

(1965) 08 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 601 of 1962

Raghubir Singh

APPELLANT

Vs

The Sub Divisional Officer and Settlement Officer
(Consolidation), Tahsil Ghatampur, District Kanpur and Others

RESPONDENT

Date of Decision : 06-08-1965

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143, 198(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143, 198(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143, 198(2)

Citation : (1965) 35 AWR 683

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Manchanda, J.—This is an application under Article 227 of the Constitution by an allotted of certain plots allotted to him u/s 195 of the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act) by the Land Management Committee by the pattas executed on the 20th and 21st of August 1960. The prayer is for the quashing of the order dated 29th September, 1962, passed by the Sub Divisional Officer Ghatampur on the application moved by the Petitioner dated 22nd September, 1962, in proceedings taken by the Gaon Samaj u/s 198 of the Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act).

2. The material facts giving rise to this petition are these. On the 20th and 21st of August, 1960, the Petitioner had been admitted to the plot in dispute by the Land Management Committee u/s 195 of the Act. The pattas were verified by the Registrar Qanungo on the 3rd of November, 1960. On the 15th of March, 1961, the Sub Divisional Officer directed the Petitioner's name to be mutated over the plots in dispute. On the 14th/15th June, 1961, Bhumidhari Sanaa was granted. On the 9th of August, 1961, Petitioner applied to the Assistant Sub Divisional Officer for the grant of a declaration u/s 143 of the Act on the ground that le

wanted to build thereupon. The report of the Registrar Qanungo obtained is dated 18th August, 1961 and report of the Tehsildar is dated 2nd August, 1961. After this enquiry on the 13th of January 1962 the Assistant Collector granted the application u/s 143 of the Act by a single word order "allowed". Thereupon on the 31st of March, 1962 the Pradhan of the Gaon Samaj moved an application u/s 198 of the Act to which the Petitioner filed his objections. He also raised the preliminary objection, by an application dated 22nd September, 1962, that as he had obtained a declaration u/s 143 of the Act by virtue of the provisions of Sub-section (2) of that section the application u/s 198 of the Act, which was a part of Chapter VIII ceased to apply and, therefore, the Sub Divisional Officer had no jurisdiction to entertain the application of the Gaon Samaj. The Sub Divisional Officer has rejected this application holding that the word "allowed" on the application did not amount to a declaration as contemplated by Section 143 of the Act and further that as the declaration was not got registered by the Collector u/s 145 "of the Act the declaration was of no effect. Hence this petition.

3. The short question which falls to be considered is; as to the effect of the word "allowed" on an application made u/s 143 of the Act. The relevant portion of Section 143 reads:

143(1) Where a Bhumidhar uses his holding...for a purpose not connected with agriculture, horticulture or animal husbandry...the Assistant Collector In charge of the sub division may, suo moto or on application, after making such enquiry as may be prescribed make a declaration to that effect.

(2) Upon the grant of the declaration mentioned in Sub-section (1) the provisions of this Chapter other than this section) shall cease to apply to the Bhumidhar with respect to such land...

4. In this case the Assistant Collector did not move suo moto but on the application of the Petitioner. That an enquiry was made cannot be denied as the impugned order itself shows that the report of the Registrar Qanungo and that of the Tehsildar dated 18th August, 1961, and 21st August, 1961, respectively was obtained. After the enquiry was made whatever prayer was made in the application u/s 143 of the Act was "allowed".

5. It is no doubt true that Section 143 speaks of "declaration to that effect", but, no statutory form in which a declaration has to be made has been prescribed. It is not unusual for courts and tribunals when granting an application merely to say that the prayer in "the application as prayed for is allowed or merely "allowed". The word allowed, necessarily means that whatever prayer was sought for in the application is being granted. If there had been a statutory form of declaration provided or there had been any rule requiring what a declaration should mention there may have been something to be said for the opposite party; but in the absence of any such statutory form for a declaration the word "allowed" on the application after due enquiry cannot mean anything else but that the necessary declaration u/s 143 of the Act was being made.

