
(2011) 11 AHC CK 0108

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 62203 of 2011

Pati Ram

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 32, 37, 41, 47
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 124, 125, 125A, 132, 195
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 173, 174, 176(4)

Citation : (2011) 11 ADJ 811 : (2012) 3 AWC 2549

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Hon"ble A.P. Sahi, J.—The petitioner is a complainant alleging that the allotments that have been made by the Land Management Committee in favour of the contesting respondents are not in accordance with Rule 176 (4) of the U.P. Zamindari Abolition and Land Reforms Rules, 1952. One of the main contentions is that there has been no advertisement by the Land Management Committee before proceeding with the allotment. Even otherwise no procedure has been followed and persons, who are ineligible have been allotted land.

2. From the facts on record, it emerges that 20 persons had been allotted land on 5.8.2008. Out of the said allotments except the names of those persons appearing at serial Nos. 1, 2, 3, 5 and 6, the others were proposed to be approved which was accepted by the Sub-Divisional Magistrate on 11.1.2010. The allotments came to be challenged in a revision before the Board of Revenue which was allowed on 14.10.2010 setting aside the order dated 11.1.2010 with a direction to decide the matter afresh after giving opportunity to the parties concerned.

3. The petitioner - Pati Ram filed a Writ Petition No. 4518 of 2011 which was taken up by a Division Bench and the following order was passed on 25.1.2011:

Tor redressal of the grievance, the petitioner may move an application before the Collector/District Magistrate, Etah who is to look into the matter on merit and pass appropriate orders in accordance with law keeping in mind the decision given by this Court and a copy of which is annexed alongwith this application.

The petition is disposed of accordingly.

4. The Collector, Etah, appears to have taken up the matter and vide order dated 9.6.2011 held that the allotments were in relation to land which had been reserved for some public purpose and that the allotments had been made in favour of persons against the preferential category as prescribed under the Act and Rules. Accordingly, the resolution of allotment dated 5.8.2008 was set aside and directions were issued for making fresh allotments after advertisement in the light of the judgment in another case by this Court namely Rajesh Babu and another v. State of U. P. and others, decided on 22.12.2009, which in turn relies on the judgment in the case of Raya Ram v. Son Kali, 2009 (7) AD J. 599.

5. The respondents appear to have gone up in revision before the Board of Revenue against the said order of the Collector which has been set aside with a direction to the Collector to decide the matter again after excluding land which falls within the definition of public utility land u/s 132 of the 1950 Act. This order of the Board of Revenue dated 2.8.2011 has been assailed by the complainant contending that the Board of Revenue could not have sidelined or overlooked the ratio of the decision in the case of Raja Ram (supra) and could not have passed a judgment which runs counter to the same. Sri Sanjeev Kumar Pandey, learned counsel for the petitioner, has vehemently urged that by virtue of the impugned order, the earlier direction of the Court and the judgment in the case of Raja Ram (supra) has been avoided for no justification. He, therefore, submits that the impugned order be set aside.

6. Learned Standing Counsel and learned counsel for the Gaon Sabha have both urged that the judgment in the case of Raja Ram does not take into account the financial status of the Gaon Sabha as also it's functioning and resources while issuing a direction for issuing advertisements in Hindi local daily newspapers "Dainik Jagran" and "Amar Ujala". They contend that Rule 173 and Rule 174 of the U.P. Zamindari Abolition & Land Reforms Rules 1 are sufficiently exhaustive and have not been amended as yet till date and, therefore, a direction by this Court to issue advertisements for allotment is against the interest of the Gaon Sabha and would be a heavy financial burden on the Gaon Sabha if such directions are to be carried out. They also contend that on account of such directions, the Gaon Sabha will be unable to proceed that would be detrimental to none others than those who are entitled for allotment being landless agricultural labourers. They, therefore, contend that the law as indicated in Raja Ram's case requires a reconsideration and if necessary, the same may be

referred to a larger Bench for an authoritative pronouncement.

7. Having heard learned counsel for the parties, so far as the merits of the present case are concerned, the findings recorded by the Board of Revenue in the opinion of the Court do not suffer from any infirmity inasmuch as the Collector did not give any basic reason for faulting the allotments. Even otherwise the Board of Revenue has rectified the allotments to the extent that the same cannot be in relation to land falling within the definition of Section 132 and, therefore, the Collector should re-consider the case. In my opinion also there is no error with the direction so issued by the Board of Revenue.

