
(1985) 02 AHC CK 0068

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2118 of 1978

Om Prakash

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 14-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 202
Constitution of India, 1950 — Article 226
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Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 202

Citation : (1985) AWC 353 : (1987) RD 150 : (1985) RD 261

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : Prakash Chandra, for the Appellant; K.B. Garg and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—The present petition under Article 226 of the Constitution of India is directed against the order dated 1-2-1978 passed by the Board of Revenue, U.P. Allahabad, the order dated 8-7-1975 passed by Additional Commissioner, Agra Division, Agra and the order dated 30-7-1975 passed by the trial court in a suit u/s 202 of the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act) filed by the Land Management Committee and the Gaon Sabha against the Petitioner for his ejection. The suit was decreed by the trial court and the said decree was affirmed by the first appellate and the second appellate courts.

2. The facts of the case are these. The Land Management Committee, Respondent No. 6 and the Gaon Sabha Respondent No. 5, filed a suit for the ejection of the Petitioner alleging that he was an asami as the land was pasture land which was the land of public utility for the benefit of the public and the

Petitioner has no right to continue in possession.

3. The suit was contested by the Petitioner denying the plaint allegation and alleging that he has got right to continue in possession of the land in dispute and that he was not asami and was not liable to ejectment.

4. The trial court decreed the suit and the said decree was maintained by the first appellate court and the second appellate court.

5. I have heard Sri Prakash Chandra, learned Counsel for the Petitioner and Sri K.B. Garg, learned Counsel for the Respondents.

6. The learned Counsel for the Petitioner urged that the Petitioner was not liable to ejectment as no notice for his ejectment was served upon him terminating his tenancy and further that he was not an asami. He placed reliance on Aziz Mam v. Deputy Director of Consolidation 1972 AWR 207 FB and Ghaii v. Waqf-al-Aulad 1969 AWR 602.

7. In the case of Aziz Alam v. Deputy Director of Consolidation (supra) the Full Bench was constituted to resolve the conflict between two division bench decisions reported in Ujain Singh v. Board of Revenue 1962 AWR 29 and Ghasi v. Waqf-al-Aulad 1969 AWR 602. But it was held in the Full Bench case that there was no conflict in the two division bench cases. In Ghasi's case (Supra) the lease in favour of asami was from year to year. In that connection it was held that as far as there was no determination of lease, the lessee remains in possession and hence no cause of action can be deemed to have been arisen for the ejectment of a person in possession. In the instant case it was not a lease from year to year. Hence there was no question of determination of a lease before filing the suit. In the instant case the plaint allegations were that the Petitioner was an asami of pasture land and no lease was granted in favour of the Petitioner from year to year or otherwise. There was accordingly no necessity nor any question of determination of the lease of the Petitioner by serving a notice on him before the present suit can be filed. In view of these state of affairs the arguments of the learned Counsel for the Petitioner are without any substance.

8. It has concurrently been held by all the courts that the Petitioner was an asami and liable to ejectment and he has no other right to continue in possession. This is a finding of fact arrived at after appraisal of the evidence on record of the case.

9. No other point has been pressed. The petition is devoid of merits.

10. In view of the discussions made herein before, the writ petition lacks merits and it is accordingly dismissed. But in the circumstances of the case there shall be no orders as to costs.