

(1998) 11 AHC CK 0128
In the Allahabad High Court
Case No : C.M.W.P. No. 8330 of 1990

Padam Chand and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 12-11-1998

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 117(1), 122C(1), 122C(3), 122C(6)
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115L, 115L(1), 115M, 115M(1), 115N

Citation : (1998) 4 AWC 379 : (1998) AWC 379 : (1999) RD 34

Hon'ble Judges : S.C. Verma, J

Bench : Single Bench

Advocate : Ashok Bhushan, for the Appellant; S.C., R.N. Saxena and Pradeep Saxena, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Verma, J.

The legal controversy involved in the present petition is as to whether the allotment of the disputed land Khasra plot Nos. 926 and 928 is the land earmarked for Abadi sites in accordance with sub-section (1) of Section 122C of U. P. Zamindari Abolition and Land Reforms Act 1950, (hereinafter referred to as the "Act") and as provided under Rule 115L of the U. P. Zamindari Abolition and Land Reforms Rules (hereinafter referred to as "Rules"). If the disputed land is not earmarked as Abadi sites as referred to in Rule 115L of the Rules, whether it is an Abadi site vested in Gaon Sabha liable to be allotted under Rule 115M of the rules.

2. A complaint was made by one Kuber Shanker. On the basis of which proceedings u/s 122C (6) of the Act were initiated by the Collector. The petitioners filed their objections and the evidence in support of their contention that these were Abadi sites which vested in Gaon Sabha for which prior

permission for allotment as required under Rule 115N of the Rules was taken from the Assistant Collector and thereafter the allotment was made under Rule 115M of the Rules and an amount equal to 40 times of the rent calculated at hereditary rates was deposited. The Land Management Committee in its resolution allotted the disputed land for housing sites as the petitioners were treated to be the residents of village who did not have any site to construct the residential accommodation.

3. The objections of the petitioners were considered by the Collector and it was held that the disputed land was the land ear-marked for Abadi sites u/s 122C of the Act and without complying the requirements of allotment to preferential category, the same could not be allotted in favour of petitioners. The petitioners did not fall in any of the preferential category and as such, the allotment proceedings are not in accordance with the law and the allotment made by the Land Management Committee would not confer any valid right in favour of the petitioners. It has also been found that the petitioners were having other accommodation and have sufficient means and they would not come in any of the preferential category of landless agricultural labourer or village artisan residing in the village.

4. Against the order of the Collector passed u/s 122C (6) of the Act, the petitioners preferred a revision as provided u/s 333A of the Act. The revision of the petitioner was dismissed on the ground that the present proceedings were initiated u/s 122C (6) of the Act and as such the order of the Collector became final and no revision u/s 333A of the Act could be entertained. The revision was accordingly dismissed by order dated 28.12.1989 without entering into the merits of the case. The Board of Revenue in proceedings u/s 333 of the Act rejected the revision filed by the petitioners by order dated 5.3.1990 and held that the proceedings were initiated u/s 122C of the Act and pleas raised by the petitioners that there was allotment made under Rule 155M of the rules is not correct. The allotment to the petitioner was not made under Rule 155M and as such, the order passed u/s 122C sub-section (6) of the Act by the Collector is in accordance with law.

5. In the conspectus of above facts the legal question to be determined is as to whether the disputed land was Abadi sites for member of Scheduled Castes or Scheduled Tribes or the land was ear-marked for extension of Abadi under the provisions of U. P. Consolidation of Holdings Act, 1953 or for any Other Abadi sites vested in Gaon Sabha which was insufficient to meet the housing requirements of persons referred to in sub-section (3) of Section 122C of the Act or the land was ear-marked for Abadi sites in accordance with subsection (I) of Section 122C of the Act for allotment under Rule 115L of the Rules. It has also to be seen whether it was Abadi site vested in Gaon Sabha available for allotment under Rule 155M or not.

6. It has come on record that plot Nos. 926 and 928 were initially recorded as Banjar and they were not Abadi sites which had vested in Gaon Sabha, There is a

report of the Supervisor Kanungo dated 19.2.1982 which has been approved and forwarded by Assistant Collector/Tehsildar on 20.2.1982 and thereafter it was approved by Sub-Divisional Magistrate on 26.2.1982, wherein it has been stated that plot Nos. 926 and 928 are Banjar plots which are adjacent to the Abadi plots and as such, they may be allowed to be recorded as Abadi for allotment. This report and the orders of the Assistant Collector and Sub-Divisional Magistrate indicates that originally the disputed land was Banjar land which was ear-marked for Abadi sites in accordance with Section 122C, sub-section (1) of the Act. The provisions of Section 122C, sub-section (1) of the Act are quoted below :