8. So far as the issue relating to the applicability of the law in the case of Raja Ram is concerned, in my opinion also the Rules as framed under the Act for the purpose of proceeding with allotments u/s 195 to 198 of the 1950 Act exist and have not been amended till date. Rules 173 and 174 of the 1952 Rules are quoted hereunder:

173. Sections 195, 197 and 198 : Admission to land.--Whenever the Land Management Committee intends to admit any person to land u/s 195 or 197, it shall announce by beat of drum in the circle of the Gaon Sabha in which the land is situate at least seven days before the date of meeting for admission of land, the numbers of plots, their areas and the date on which admission thereto is to be made.

174. On the said date, a meeting of the committee shall be held to select persons for admission to land as sirdar or asami as the case may be. A list of all the persons who are present and who express their desire to be admitted to the land shall be prepared in Z.A. Form 57-A. The list shall be drawn up separately in respect of the land to be settled to a sirdar and land to be settled to an asami. The names of the persons shall be arranged in the list in the order of preference laid down in Section 198.

9. The purpose of the said Rules is to make an announcement of the village for transparent allotment of land enabling everybody eligible to stake his claim. The announcement is for the villagers where the allotment has to be made. The judgment in the case of Raja Ram holds that such method of announcement by way of beat of drums belongs to an age which has gone by, in view of the fact that we have entered into the age of right of information with wide access to computers and Internet even in rural areas.

10. The other reason given in the said judgment is on the basis judgments in service matters where it has been found that no appointment should be made without any advertisement. Another decision in relation to allotment under the Rent Control Act has also been taken into account with a further reliance on the Full Bench decision of this Court in the case of Ram Kumar and others v. State of U.P. and others, 2005 (99) RD 823, which is for allotment of fishery ponds under the U.P. Zamindari Abolition & Land Reforms Act. The Court came to the conclusion that where ever it has been found necessary, the Court has held that

advertisement is a must for any offer in the public realm and, therefore, it has been concluded that such advertisement should also be made in relation to allotment of land by the Gaon Sabha or even by the authorities under the U.P. Imposition of Ceiling on Land Holdings Act. The Court has, therefore, directed that advertisements should be made in daily newspapers which have wide circulation for example Hindi daily "Dainik Jagran" and "Amar Ujala".

11. The provision for a proclamation or public announcement through beat of drums is prescribed under Rule 173 quoted herein above. The Rule, however, does not prescribe any other mode for public announcement. Needless to mention that this Rule was framed in the year 1952 about 60 years ago when the population of the villages were low and there was a very close interaction amongst the villagers. The method of beat of drums was also readily available as such professionals by virtue of tradition continued to perform such duties and were readily available. Today, standing at the threshold of 21st Century, an easy access to print media and other forms of information is available in rural areas and in almost every village. This is a facility which is not only available to individuals on subscription but also on tea tables of all roadside shops either in most of the villages or nearby places in proximity to remote villages as well in the State of U.P.

12. Accordingly, calling upon the authorities to adopt the method of advertisement through print media would be in pace with times. The apprehension expressed by the Board of Revenue about the expenditure involved for such advertisement also deserves mention. To illustrate as to the expenditure involved in such advertisements, the Court had called upon the learned Standing Counsel to seek information in this regard from a reputed newspaper and the learned Standing Counsel has provided a similar nature of advertisement made in the district of Pratapgarh by the Tehsildar Patti, which is quoted here under.

13. Even though the said advertisement is a composite advertisement yet it also relates to the allotment of agricultural leases and housing sides as well in a particular Gram Sabha. The aforesaid illustration has been explained by the learned Standing Counsel on further information received that a Government advertisement of the nature aforesaid costs Rs. 20.71 per Sq. cm. in black and white. The aforesaid advertisement which is printed in Hindi daily Amar Ujala dated 2.11.2011 at page 6 relating to Allahabad is of the size 6 cm x 8 cm, and multiplying the same by the rate prescribed aforesaid, the same comes to about Rs. 994.08. It can, thus, be seen that a small abridged advertisement of the nature aforesaid giving public information costs approximately about Rs. 1,000/- for the time being in a Hindi daily newspaper like Amar Ujala. The commercial rates for black and white or colour are much higher and the learned Standing Counsel informs that they are Rs. 373/- and Rs. 505/- respectively per Sq. cm. The cost of such advertisement, therefore, is almost in 4 figures and if a detailed advertisement is made entailing the plot numbers, the date and time of the proceedings or other details of the names of applicants then the advertisement

would ordinarily increase to a very big size resulting in inflation and increase of the amount that would have to be borne for such an advertisement.

