

(1991) 10 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 9677 of 1981

Rajendra Tewari

APPELLANT

Vs

Gaon Sabha Village Oriyara and Others

RESPONDENT

Date of Decision : 09-10-1991

Acts Referred:

Uttar Pradesh Land Laws (Second Amendment) Act, 1961 — Section 2

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 122B(4), 2, 3, 333

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115C, 115H

Citation : (1991) 2 AWC 614 : (1992) RD 49

Hon'ble Judges : R.R.K. Trivedi, J

Bench : Single Bench

Advocate : R. Singh and V.K.S. Chaudhary, for the Appellant; K.B. Garg, for the Respondent

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—Short question involved for determination in this writ petition is as to whether Petitioner could be required to file a suit for declaration of his title in the court of competent jurisdiction within a period of three months" from the date of the order passed in proceedings u/s 122B of UP ZA and LR Act (herein-after referred to as Act), which were initiated against the Petitioner in the year 1972.

2. The undisputed facts giving, rise to this writ petition are that in the year 1972 Lekhpal of the village Oriyara made a report that the Petitioner has illegally occupied plot No. 93 area 1-12-0 of village Oriyara in the year 1378F. On this report a show--cause notice was served on Petitioner in Z.A. Form 49-A as to why he may not be evicted from the land in dispute and the damages may not be recovered from him In response to this notice Petitioner filed an objection stating therein that his possession is old and continuing from before the abolition of Zamindari. The land was taken from Zamindari and after taking possession he constructed his abadi and also established a Chakki (Flour mill). Even during

consolidation No. notice was served on him. After taking evidence of both the sides Assistant Collector 1st class, Kanpur by his order dated 23rd August, 1973 asked the Petitioner to vacate his possession from the plot in dispute and to pay Rs. 210 60P. As damages. Aggrieved by this order, Petitioner filed a revision before the Additional Commissioner, Allahabad Division, Allahabad who vide his order dated 24th June, 1975 made a recommendation to the Board of Revenue to set aside the order of Tahsildar and to drop the proceedings against the applicant, as on the basis of the evidence on record the bonafide question of title is involved. Board of Revenue vide its order dated 13th May, 1981 has accepted the recommendation in part only to the extent that the bonafide question of title is involved and thus has set aside the order dated 23rd August, 1973 passed by Tahsildar/Assistant Collector 1st class, Kanpur. However the Petitioner has been required to file a suit within three months in a competent court of jurisdiction for declaration of his title and the proceedings before the trial court have been stayed. Thus show cause notice which was served on Petitioner in Z A. Form 49-A and the proceedings initiated on the basis of the same are pending This order passed by Board of Revenue has been challenged in the present writ petition as illegal and without jurisdiction.

3. I have heard Shri Yatindra Singh, learned Counsel for the Petitioner and Shri K.B. Garg, learned Counsel appearing for the Gaon Sabha Sri Garg raised a preliminary objection that before Assistant Collector 1st Class/Tahsildar one Sri Ballabh Bajpai was made a party and he was allowed to adduce evidence and was heard by Tahsildar, Kanpur but he has not been made a party and the writ petition is liable to be dismissed for non-impleadment of necessary parties. Sri Yatindra Singh has submitted that though it is true that Sri Ballabh Bajpai was impleaded and he was allowed to adduce evidence but his allegations were not accepted by Tehsildar The dispute as raised by Ballabh Bajpai cannot be determined in the present. proceedings The Board of Revenue in the Impugned order has considered this objection and has rejected the same as irrelevant for the decision I have considered the preliminary objection raised by Sri Garg and in my opinion, in the present proceedings the inters dispute of title between the Petitioner and Sri Balhbh Bajpai cannot be gone into and determined. The provisions of Section 122B of the Act are meant only for the protection of the property vesting in Gaon Sabha and local authorities. A quick remedy has been provided to get possession of public property from unauthorised occupation. This forum cannot be permitted to be used for resolving the private dispute of the nature raised by Sri Ballabh Bajpai. If such disputes are allowed to be raised and considered, the very purpose and object behind enacting Section 122B shall stand defeated. It is also noteworthy that though No. relief was granted to Sri Ballabh Bajpai, but he did not file any revision challenging the order of Tahsildar. He gave up contest and in the circumstances he could not be treated to be a necessary party. The preliminary objection raised by Sri Garg thus is rejected as not tenable.

4. Sri Yatindra Singh submitted that the proceedings u/s 122B were initiated

against the Petitioner in 1972. The order of Tahsildar was passed on 23rd August, 1973 and as such the proceedings should be governed by the provisions of Section 122B as it then stood. As it has been found by Additional Commissioner and the Board of Revenue on the evidence adduced by Petitioner that a bonafide question of title is involved, the proceedings should have been dropped and the Petitioner cannot be legally required to file a suit within three months as done by the Board of Revenue. The submission of learned Counsel for the Petitioner is that the amended provisions of Section 122B cannot be legally applied against the Petitioner in the pending proceedings and the Board of Revenue has committed a serious error of law and in requiring Petitioner to file a suit and the impugned direction is liable to be quashed as illegal and without authority.

