
(2012) 04 AHC CK 0131

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 35273 of 1995

Phool Das

APPELLANT

Vs

Additional Collector (F & R) Saharanpur and Others

RESPONDENT

Date of Decision : 23-04-2012

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117, 122B, 122B(4)F, 195

Citation : (2012) 04 AHC CK 0131

Hon'ble Judges : Sunil Hali, J

Final Decision : Allowed

Judgement

Sunil Hali, J.—The writ petition is restored. For order see order of date passed on restoration application.

Heard learned Counsel for the parties and perused the material on record.

2. Petitioner belongs to Scheduled Caste and claims to be in possession of a land situated in 241/3 in measuring 0.615 hectares, situated in village Hardayaki, Pargana Rampur, Tehsil Deoband, District Saharanpur. He states that he is landless agricultural labourer and is in possession of the said land for the last more than 15 years.

3. Specific case of the petitioner is that he was in possession of the land before 30.6.1985. A report was submitted by the Lekhpal that the petitioner was in possession of the said land since 1401 Fasli which corresponds to 1994 as such he is liable to be evicted from the said land on the ground that his possession is after the cut of date of June, 1985. Consequently, a notice in Form 49 Ka was issued to the petitioner by the Prescribed Authority who after hearing the parties vide its order dated 28.3.1995 has stated that the petitioner's possession on the land is w.e.f 1401 F and not prior to 30.6.1985. This order is based upon a report submitted the Lekhpal. On the basis of the said report the Prescribed Authority found the petitioner to be in illegal possession of the Gaon Sabha land which is not in his possession prior to 30.6.1905. As a result of which eviction order along

with damages to the tune of Rs. 2,922/ was passed. Aggrieved against this order petitioner preferred a revision which was also dismissed vide judgment and order dated 31.8.1995.

4. Short grievance of the petitioner is that the petitioner is in possession of the said land and it cannot be said that the petitioner is trespasser. Section 122 B(4)F of the Act clearly provides that if any agriculture labourer belonging to a scheduled castes or scheduled tribes is in possession of any land vested in a Gaon Sabha under Section 117 (Not being land mentioned in Section 132) having occupied it from before 30th June 1985 and the land so occupied together with land, if any, held by him from before the said date as Bhumidhar, Sirdar, and Assami does not exceed 1.25 hectares (3.1215 Acres) then no action under this Section has been taken by the Land Management Committee or Collector against such labourer and it shall be deemed that he has been admitted as Bhumidar with non transferable rights of that Land under Section 195. Such a person shall be immune from eviction in view of proceedings contemplated under Section 122B of the UPZA and LR Act.

5. Date of possession of the land by the petitioner has been disputed by the respondents. Respondent contended that the petitioner has been in possession of the land since 1401 F which corresponds to 1994. While the case of the petitioner is that he is in occupation of the land prior to June 1985. The date of his possession may not be relevant in the present case as the possession of the land of the landless scheduled caste labourers has been protected if the same is occupied by him prior to 30.6.1985. This cut of date has specifically been amended to year 1995, and now 2002. Retrospective application of the said Act is inherent in the very nature of the scheme. What is intended by amendment is to protect the eviction of the landless labourers belonging to Scheduled Caste and Scheduled Tribes who are in occupation of the Gaon Sabha land. By effecting the amendment in the Act the intent and purpose is to legalize the occupation of the land possessed by the said landless labourers. The very language of the Act clearly mentions that the persons would be immune from eviction if they occupy the land on 1.5.2002. This in itself indicates; the intent and purpose of the legislation.

6. In view of the amendment effected all those landless labourers belonging to Scheduled Caste and Scheduled Tribes would be entitled to have their possession legalized provided they are in occupation of the land on or before 1.5.2002. This will cover all those persons who are in possession of the land much before the date fixed in the amending provision which will include the case of the petitioner who claims to be in possession from 30.6.1985 or as stated by the respondents from 1994. Petitioner's case is fully covered by the amending provision. Whenever a new cut off date is provided (the latest being 1.5.2002), retrospective application of the said Act is inherent in the very nature of the scheme and the landless scheduled caste labourer cannot be evicted from the land in question.

7. Viewed thus, even if the petitioner is unable to show that he was in occupation of the land on or before 30.6.1985 even then he will get protection under Section 122B(4F) of the Act. Admittedly, the petitioner is in occupation of the land prior to 1.5.2002. Respondents have on their own admitted that the petitioner is in occupation of the land since 1401 F.

In view of this the writ petition is allowed. Impugned orders are hereby set aside.