
(2017) 01 AHC CK 0197
In the Allahabad High Court
Case No : Writ B. No. 61154 of 2016

Raghvendra Pratap

APPELLANT

Vs

The Board of Revenue U.P.

RESPONDENT

Date of Decision : 05-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Panchayat Raj Act, 1947 — Section 28-C
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198(4)

Citation : (2017) 134 RD 585

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : Arjun Singhal and Om Prakash Singh, Advocates, for the Petitioner;
C.S.C. and Ramesh Chandra Upadhyay, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.— Heard Shri Arjun Singhal, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. The writ petition arises out of proceedings under Section 198(4) of the U.P. Zamindari Abolition and Land Reforms Act, initiated by the respondent, for cancellation of an allotment made in favour of Sita Devi, the mother of the petitioner.

3. The application under Section 198(4) of the Act was filed on 04.09.1987 on the ground that the land allotted, namely plot no. 236 area 0.51, was since time immemorial, in the possession of the complainant and the allottee is wife of the Pradhan. She was not an eligible person and the allotment had been made without any agenda or munadi nor was any proposal for such allotment, passed by the Land Management Committee.

4. The Additional Collector, Ballia/Chief Revenue Officer by his order dated 09.02.1999, cancelled the allotment. The consequential revision filed by the

petitioner has been dismissed. Hence this writ petition.

5. Learned counsel for the petitioner has submitted that the respondent no. 3 was not an aggrieved person and, therefore, was incompetent to maintain the proceedings for cancellation of the allotment. In any case, the application for cancellation of the allotment, was barred by time and the proceedings are not suo moto. The allotment was made on the ground that the allottee had contributed to the Twenty Point Program of the State Government with regard to family planning. The State Government is empowered to issue directions in view of Section 126 of the U.P. Zamindari Abolition and Land Reforms Act.

6. Lastly it has been contended that the petitioner being wife of the Pradhan there was no requirement for her to obtain the permission contemplated by Section 28C of the U.P. Panchayat Raj Act.

7. In support of this contention, learned counsel for the petitioner has placed reliance upon Govind and others v. Sub-Divisional Officer, 1986 RD 137 and Brihma Dutt Singh v. Additional Commissioner (Administration) Lucknow Division, Lucknow, 2004 (96) RD 665.

8. Learned Standing Counsel has supported the impugned order.

9. I have considered the submissions made by learned counsel for the parties and have perused the record.

10. It is no doubt true that the judgments cited on behalf of the petitioner hold that the permission contemplated by Section 28C of the U.P. Panchayat Raj Act is not required by a family member of the Pradhan, yet, the authorities do not help the petitioner in any manner.

11. The courts below have recorded categorical findings that the allottee, Smt. Sita Devi, was herself a member of the Land Management. She was also the wife of the Pradhan. This finding which is a pure finding of fact has not been specifically denied in the writ petition. The challenge to the finding is an oblique averment made in the petition that this finding is perverse. The allegation made in the writ petition, in my considered opinion is not adequate to rebut the categorical finding of fact recorded, namely that the allottee was herself a member of the Land Management Committee. The petitioner has failed to make a categorical averment that she was not a member of the Land Management Committee at the time the allotment was made in her favour.

12. As such, she necessarily needed to obtain permission of the Collector as provided by Section 28C of the U.P. Panchayat Raj Act and in the absence of such a permission, the allotment was clearly vitiated and has rightly been set aside.

13. The other contention of learned counsel for the petitioner that the respondent/complainant was not an aggrieved person is a point which has not been raised by the petitioner in the objection filed against the complaint under Section 198 (4) of the Act. The petitioner is therefore raising a factual issue for

the first time in the writ petition, which cannot be permitted.

14. The contention that the proceedings for cancellation of the allotment were barred by time also cannot be accepted. The allotment has been made suo moto on 26.12.1986. The application for cancellation thereof was filed on 04.09.1987.

15. The limitation for initiating proceedings for cancellation of a lease is provided in sub-section 6 of Section 198 of the Act. For allotments of land made on or after November 10, 1980, the cancellation proceedings have to be initiated within a period of five years from the date of the allotment.

16. In the case at hand, the application for cancellation was filed within one year of the allotment. The same was therefore, within time.

17. Moreover, even the issue of limitation is being raised before this Court for the first time. Even the contention that the allotment had been made in favour of the allottee, suo moto, on account of her contribution to the Twenty Point Program of the State Government, cannot be accepted.

18. There is nothing on record of the writ petition to establish this contention made on behalf of the petitioner. Nor has any notification or direction of the State Government been brought on record and in its absence it is not possible to decide this issue.

19. In view of the forgoing discussion, the writ petition is found to be devoid of merits and is accordingly dismissed.