
(2005) 12 AHC CK 0168

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 64982 of 2005

Panchayat Raj Inter College

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 29AA, 29B, 29C, 29C(1), 29C(2)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 117(1), 117(2), 117(6), 19

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 24A

Citation : (2005) 12 AHC CK 0168

Hon'ble Judges : Janardan Sahai, J

Bench : Single Bench

Advocate : B.B. Jauhari, for the Appellant; V.K. Singh, S.K. Chaubey, R.K.S. Chauhan, R.D. Khare, Sanjay Goswami, J. Prasad and N.L. Verma and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Janardan Sahai, J.—Panchayatraj Inter College, Baragaon, Shahjahanpur has filed this writ petition against an order u/s 117(6) of the U.P. Zamindari Abolition & Land Reforms Act passed by the Commissioner, Bareilly Division, Bareilly resuming certain land which appears to have been contributed by the tenure holders of the village for public purpose and reserved for a play ground for the college under the U.P. consolidation of Holdings Act. The resumption was made on the basis of a report submitted that this land is required for setting up of a power substation of the U.P. Power Corporation. The petitioner is aggrieved by the resumption.

2. I have heard Sari B.B.Jauhari counsel for the petitioner and Sri Sanjay Goswami, learned Standing Counsel.

3. It was submitted by the counsel for the petitioner that the land was reserved

for a specific public purpose i.e. for the play ground for the college and even conceding that the power of resumption could be exercised the purpose for which the land is to be used can not be changed. Setting up a power sub-station is a different purpose for which the land was not reserved under the final consolidation scheme. The validity of the impugned order has to be tested in the light of the provisions of the U.P. Consolidation of Holdings Act particularly Section 29C thereof. Sub-section (1) of Section 29C provides that the land contributed by the tenure holders for public purpose shall be deemed to have vested in the Gaon Sabha in an area in which the provisions of Section 117 of the U.P. Zamindari Abolition & Land Reforms Act applies, and in the State government in other areas, and shall be used for the purpose for which it was earmarked in the final consolidation scheme unless that purpose has failed in which case it can be used for any other purpose as may be prescribed by rules. Sub-section (2) provides that the provisions of Section 117 of the U.P. Zamindari Abolition and Land Reforms Act shall mutatis mutandis apply to such land vested in the Gaon Sabha as if the land had vested in the Gaon Sabha by virtue of a declaration by the State Government under Sub-section (1) of that Section. Counsel for the petitioner placed reliance upon Sub-section (1) of Section 29-C and submitted that as the public purpose of the playground for the school had not failed, the Commissioner was not competent to resume the land for any other purpose. On the other hand the contention of the learned Standing Counsel is that Sub-section (2) of Section 29C is independent of Sub-section (1) and in fact controls Sub-section (1) and under Sub-section (2) the power to resume the land is without any fetters and can be exercised for any purpose, even through the purpose for which it was earmarked in the consolidation scheme may not have failed. In the present case the land has been resumed for the purpose of setting up of a power substation, which is undisputedly a public purpose.

4. To appreciate the merit of the contentions advanced by the parties" counsel it is necessary to refer to the provisions of the U.P. Consolidation of Holdings Act. "Consolidation area." has been defined u/s 2A of the Act to mean an area in respect of which a notification has been issued by the State Government u/s 4. They are areas to which the U.P. Zamindari Abolition & Land Reforms Act other law of Zamindari Abolition is applicable. "Consolidation scheme" has been defined u/s 3B to mean the scheme of consolidation in a unit. The purpose of consolidation as appears from its definition given in Section 3(2) of the Act is rearrangement of holdings to make them more compact. The statement of principles prepared u/s 8-A read with Rule 24-A which have to be followed in view of Section 19 in preparing the consolidation scheme provide for various kinds of public utility projects to improve the quality of village life and agriculture. The public purposes contemplated in these provisions include earmarking areas for extension of abadi for Harijans and others, roads, pasture lands, manure pits, threshing floor, primary and other schools, hospitals, panchayat ghar, plantation of trees, cremation grounds and graveyards water channels, flaying sites etc. The tenure holders have been given the right to file