14. It would be appropriate to mention that under Chapter-V of the Uttar Pradesh Panchayat Raj Act, 1947, there is a fund for every Gaon Sabha and the expenditure to be undertaken has to be passed in a budget of the Gram Panchayat by a simple majority of the members present and voting at a meeting of the Gram Panchayat u/s 41 of the 1947 Act. There is also a provision therein that amounts are to be credited in the consolidated Gaon Sabha fund which is credited u/s 125-A of the U.P. Zamindari Abolition & Land Reforms Act, 1950. The said fund has to be partially refunded for crediting the amount received as damages or compensation of the Gaon Sabha or contribution in that regard. The Gram Panchayat has to pay to the Collector annually such contribution not exceeding 25% of the total amount credited to the Gaon Sabha fund to be fixed by the Collector. The fund is to be utilized for payment of fee and allowances to the panel lawyers and for meeting the expenses over the conduct of legal proceedings etc. It has to be applied for payment of expenditure incurred on the development of lands of common utility or any other sum which the State Government may by general or special order declare to be an appropriate charge on the fund.

15. Section 124 of the 1950 Act describes the Gaon Sabha fund which is separate from the consolidated fund and Section 125 empowers the Land Management Committee to meet the charges in connection with the discharge of its duties or performance of its functions under the Act. The withdrawal of such money and its distribution has to be done jointly by the Pradhan and the Secretary of the Gram Panchayat as per Section 32 of the 1947 Act.

16. The Gaon Sabha has also been empowered to impose taxes and fees u/s 37 of the 1947 Act and the expenses have to be met with in the manner as referred to herein above.

17. The announcement by way of beat of drums which is contemplated under Rule 173 aforesaid is also an expense which the Gaon Sabha has to legitimately incur for executing the announcement. In view of this, in the opinion of the Court, the Gaon Sabha and the concerned authorities can also meet the expenditure of any advertisement which is required to be published in order to carry out the need of a proper advertisement for the purpose of allotment of land. This would, however, be subject to availability of funds in the hand of the Gaon Sabha.

18. It is true that the Gaon Sabha has limited resources and, therefore, a heavy expenditure may not be possible to be incurred by it. Nonetheless, the Sub-Divisional Authorities including the Tehsildar of the area concerned are equally under an obligation to carry out such advertisements in cases where such powers are to be exercised at the Sub-Divisional level. The authorities, therefore, have funds available for incurring such expenditure lawfully.

19. The purpose of advertisement is to bring about transparency in the allotment of land which is basically a state largesse of value. The purpose of allotment is to allow such persons to have information who are entitled for benefits of allotment.

These allotments are made to preferential category of persons including landless labourers and, therefore, on account of this avowed object which is sought to be achieved, it is obligatory on the part of the Gaon Sabha as well as the authorities to ensure that such public announcements, even though meant for the villagers of the concerned village only, is made known through a transparent method.

20. The system of beat of drums is not only old fashioned but is also underplayed in many cases. The Court has been experiencing allegations that without any such procedure being adopted, the allotments are concluded only on paper in order to favour vested interests. The reports of the announcer are also very misleading and most of the time where complaints are received, such announcements are certified by the Gram Pradhan which are ultimately found to be fake. This method, therefore, is not a perfect or a sure method of announcement at least in the present times when newspapers are available in almost every village. To ensure this transparency and to eliminate any possibility of favouritism or nepotism, this Court in the case of Raja Ram (supra) introduced the system of an advertisement as applicable to other fields of State and Public action and issued directions for publication of advertisement in relation to land allotments. In my opinion also, the said intention to ensure transparency as expressed in the said judgment has to be implemented which would fulfil the object and intention of the Legislature to ensure allotment of land to deserving categories of persons as mentioned under the 1950 Act after full notice and information.

