to have their say before the allotment in their favour was cancelled. The Petitioners led both documentary and oral evidence in support of their claim, which, however did not find favour with the Collector, Ghazipur, who cancelled the allotment on the findings amongst others that no valid Patta in favour of the Petitioners could have been granted in the presence of other eligible persons covered under Clauses (a) and (b) of Sub-rule (1) of Rule 115-M(L) of U.P. Zamindari Abolition and Land Reforms Rules, 1932, (hereinafter referred to as "the Rules") and were entitled to allotment 1 order of preference set out in that Rule. It was found as a fact that out of 274 eligible persons entitled for allotment of Abadi Patta under Clauses (a) and (b) referred above, in the village in question, only 226 persons had been allotted Patta when the allotment to the Petitioners came to be made. Thus, the claim of 48 persons was yet to be

considered. The order cancelling the allotment in favour of the Petitioners was upheld in revision by the Divisional Commissioner, Varanasi Division, by an order dated 6-5-1985 and that order in turn was upheld by the Board of U.P. at Allahabad vide its order dated 1st August, 1986. Feeling still aggrieved, the Petitioners have filed this writ petition.

3. Learned Counsel for the Petitioner urged that the order of cancellation was not valid for non-compliance of Rule 115-P and particularly Sub-rule (4) thereof. The argument addressed was that unless the Collector had issued notices to all the 48 persons, who were said to have been left out from consideration, the cancellation of Patta in favour of the Petitioners could not have been made.

4. There is no merit in this submission. In the first Instance, no such plea was taken earlier before the concerned authorities. The plea now taken is one of fact, which can not be permitted to be raised for the first time in these proceedings, secondly, the contention now made is without any substance. Rule 115-P reads as under:

115-P(1) The Collector may, of his own motion or on the application of any person aggrieved by order of allotment of land under Rule 115-L or 115-M, proceed to make an Inquiry in the manner given hereunder.

(2) The allottee and Land Management Committee shall be necessary parties to all such cases.

(3) The Collector on the application of any party or otherwise may pass suitable interim orders at any time before the final disposal of the case.

(4) The Collector shall call upon all persons interested in the order of allotment to appear and present their case before him. It shall not be necessary to record evidence but the memo of the day to day inquiry shall be kept on record by the Collector. On making inquiries, 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 shall cease.

(5) The order of the Collector under the preceding sub-rule shall be final.

5. Sub-rule (1) of the above Rule empowers the Collector on his own motion or on the application of any person aggrieved by an order of allotment of a land under Rule 115-L or 115-M to take proceedings and to make an inquiry in the manner set out in that Rule. It was not disputed that the Collector had validly initiated an inquiry against the allotment made in favour of the Petitioners on his own accord. Sub-rule (2) provides as to who shall be the necessary parties. It directs that the allottee and Land Management Committee shall be necessary parties to all such cases. Sub-rule (3) provides for the power to pass suitable interim orders. Then comes Sub-rule (4) with which we are concerned. This Sub-rule inter-alia enjoins upon the Collector to call upon all such persons interested in the order of allotment to appear and present their case before him. After inquiry, if the Collector finds that the allotment is irregular, he may cancel the

allotment. Sub-rule (5) speaks of the finality of the order passed by the Collector under Sub-rule (4). The expression "shall call upon all such persons interested in the order of allotment" appearing in Sub-rule (4) of Rule 115P can not be read in isolation and is to be read alongwith preceding Sub-rules of Rule 115-P. The Scheme of Rule 115-P appears to be that before any order is made by the Collector in way or the other he must provide opportunity to all the interested persons to have their say in the matter. The necessary parties before the Collector are the allottees and the Land Management Committee as envisaged in Sub-rule (2) without which the Collector can not proceed with his inquiry. Sub-rule (1) besides empowering the Collector to initiate the inquiry on his own accord also confers a right on the persons who may be aggrieved by an order of allotment, to move the Collector for initiating the inquiry as contemplated under Sub-rule (1) for cancellation of allotment. In every case, where the allotment is objected to by a person or persons and they approach the Collector under Sub-rule (1) the Collector is obliged to issue notices to all such persons under Sub-rule (4) of Rule 115-P. Under that rule there is no duty cast on the Collector to send notices to all the persons who may be eligible for consideration of allotment in their favour and had not come forward making any complaint against the order of allotment. As already observed, in the instant case, the inquiry was not initiated at the behest of any complaint made by any person against the allotment order but the inquiry was set in motion by the Collector on his own accord on a report of Naib tahsildar. In such a situation, it was not necessary for the Collector to have issued notices to 48 persons whose claim for allotment could have been considered for allotment in preference to the allotment made in favour of the Petitioner. It is not the Petitioners' case that they were not served with a notice or the Land Management Committee was not served and they were not made necessary parties. That apart, even if there was any omission, as contended for the Petitioners, in my opinion, it was only a procedural irregularity of which the Petitioners can not take advantage for, so far as the Petitioners were concerned, they were duly served and heard at every stage.

6. The petition is without any substance and is accordingly rejected.