6. Once the position is arrived at that, there was a declaration, made u/s 143 of the Act, after due enquiry, then by virtue of Sub-section (2) thereof the conclusion is inescapable that the provisions of the whole of Chapter VIII other than of Section 143 would become wholly inapplicable. Section 137A and Section 198 both fall within this Chapter and, therefore, no authority will, after a declaration has been made u/s 143 of the Act, have any jurisdiction to entertain such an application. More so when an order u/s 143 of the Act is an appealable order and no appeal has been preferred and that order has become final.

7. There is yet another aspect of this question which does not seem to have received the attention of the authorities or the parties and that is that the application u/s 198 of the Act itself would not lie at the Instance of the Gaon Samaj. The Sub Divisional Officer could have on his own motion proceeded under Sub-section (2) of Section 198 of the Act; but that he did not do. He proceeded on the basis of an application filed by the Pradhan of the Gaon Samaj. Such an application can only be made at the instance, of "any person aggrieved by an order of the Land Management Committee, passed under Sub-section (1)". Sub-section (1) of Section 198 of the Act gives the order of preference in determining the persons to be allotted land under Sections 196 and 197 of the Act. It is the Land Management Committee which is the administrative body of the Gaon Samaj which has to make the allotment. When, that body has once made the allotment it is no longer open to a subsequent; Pradhan of the Gaon Samaj, who may hold a different view, to make an application u/s 198(2) of the Act. He cannot possibly be described as an aggrieved person. It was never the intention of the Legislature to give the successor Pradhans the right to apply u/s 198(2) of the Act. For this additional reason also I would hold that the application u/s 198 at the instance of Pradhan would not lie.

8. It was contended by the learned Counsel for the opposite party that an order u/s 143 of the Act is required to have been passed by an "Assistant Collector Incharge of the Sub Division" and as that fact has not been established the order passed under 143 of the Act cannot be said to be a valid order. There is no force in this contention. This very ground was urged before the Sub Divisional Officer who, though he noticed it, did not give a finding thereon presumably for the good reason that there was no basis for the ground taken. While dealing with this contention he went on to reiterate:

In this case no doubt an enquiry has been held by the Registrar Qanungo which was submitted by the Tahsildar but it appears that no proper declaration was given by the ASDO as the word "allowed" can not come within the category of declaration.

It is manifest that that Sub Divisional Officer, who had the records before him must have known whether the order passed u/s 143 of the Act was by the "Assistant Collector In charge of the Sub Division" and was satisfied that this was so. This objection does not seem to have been pressed any further after the facts were ascertained; nor was any attack directed against it in the counter affidavit

filed, so as to show that the order u/s 143 of the Act was not passed by "the Assistant Collector In charge of the Sub Division.

9. Lastly, it was contended by the learned Counsel for the opposite party relying upon the decisions in *Ram Roop and Ors. v. Vishwanath and Ors.* (1) (1958 AWR 445) and *Vidya Ram and Ors. v. Munsif, Fatehabad, Agra and Ors.* (2) (1956 AWR 622) that an order u/s 198 of the Act is an appeasable order and as there is an alternative remedy the powers under Article 227 should not be exercised by this Court. It is true that ordinarily the supervisory powers under Article 227 should not be exercised unless there is danger of miscarriage or the perpetration of grave injustice but, at the same time, it is the duty of this Court to keep the courts within the strict bounds of their jurisdiction. In the present case the order u/s 143 of the Act having become final and the provisions of Sub-section (2) of Section 143 of the Act being mandatory, the Sub Divisional Officer had no jurisdiction to entertain or to adjudicate upon an application u/s 198 of the Act at the instance of the Gaon Samaj.

10. For the reasons given above the order of the Sub Divisional Officer dated 29th September, 1962, is hereby quashed. In the circumstances of the case parties are left to bear their own costs.