
(2016) 07 AHC CK 0163

In the Allahabad High Court

Case No : C.M.W.P. Public Interest Litigation (PIL) No. 31035 of 2016

Rajesh

APPELLANT

Vs

State of U.P

RESPONDENT

Date of Decision : 12-07-2016

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122 B

Citation : (2016) 11 ADJ 762 : (2016) 133 RD 35 : (2016) 4 UPLBEC 2685

Hon'ble Judges : Ran Vijai Singh, J.

Bench : Single Bench

Advocate : Mukesh Kumar Maurya, Advocate, for the Petitioner; C.S.C, for Respondent

Final Decision : Dismissed

Judgement

Ran Vijai Singh, J.—Learned counsel for the petitioner is permitted to implead concerned Gaon Sabha and Tehsildar as respondent nos. 7 and 8 and serve copy of the writ petition to Sri T.M. Khan, learned counsel for the Gaon Sabha and learned standing counsel respectively.

2. Heard Sri Mukesh Kumar Maurya, learned counsel for the petitioner, learned standing counsel for the State-respondents and Sri R.C. Upadhyay holding brief of Sri T.M. Khan, learned counsel for the Gaon Sabha.

3. In substance, petitioner appears to be aggrieved by non execution of order dated 28.1.2015 passed, in Case No. 132/21 and 131/20 by Assistant Collector/ Tehsildar, Deoria and order dated 8.5.2015 passed by District Magistrate, Deoria in Case no. 68 (Halwai v. Tehsildar, Deoria) and Case No. 69(Heermatia v. Tehsildar, Deoria). The aforesaid orders appear to have been passed in a proceeding under section 122B of U.P. Zamindari Abolition & Land Reforms Act, 1952 (hereinafter referred to as the Act).

4. Vide order dated 28.1.2015 respondent nos. 5 and 6 were found to be unauthorized occupant over the Gaon Sabha land and a direction was issued in

both cases to dispossess them after imposing damages.

5. Aggrieved by the aforesaid order the respondents no. 5 and 6 have filed appeal No. 68 and 69 before the District Magistrate, Deoria and that too have been dismissed on 8.5.2015.

6. The submission is that even after the aforesaid orders of eviction and dismissal of appeals of the opposite parties i.e. respondent nos. 5 and 6 i.e. the encroachers have yet not been dispossessed and the encroachment has yet not been removed.

7. Learned standing counsel as well as learned counsel for Gaon Sabha have raised preliminary objection with regard to maintainability of the writ petition. In their submissions, there is remedy under U.P. Zamindari Abolition and Land Reforms Rules, 1952 (in short the Rules, 1952) itself for execution of the order passed under section 122B of the Act therefore the writ petition should be dismissed on the ground of alternative remedy.

8. For appreciation the provisions contained under Rule 115-E of the Rules, 1952, paragraphs 137 and 138 of the Revenue Court Manual and Rule 11 to 14 of Order 21 of Code of Civil Procedure are reproduced herein under, which are relevant for the purpose of the execution of an order passed under section 122B of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

(1) Rule 115-E of U.P. Zamindari Abolition and Land Reforms Rules, 1952

115-E (1) Where any direction for eviction or recovery of any amount of compensation has been issued by the Collector under sub section (4) of Section 122-B an order in Z.A. Form 49-C shall be sent to the Tahsildar concerned for execution who shall as far as possible follow the procedure laid down in paragraphs 137 and 138 of Revenue Court Manual.

(2) The order under Z.A. Form 49-C shall also specify the amount which shall be recovered from the person concerned as expenses of execution which shall include the pay and allowances of the staff deputed to be calculated according to the rates mentioned in paragraphs 405 of the Revenue Court Manual.

(2) Paragraphs 137 and 138 of the Revenue Court Manual

137. Examination of applications by reader.- The reader of each Court shall examine all applications for execution presented to that Court and shall report without delay whether such of the requirements of Rules 11-14 of Order 21 of the First Schedule of the Civil Procedure Code, 1908 (Act V of 1908), as may be applicable have been complied with.

138. Certificate of payment of Court.- Where any money payable under a decree of any kind is paid out of Court or the decree is otherwise, adjusted in whole or in part to the satisfaction of the decree-holder the decree-holder shall certify such payment or adjustment to the executing Court in the form given below. Such certificate need not be stamped. If however, the certificate accompanies a

formal written application the application shall be stamped but the fee shall not be charged as costs against the judgement-debtor.

(3) Rule 11 to 14 of Order 21 of Code of Civil Procedure

11. Oral application.- (1) Where a decree is for the payment of money the court may, on the oral application of the decree holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgement debtor, prior to the preparation of a warrant if he is within the precincts of the court.

(2) Written application-Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely:-

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;
- (f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;
- (g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed;
- (h) the amount of the costs (if any) awarded;
- (i) the name of the person against whom execution of the decree is sought; and the mode in which the assistance of the court is required, whether?
 - (i) by the delivery of any property specifically decreed;
 - (ii) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;
 - (iii) by the arrest and detention in prison of any person;
 - (iv) by the appointment of a receiver;
 - (v) .otherwise, as the nature of the relief granted may require.

(3) The court to which an application is made under sub-rule

(2) may require the applicant to produce a certified copy of the decree.

11-A. Application for arrest to state grounds-Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.

12. Application for attachment of movable property not in judgment debtor's possession.- Where an application is made for the attachment of any movable property belonging to a judgment debtor but not in his possession, the decree holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

13. Application for attachment of immovable property to contain certain particulars.- Where an application is made for the attachment of any immovable property belonging to a judgment debtor, it shall contain at the foot?

(a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in,1 record of settlement or survey, a specification of such boundaries or numbers, and

(b) a specification of the judgment debtor's share or Interest in such property to the best of the belief of the applicant and so far as he has been able to ascertain the same:

14. Power to require certified extract from Collector's register in certain cases.- Where an application Is made for the attachment of any land which is registered in the office of the Collector, the court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land of its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

9. From the perusal of Rule 115-E it transpires that order passed under section 122B of the Act is to be executed as for as possible in accordance with provision contained in paras 137 and 138 of the Revenue Court Manual. Paragraph 137 of the Manual requires that the reader of each Court shall examine the application for execution presented before the court and report the same without any delay and such requirement of Rule 11 to 14 of Order 21 of the Code of Civil Procedure has been complied with.

10. Rule 11 Order 21 talks about oral application as well as written application. So far as oral application is concerned, it is only confined to the money decree but for remaining part, an application has to be filed in writing in consonance with sub Rule 2 of Rule 11 Order 21. Rule 12 talks about the attachment of immovable property. Rule 13 about talks about attachment of immovable property. Rule 14 talks about power to require certified extract from the collector's register.

11. In view of the fact that there is a complete procedure prescribed under the Rule 115-E of the Rules meant for execution of the order passed under section 122B of the Act the petition is disposed of with liberty to the petitioner to file an

appropriate application under Rule 115-E before the concerned Assistant Collector/Tehsildar. In case such application is filed, needful be done in accordance with law, expeditiously, keeping in mind the mandate/object of section 122B of the Act and Rule 115-E of the Rules.