5. Sri K.B. Garg, on the other hand, has submitted that the provisions of Section 122B are procedural in nature and amended provisions have been correctly applied to the pending proceedings also as Board of Revenue has directed the Petitioner to file a suit and has stayed the proceedings in view of the amended provisions of Section 122B, as they stood on the date of order passed by Board of Revenue. Sri K.B. Garg has further submitted that the order passed by Assistant Collector has become final as the order was final u/s 122-B(4) and revision was not legally maintainable. Sri Garg has placed reliance on a case Nasiruddin and Others Vs. Ch. Ram Swarup and Others, and 1980 RJ 103 and 270.

6. Learned Counsel for the Petitioner in his rejoinder has submitted that the revision filed by him was legally maintainable before the Additional Commissioner and Board of Revenue. He has relied on Ram Raja v. Board of Revenue, U.P. Allahabad 1970 ALJ 410. Sri Yatindra Singh has also submitted that the Board of Revenue has taken the view in respect of proceedings u/s 122B that the proceedings initiated before 19th August, 1975 should be decided in accordance with law then prevailing. Sri Yatindra Singh has placed before me a judgment of Board of Revenue in Chandra Kumar Sah and Another Vs. Girdhar Das and Others (Revenue). I have considered the submissions raised by both the learned Counsel "Section 122B was brought on the statute book and was added for the first time by Section 2(i) of U.P. Land Laws (Second Amendment) Act. 1961 i.e. Act No 28 of 1961. This provision was introduced as Rules 115-C, 115-H of UP ZA & LR Rules for the summary ejectment of the trespassers from Gaon Sabha property were held invalid, in case Paras Nath Singh v. State of U.P. 1960 ALJ 549. Main purpose behind introducing this section was to remove the difficulties and provide necessary sanction of law for evicting unauthorised occupants of the land of Gion Sabha and local authorities in summary proceedings without causing much delay Thereafter Section 122B was subjected to various legislative changes The First Amendment was introduced on the basis of the recommendation of Visharad Committee which recommended that stern action should be taken to deal with the problem of unauthorized occupants of Gaon Sabha land The amendments were firstly introduced through U.P. Ordinance No. 20-1975 which was placed by U.P. Land Laws (Amendment) Act, 1975 that is U.P. Act No. 30 of

1975 which came in force on 19th August, 1975. Sections 2, 3 and 4 of existing Section 122B of the Act were substituted by new Sub-sections and Sub-sections 4-A to 4-F were also added. Section 4-B of the Act provided as under:

If during the course of enquiry any proceeding under this section, the person in occupation of land referred to in Sub-section (i) has produced any evidence of title to such land which appears to the Collector to raise bona-fide question of title, then the Collector shall, by order require such person to file a suit, for declaration of his title u/s 229B in competent court within a period of one month from the date of such order and stay further proceedings in the mean time.

Section 4-B was again amended by U.P. Ordinance No. 17 of 1976 with effect from 15th June, 1976. After amendment Section 4-B provided that the suit could be filed within three months from the date of the order and otherwise it remained same substantially. Section 4-D and 4-DD provided that where the suit succeeded in whole or in part the Collector shall either drop or continue further proceedings under this Section. Section 4-DD provided that if No. suit was filed within the period as directed or the suit has been dismissed, the Collector shall evict the person and realise the compensation for damages and misappropriation. In the statement of objects and reasons for passing aforesaid U.P. Land Laws Amendment Act, 1976 it has been said that the problem of unauthorised occupants of Gaon Sabha's land has been disturbing. In order to reduce the incidence of this evil it has been decided to amend the UP ZA LR Act, 1950 to provide that if after execution of any decree or order for eviction from any Gaon Sabha land in case present occupant occupies, he shall be liable to be criminally prosecuted and No. rights could accrue by adverse possession over and Gaon Sabha land.

7. Section 122B has been further amended by U.P. Act No. 20 of 1987 with effect from 3rd June, 1987 and after this amendment under the provisions of Section 122B as they exist today, the notice can be discharged only when it has been established by the person showing cause that he is not guilty of causing the damage or misappropriation or wrongful occupation, referred to in the notice served on him. It has been provided in Section 4-D that any person aggrieved by an order of Assistant Collector or Collector in respect of any property under this section may file a suit in the court of competent jurisdiction to establish the right claimed by him in such property. Thus now under the section as it stands today the proceedings are not to be stayed but they shall be decided and it shall be for the person concerned to file a suit if he feels aggrieved by the orders.