"122C. Allotment of land for housing site for members of Scheduled Castes, agricultural labourers etc.-- (1) The Assistant Collector in charge of the sub-division of his own motion or on the resolution of the Land Management Committee, may ear-mark any of the following classes of land for the provision of Abadi sites for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans :

(a) lands referred to in clause (i) of sub-section (1) of Section 117 and vested in the Gaon Sabha under that section ;

(b) lands coming into possession of the Land Management Committee u/s 194 or under any other provisions of this Act ;

(c) any other land which is deemed to be or becomes vacant u/s 13, Section 14, Section 163, Section 186, or Section 211 ;

(d) where the land ear-marked for the extension of Abadi and reserved as Abadi site for Harijans under the U. P. Consolidation of Holdings Act. 1953, is considered by him to be insufficient, and land ear-marked for other public purposes under that Act is available, then any part of the land so available."

7. The provisions of Rule 155L (1) and 155M (1) of the Rules are also quoted below for clear understanding of the dispute involved in the present case :

"115LA. Abadi sites /or preferential categories.--(1) The Assistant Collector-in-charge of the Sub-division may, wherever land ear-marked for the extension of Abadi for Harijans under the provisions of the Uttar Pradesh Consolidation of Holdings Act, 1953 and any other land of Abadi site vested in Gaon Sabha is insufficient to meet the housing requirements of persons referred to in sub-section (3) of Section 122C, proceed to ear-mark land for Abadi sites in accordance with sub-section (1) of the said section."

"115MB. Other Abadi sites.--(1) Abadi sites other than those referred to in Rule 155L and vested in a Gaon Sabha may be allotted for construction of buildings for residential or charitable purposes or for purposes of cottage industry in the following order of preference :

(a) a landless agricultural labourer or a village artisan residing in the village ;

(b) a bhumidhar, sirdar or asami residing in the village and holding land less than

1.26 hectares (3,125 acres) ;

(c) any other person residing in the village."

8. The Gaon Sabha treating this land to be, Abadi sites which have vested in Gaon Sabha has taken recourse to allotment of land under Rule 155M of the Rules and have allotted this land in favour of the petitioners. The resolution dated 26.10.1982 contained in Annexure-2 to the writ petition to this effect has been placed on record. The petitioners have also placed on record certain receipts which according to them are receipts of payment of 40 times of rent calculated at the hereditary rates which was paid by them for allotment. The possession of the land was also delivered to the petitioners in pursuance of the aforesaid allotment. The petitioners have not been able to place any material on record that this was an Abadi site as mentioned in Section 117 of the Act which has vested in Gaon Sabha. The provisions of Rule 115M very clearly indicate that Abadi sites other than those referred to in Rule 115L and vested in Gaon Sabha may be allotted for construction of buildings to the following categories of persons :

(a) a landless agricultural labourer or a village artisan residing in the village ;

(b) A bhumidhar, sirdar or asami residing in the village and holding less than 1.26 hectares ;

(c) any other person residing in the village.

9. The above provisions clearly establishes that the land ear-marked as Abadi sites or land which may be considered for allotment u/s 122C are different than those land which are to be allotted under Rule 115M of the Rules either to landless agricultural labourer or village artisan or to bhumidhar, sirdar or asami residing in the village and holding land less than 1.26 hectares or any other person residing in village. The land ear-marked or reserved u/s 122C and under Rule 115L are the land which are to be provided to agricultural labourer or village artisan residing in village and belonging to Scheduled Castes and Scheduled Tribes and any other agricultural labourer or a village artisan residing in the village or to any person residing in village and belonging to Scheduled Castes and Scheduled Tribes.

10. Since the provision have been made u/s 122C for reserving/ear-marking land as Abadi site for allotment to special category of person, I am of the opinion that the land could not have been allotted to the other residents of village treating it to be Abadi site which has vested in Gaon Sabha. When sufficient and as Abadi site is not available the authorities have to make available land for allotment u/s 122C and Rule 115L. In my opinion, the disputed land which was initially Banjar was recorded as Abadi and was ear-marked for allotment to preferential category of persons mentioned in Section 122C (3) of the Act. The disputed land in my opinion, was not Abadi site which had vested in Gaon Sabha so as to be treated other than Abadi sites referred to under Rule 115L available for

allotment. Thus, in my opinion, the Collector has rightly held in adjudicating the matter under sub-section (6) of Section 122C of the Act that the land was earmarked as Abadi site for allotment u/s 122C and the petitioners did not fall in any of the preferential category indicated therein. The revisional court was also correct in holding that since the order was passed under subsection [6) of Section 122C of the Act, no revision u/s 333 of the Act would lie before the revisional authority.

11. For the reasons stated above the writ petition tacks merit and is liable to be dismissed. The petition is accordingly dismissed. The interim order, if any, stands discharged.