
(2013) 04 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 203 of 1990

Ram Awadh and Another

APPELLANT

Vs

Board of Revenue, U.P. and Others

RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:

Citation : (2014) 2 AWC 1322 : (2013) 120 RD 269

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : R.S. Chauhan, Alok Singh, Ambrish Prasad, M.K. Dhruvanshi, R.N. Singh, R.S. Maurya and Surendra Nath Singh, for the Appellant; S.K. Tyagi, C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

Ran Vijai Singh, J.—Learned Counsel for the petitioners states that he may be permitted to amend the prayer by deleting the quashing of the order dated 23.8.1973. He is permitted to do so during the course of the day. Through this writ petition, the petitioners have prayed for issuing a writ of certiorari quashing the order dated 8.5.1989 passed by the Board of Revenue, Allahabad in reference No. 127 of 1983-84 (Shobh Nath v. Gaon Sabha) and order dated 18.10.1989 passed by the learned Member, Board of Revenue, Allahabad in review application in reference No. 127 of 1988-89 (Ram Dular v. Shobh Nath).

2. Heard Sri M.K. Dhruvanshi, learned Counsel for the petitioners, learned Standing Counsel appearing for the State-respondents and Sri S.K. Tyagi, learned Counsel for respondent Nos. 5/1 and 5/2.

3. The facts giving rise to this case are that, it appears that a lease was executed by the Gaon Sabha in the name of father of respondent Nos. 5/1 and 5/2 on 21.7.1971 for plot Nos. 325, 362, 489, 885 and 480. The petitioners herein filed an application for cancellation of the aforesaid lease on the ground that respondent No. 5 is the son of sitting Gram Pradhan and had more than 3.126

acres of land, therefore, allotment could not be made in his favour. In addition to that, it was also stated that before granting the lease, no Munadi was conducted and the Sub-Divisional Officer has also not approved the proposal of the Gaon Sabha for grant of lease. The aforesaid application was allowed by the Sub-Divisional Officer vide order dated 23.8.1973. Aggrieved by the order dated 23.8.1973, respondent No. 5 had preferred revision No. 186 of 2005 before the Additional Commissioner, Faizabad Division, Faizabad. The aforesaid revision was heard by learned Additional Commissioner, Faizabad and he found that the order passed by the Sub-Divisional Officer was without jurisdiction as for cancellation of agricultural lease, the Assistant Collector in-charge is not competent authority and the lease could only be cancelled by the Collector of the concerned district.

4. Taking note of this, learned Additional Commissioner made a reference before the Board of Revenue for setting aside the order passed by the Sub-Divisional Officer, holding it without jurisdiction. The aforesaid reference was numbered as reference No. 127 of 1983-84 (Shobh Nath v. Gaon Sabha). The learned Board of Revenue, after hearing the Counsel for the parties, accepted the reference and set aside the order passed by the Sub-Divisional Officer dated 23.8.1973, holding it without jurisdiction. The petitioners filed a review application, reviewing the order dated 8.5.1989. The said review application was also rejected by the learned Member, Board of Revenue by the detailed order on 18.10.1989.

5. Sri Dhrubvanshi contends that the orders impugned are patently illegal orders for the simple reason that if the learned Member, Board of Revenue was of the opinion that the order passed by the Assistant Collector in-charge was without jurisdiction, he should have, after allowing the reference, directed the competent authority concerned to consider the petitioners' application only and pass an appropriate order on the same as the petitioner's grievance is still unredressed.

6. Refuting the submissions of learned Counsel for the petitioners, learned Standing Counsel as well as Sri Tyagi submitted that there is no illegality in the orders impugned as before the Board of Revenue, the question was as to whether the order passed by the Assistant Collector in-charge is within his competence or it is without jurisdiction. Learned Counsel for the respondents have also placed reliance upon the amendment made from time to time in the U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short, "the Act"). Particular attention has been drawn towards the amendment made vide U.P. Act No. IV of 1969. For appreciation, the relevant amendment as made in sections 14 and 23 of the Act are reproduced hereinunder:

14. Amendment of section 198-In section 198 of the principal Act,--

(a) in sub-section (2) for the words, figures and brackets "The Assistant Collector-in-charge of the sub-division may on his own motion and shall on the application of any person aggrieved by an order of the Land Management Committee passed under sub-section (1) enquire in the manner prescribed into an allotment made under sub-section (1)", the words, figures and brackets "The Collector may of his

own motion and shall on the application of any person aggrieved by an allotment referred to in sub-section (1) inquire in the manner prescribed into such allotment" shall be substituted; and

(b) in sub-section (3), for the words "an Assistant Collector-in-charge of the sub-division", the words "the Collector" shall be substituted.

23. Transitory provisions--Notwithstanding the amendments made in section 198 of, and in Schedule II to, the principal Act, by this Act-

(a) the jurisdiction to make inquiries and pass orders under subsection (2) of the said section 198; and

(b) the jurisdiction to entertain and decide suits under sub-section (4) of the said section, in relation to allotments referred to in sub-section (1) of the said section, made prior to the 28th day of June, 1968, shall continue to vest in the Assistant Collector-in-charge of the sub-division as if this Act had not been passed.