21. As to what purpose is sought to be achieved by an advertisement, it would be pertinent to understand the meaning of the word "Advertisement". An advertisement is an announcement either oral or in writing through print media. It is taking note of any particular action and is a notice allowing persons to observe the same. It is a method to turn once attention and is an information in a formal manner. It is a announcement of an official act and, therefore, it gives recognition and authority to the proceedings in a transparent manner. It indicates and makes generally known about the intention of the advertiser about the action to be taken. It signifies an action for a specific purpose or heralding a report by way of a public announcement. In short, it is a proclamation. The question is as to what should be the method adopted for putting the villagers to notice for the purpose of allotment of land as presently involved. The Board of Revenue on account of the poor financial status of a Gaon Sabha has taken a view that Rules still provide for announcement by way of beat of drums and, therefore, an advertisement in the print media if not made, would not invalidate an action.

22. To my mind, the Board of Revenue has slightly misdirected itself on this issue and has not understood the clear purport of the judgment of this Court in the

case of Raja Ram (supra). What the said judgment intends to communicate is that there should be a better method adopted for signifying and proclaiming the intention of the Land Management Committee, the Gaon Sabha or the authority concerned proceeding to make allotments as against an old worn out method of announcement. The learned single Judge has opined that such an announcement should not only be dependent on an ancient method of proclamation through a town-crier or by beat of drums as they appear to be fragile as compared to a surer way of advertisement through newspapers. An argument can be advanced that all villagers may not be having access to print media and, therefore, the same cannot be a substitute for an announcement by way of beat of drums. The learned single Judge in the case of Raja Ram (supra) has nowhere issued any direction to give up the method of announcement as provided under Rule 173. What has been done is that an additional modern method of advertisement in newspapers has to be undertaken so as to make a proclamation appear on more solid foundations reflecting transparency. This, in my opinion, is in larger public interest and is an expenditure which has to be justified for the greater cause of the object of fair allotments sought to be achieved.

23. The issue of minimum expenses may require a consideration and, therefore, in my opinion, instead of undertaking a heavy expenditure of an Advertisement running into thousands of rupees, a news item can be floated under the authority of the local sub-division official calling upon the media to print the news before hand so that the villagers may come to know of the proceedings that are likely to be undertaken for allotment. An example or illustration has already been extracted herein above and if the same can be tuned in the shape of a news item as well, it would ensure at least an information that is desirable in such matters.

24. The Court has had the experience of such news items also where the complaint is that the news is published in a very insignificant corner of a newspaper thereby frustrating the entire purpose of the transparency of the information. To ensure this, the news item should be published in a prominent way so that it does not end up in an empty formality. It should be published in a column that is likely to attract attention of the reader at first glance and they may not have to make a frantic or archaeological search to find out such a news item. The judgment of the learned single Judge in the case of Raja Ram (supra), therefore, has to be understood in the aforesaid context and the Land Management Committee or the authority concerned can tune the information and the advertisement accordingly. This would ensure a much lesser expenditure and would, therefore, not be a burden either on the Gaon Sabha or on the authorities.

25. Every village, almost all over the State except in remote corners, usually have a small hamlet where items of daily necessity are available in wooden Gumti shops. They have periodical or daily vegetable markets. It is not rare to witness ice-cream sellers and medicine vendors or smaller items being sold on bicycles or carts equipped with a rubber bulb blow-horn or a small battery operated speaker. At times cycle mounted battery operated musical tapes with a

small loud-speaker lofted on the handle are also seen in a religious or a marriage or even a funeral procession. Such methods of sound transmission are, therefore, available in rural areas as well. The Gram Sabha or its officials can deploy such effective methods that are available on small bearable payments instead of sticking to the method of beat of drums only. The rule intends to provide the most conveniently available low cost method of announcement. This rule was framed when such methods were rare or not readily available. Times have changed faster, especially in the field of electronics and communication and, therefore, the Gaon Sabha should adopt all such methods that it can afford easily to disseminate important information to its inhabitants. After all, the rural or urban public does not hesitate in taking recourse to such methods when it concerns religion or fanfares or even private entertainment. The existing Rule 173 of the 1952 Rules does not prohibit other modes of announcement.

26. The judgment in the case of Raja Ram (*supra*) should have been construed in the aforesaid background. This would have relieved the Board from taking too narrow and pedantic view of the judgment which should not have been read like a Statute.

27. In the instant case, the authority shall now consider as to whether there was substantial compliance of notice or not and shall also be obliged to consider the preference of the candidate and their eligibility in accordance with the provisions of Section 198 of the 1950 Act. The petition, therefore, stands disposed of with the said observations.