objections to the statement of principles u/s 9 of the U.P. Consolidation of Holdings Act. The objections are decided u/s 9B of the Act and appeal against the order is maintainable before the Settlement Officer Consolidation. The provisional consolidation scheme has to follow the statement of principles. Objections against the provisional consolidation scheme may be filed by the tenureholders which are decided u/s 21 of the Act. After the objections have been decided or if no objections are filed, the provisional consolidation scheme becomes final u/s 23. The rules provide for spot inspection and for hearing the tenureholders in respect of their grievances. Once the consolidation scheme has become final, it has to be enforced subject to any other order the Deputy Director of Consolidation may pass u/s 48(3) of the U.P. Consolidation of Holdings Act. Section 29AA provides for reduction of land revenue on account of contribution of land by the tenureholders for public purposes. Section 29B provides for the amount of compensation which a tenureholder is entitled to, which in the case of bhumidhari land with transferable rights is four times the land revenue and in the case of bhumidhari land with non transferable rights is two times the land revenue. Section 33 of the Act provides that the State Government shall fix the amount of cost of the consolidation operations and shall recover the same from the tenureholders of the unit. It is in the background of these provisions that we have to interpret Section 29C of the U.P. Consolidation of Holdings Act.

5. Section 29C (1) and (2) are quoted below

29C. Vesting of land contribution for public purposes-

(1) The land contributed for public purposes under this Act shall, with effect from the date on which the tenureholders became entitled to enter into possession of the chaks allotted to them under the provisions of this Act as amended from time to time, vest and be always deemed to have vested in the Gaon Sabha in an area in which Section 117 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 applies and in the State Government in any other area and shall be utilized for the purpose for which it was earmarked in the final consolidation scheme, or in case of failure of that purpose, for such other purposes as may be prescribed.

(2) The provisions of Section 117 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 (U.P. Act No. 1 of 1951), shall mutatis mutandis apply to such land vested in the Gaon Sabha as if the land had vested in the Gaon Sabha by virtue of a declaration made by the State Government under Sub-section (1) of that section, and as if the declaration were made subject to the conditions respecting utilization specified in Sub-section (1) of this section.

Section 29(C)(1) creates a fiction that although no actual notification u/s 117(1) of the U.P. Zamindari Abolition & Land Reforms Act was ever issued in respect of the land contributed by the tenure holders but it will be deemed that the notification u/s 117(1) of the Act has been issued and the land has vested in the Gaon Sabha with the rider that the land would be used for a public purpose specified in the final consolidation scheme. Sub-section (1) of Section 29C

provides that the land earmarked for public purpose shall be used by the "Gaon Sabha for that purpose only and on failure of that purpose for other purposes prescribed. The other purposes referred to are the public purposes specified in Rule 24-A referred to above. If the land that vests in the Gaon Sabha can be used only for the public purpose for which it is earmarked in the final consolidation scheme there is no reason why a different view should be taken about the use of the land which vests in the state u/s 29-C as the consolidation scheme is applicable equally to land which vests in the Gaon Sabha as it does in respect of land which vests in the State government. Section 29C(1) makes no distinction between land which vests in the Gaon Sabha on the one hand or in the State Government on the other hand in the matter of use of the land for the specific public purpose or for change of purpose and in both cases the change of public purpose is contingent to the failure of the public purpose for which it was earmarked in the consolidation scheme. The Consolidation scheme can be changed only in accordance with consolidation scheme. The Consolidation scheme can be changed only in accordance with the provisions of the U.P. Consolidation of Holdings Act Utilizing the land otherwise then for the public propose for which it is earmarked in the consolidation scheme can affect the village life or agriculture in the village drastically. What if land earmarked for a graveyard or for road is resumed and utilized for other purposes at the discretion of the government. If the contention of the learned Standing Counsel is accepted that Sub-section (2) of Section 29C prevails over Sub-section (1) it will result in anomalies and give unfettered discretion to the State Government to breach the consolidation scheme arbitrarily as the exercise of the power of resumption u/s 117(6) of the Act is not limited to cases where the land is required for public purposes. It is the sweet will of the Government to resume the land exercising the power u/s 117(6) of the Act. The question of resuming the land only arises in a case where the land vests in the Gaon Sabha u/s 117(1) of the Zamindari Abolition and Land Reforms Act by fact of notification or fiction. There is no question of resumption where the land vests in the State Government itself. In case the land vests in the State government u/s 29-C (1) it has to be used for the public purpose for which it is earmarked under the consolidation scheme and it is only on failure of that purpose that it can be used for other public purposes provided in Rule 24-A. If that be the restriction upon the use of land which vests in the Gaon Sabha there is no reason why the same restriction be not read in respect of land which is resumed by the State u/s 117(6) of the U.P. Zamindari Abolition and Land Reforms Act. If Section 29C of the U.P. Consolidation of Holdings Act and Section 117(6) of the U.P. Zamindari Abolition & Land Reforms Act are not read harmoniously the effect would be that while the State Government would be debarred from using the land which vests in it u/s 29C for a public purpose other than that for which it was earmarked it can use it for any purpose without restriction in case the land vests in the Gaon Sabha u/s 29C(1) and resumed by the State u/s 29C(2). The contention of the learned Standing Counsel therefore can not be accepted. Such an interpretation would also affect the sanctity of the finality of the confirmed consolidation scheme. It has