8. Considering the aforesaid legislative history of Section 122B, it is clear that grabbing of Gaon Sabha property was being done in large scale and the provision for speedy action against such scrupulous persons became necessary. However the Legislature took care of the persons having bonafide title over the land and it was thought proper that they may nor be evicted in these summary proceedings But. the important question was whether the burden should be placed on Gaon Sabha or local authority to initiate the proceedings for suit for eviction of such

person or person concerned should be asked to get his title declared from competent court of jurisdiction by filing a suit. The legislature in its wisdom thought it proper to place the burden on the person concerned and, in my opinion rightly for two reasons; firstly that for the protection of public property, where there is No. body to have any individual interest, it could not be reasonably expected from Gaon Sabha or local authority to take swift and sure action for eviction of unauthorised occupants by filing suit, and to pursue the same for years which is usual feature in our legal system. Further the constitution of Gaon Sabha or local authority; are subject to frequent changes due to elections and the loyalties also change with the same. It cannot be thus expected from the Gaon Sabha and local authorities that they shall pursue the long and cumbersome procedure of suit necessary for eviction of unauthorised occupants who are possessed with some evidence showing the bonafide question of title over the land in dispute. Secondly in proceedings u/s 122B the question of title could not be decided and if the proceedings were allowed to be dropped on the ground that bonafide question of title is involved, the Gaon Sabha or the local authority could be deprived of their properties without their being any adjudication or the final determination of the question of title between Gaon Sabha and person in possession which cannot be in any manner desirable and advisable. The purpose appears that on basis of evidence showing bonafide question of title, his ejection in summary manner should not be done. However he can be legally required to get his title cleared by filing suit in the competent court of jurisdiction and then only he shall be entitled to retain possession.

9. The submission of the learned Counsel is that the amended provisions of Section 122B could not be legally applied in pending proceedings and the proceedings against the Petitioner ought to have been decided according to the provisions as they stood at the time of service of notice in Form 49-A of the Act I have seriously considered the contention of the learned Counsel for the Petitioner and in my opinion the provisions of Section 4-B as introduced by U.P. Act No. 30 of 1975 and U.P. Act No. 35 of 1976 are procedural. The aforesaid provision did not effect in any manner any vested right of the Petitioner. The provisions contained only procedure for getting adjudication in respect of the land in dispute from the competent court of jurisdiction and to keep the proceedings u/s 122B pending till then. It also provided period of limitation within which the suit should be filed. The provisions are clearly procedural in nature and can govern the pending proceedings as held by Division Bench of this Court in case *Nasiruddin v. Ch. Ram Swarup* (supra) On 13th May 1971 when the Board of Revenue passed the order Section 122B Sub-section 4-B provided that the person showing cause could be required to file a suit within three months in case he was possessed of evidence raising bona fide question of title. The Board of Revenue was thus justified in directing the Petitioner to get his title decided from the competent court of jurisdiction. No prejudice or harm has been caused to the Petitioner by this direction. Petitioner cannot be allowed to retain possession of property for indefinite period without having a clear title in his favour justifying the

possession.

10. Sri Yatindra Singh, learned Counsel for the Petitioner, however, submitted that the period of three months provided by the Board of Revenue has already expired. In case the writ petition is dismissed he shall not be able to file a suit and in that situation the order of eviction will be passed against him and he shall suffer irreparable loss of his property. This apprehension of the learned Counsel is not justified. This Court by interim order dated 16th March, 1982 stayed the operation of the order dated 13th May, 1981 which is still continuing. In view of the interim order of this Court the Petitioner was not obliged to file a suit. The time fixed for filing suit fixed by Board of Revenue would be effective after disposal of the present writ petition and the period of three months fixed by the Board of Revenue shall commence from the date of this judgment. Sri K.B. Garg has submitted that the revision filed by Petitioner was not legally maintainable as the order of the Assistant Collector was final in view of the provisions contained in sub-Section 4 of Section 122B. This Sub-section (4) has been interpreted by this Court in judgment reported in case of Ram Raja v. Board of Revenue (supra) and it has been held that the revision against the order of Collector u/s 333 is maintainable. The judgment is squarely applicable in the present case. This objection was not raised either before the Additional Commissioner or before the Board of Revenue. The submission of Sri Garg is not acceptable as the Gaon Sabha or the State of U.P. have not challenged the order of the Board of Revenue by which the order of Assistant Collector has been set aside. Further as now the Petitioner is being required to file a suit within three months the Gaon Sabha will get full opportunity to contest its claim on merits and No. prejudice has been caused to it.

11. For the reasons recorded above, this writ petition has No. force and is, accordingly, dismissed. However, it shall be open to the Petitioner to file a suit for declaration of his title in respect of the land in dispute within three months from the date of this judgment, in competent court of jurisdiction. There will be No. order as to costs.