therefore to be held that the purpose for which the land is earmarked in the consolidation scheme can not be changed at the discretion of the State Government by merely exercising the power of resumption unless the public purpose for which the land was earmarked has failed. Counsel for the petitioner relied upon certain decisions, which may be taken note of. These are 1971 ALJ 1113, Lalji and Anr. v. Board of Revenue in which it was held that if the land is earmarked for a particular purpose, the public purpose can not be changed by the Gaon Sabha. The other decision upon which he placed reliance is 1986 ALJ 196, Ram Pati and Ors. v. District Judge and Ors.. In this case it was held that where an arrangement has been made by the Gaon Sabha in favour of the tenureholder, the exercise of resumption is subject to such arrangement. This latter case is distinguishable as the reservation of land for public purpose is not an allotment under the Act.

6. It was then submitted by the learned Standing Counsel that in this case the public purpose has failed. Reliance is placed upon the averments in the counter affidavit filed by the Tehsildar and the copies of the khasra extracts of various years which have been annexed. The entries of some of the years indicate that the entire land which was allotted for the purpose of play ground has been used for growing crops. Entries of other years indicate that there was no cultivation or cultivation was only over a portion. It is also submitted that in the report of the Sub-Divisional Magistrate there is no allegation that the purpose for which the land was earmarked had failed and the petitioner was using the land for cultivation purposes. The fact that the land has been used for agricultural purposes is not however disputed. The petitioner's case is that it was only for a short period that the land was cultivated after obtaining permission from the authorized controller. The copy of the application filed by the petitioner seeking permission from the authorized controller is on the record. In the application it is stated that the petitioner wants to construct a boundary wall and for that purpose seeks permission to use a portion of the play ground allotted to the college for cultivation purposes. It is clear from the record that at least on a substantial portion of the land the petitioner has been doing farming. It is therefore apparent that the purpose for which the land was earmarked has failed. That apart it appears from the record of the petition that the petitioner has other land which it can use for a play ground in case required by it.

7. To consider the validity of the petitioner's contention it is also necessary to consider the status of the petitioner in respect of the disputed land. Under the provisions of the U.P. Consolidation of Holdings Act, the land earmarked for public purpose vests in the Gaon Sabha. The tenureholders are paid compensation for the land contributed by them and after the payment of compensation they lose their title over it. The land vests in the Gaon Sabha. The petitioner has therefore no right to possession. The beneficiaries of such land are the tenureholders of the unit as a body whose interest is represented by the Gaon Sabha. Counsel for the Gaon Sabha made a statement that the Gaon Sabha is supporting the order of resumption. In the impugned order itself it is

stated that the compensation quantified therein shall be paid to the Gaon Sabha. It is stated in the counter affidavit of the power Corporation that this amount has already been deposited by it. Learned Standing Counsel relied upon 2002 RD. (93)126 Likhi Ram @ Moola v. State of U.P. and Ors. in which it has been held that the exercise of resumption u/s 117(6) of the Act is a matter between the State and the Gaon Sabha and no other person has any right. For these reasons also the petitioner's right to challenge the impugned order even if granted is weak. The land has been resumed for a power substation which is also a public purpose. The petitioner has failed to use the land for the purpose for which it was earmarked and the Gaon Sabha which represents the interest of the tenure holders is supporting the resumption.

8. In view of the aforesaid discussion, the petition lacks merit and is accordingly dismissed.