7. As has been noticed, before filing of the application for cancellation of the lease, another amendment was made in the Act, known as "U.P. Act No. 35 of 1970". In view of section 3 of this Act, the entire provisions contained in section 198 earlier have been substituted by inserting the following provisions:

3. Amendment of section 198--For section 198 of the principal Act, the following shall be substituted, namely: "198. Order of preference in admitting persons to land under sections 195 and 197--(1) In the admission of persons to land as sirdars or asami u/s 195 or section 197 (hereinafter in this section referred to as "allotment of law"), the Land Management Committee shall, subject to any order made by a Court u/s 178, observe the following order of preference:

(a) any educational institution recognized by the Director of Education, Uttar Pradesh or by the Board of High School and Intermediate Education, Uttar Pradesh or by a University and imparting instructions in or providing for research in agriculture, horticulture or animal husbandry;

(b) landless widow, sons, unmarried daughters and parents residing in the circle, of a person who has lost his life by enemy action while in active service in the Armed Forces of the Union;

(c) a person residing in the circle, who has become landless on account of his land having been compulsorily acquired under the provisions of any law relating to acquisition of land on or after the date of vesting;

(d) a landless person, residing in the circle, retired, released or discharged from service (other than service as an officer) in the Armed Forces of the Union;

(e) landless political sufferer residing in the circle who has not been granted political pension;

(f) a landless agricultural labourer residing in the circle and belonging to a

scheduled caste or scheduled tribe;

(g) any other landless agricultural labourer residing in the circle;

(h) a bhumidhar, sirdar or asami holding land less than 1.26 hectares (3.125 acres);

(i) any other person.

Explanation I--For the purpose of this sub-section-

(i) "landless" refers to a person who or whose spouse or minor children hold no land as bhumidhar, sirdar or asami; and except in clause (c), also held no land as such within two years immediately preceding the date of allotment; and

(ii) "agricultural labourer" means a person whose main source of livelihood is agricultural labour or assistance or participation with any person in the actual performance of agricultural operations on any land in consideration of a right to share in the produce grown on such land.

Explanation II--For the purposes of clause (e), "political sufferer" means a person who is certified by the Collector to have undergone either preventive detention or sentence of imprisonment (either as a substantive sentence or in default of payment of fine) for not less than three months for participation in any movement connected with the national struggle for Freedom during the period between 1930 and 1947.

(2) The land that may be allotted to-

(i) an education institution under clause (a) of sub-section (1) shall not exceed such area as together with the area held by it immediately before the allotment would aggregate to more than 5.04 hectares (12.50 acres);

(ii) any person under clause (b), clause (c), clause (d), clause (e), clause (f), clause (g) or clause (i) of sub-section (1) shall not exceed an area of 1.26 hectares (3.125 acres); and

(iii) any person under clause (h) of sub-section (1) shall not exceed such area as together with the land held by him as bhumidhar, sirdar or asami immediately before the allotment would aggregate to more than 1.26 hectares (3.25 acres).

(3) The Collector may of his own motion and shall on the application of any person aggrieved by an allotment of land inquire in the manner prescribed into such allotment and if he is satisfied that the allotment is irregular he may:--

(i) cancel the allotment and the lease, if any, and thereupon the right, title and interest of the allottee or lessee or any person claiming through him in the land allotted or leased shall cease, and such land shall revert to the Gaon Sabha, and

(ii) direct delivery of possession of such land forthwith to the Gaon Sabha after ejectment of every person holding or retaining possession thereof and may for

that purpose use or cause to be used such force as may be necessary.

(4) Every order passed by the Collector under sub-section (3) shall subject to the provisions of section 333, be final.

8. From the perusal of the clause (a) of section 14 of U.P. Act No. IV of 1969, it would transpire that the power of inquiry with respect to cancellation of lease referred in sub-section (1) of section 198 of the Act vested in Assistant Collector in-charge of the Sub-Division, has been substituted by mentioning the words, "the Collector." However, in view of section 23, as has been quoted above, with respect to sub-section (1) of section 198 of the Act, the power prior to 28.6.1968 shall continue to vest in the Assistant Collector in-charge of the Sub-Division, meaning thereby, for cancellation of lease executed prior to 28.6.1968, the power of cancellation shall remain in tact with the Assistant Collector of the sub division. This has further been substituted by the U.P. Act No. 35 of 1973 by substituting section 198 in toto in view of section 3 of the amended Act, where sub-section (3) has been inserted and as has been quoted above, the power of cancellation of lease has been conferred to the Collector while exercising his suo motu power or on an application filed by the aggrieved person.

9. On the bare reading of the aforesaid amendments and in view of the fact that the lease of respondent No. 5 was granted on 21.7.1973, it is doubtless that the power of cancellation of lease on the relevant date was vested in the Collector and not in Assistant Collector in-charge, therefore, order impugned passed by the Deputy Collector is without jurisdiction. It is settled law that the order passed without jurisdiction is nullity in the eye of law and no legal consequences can flow from such orders, as the jurisdiction can neither be assumed nor presumed nor conferred or acquired by acquiescence of the parties and the only fate of such order is that the order becomes void ab initio. Reference may be given to M.D., Army Welfare Housing Organisation Vs. Sumangal Services Pvt. Ltd., . Sarup Singh and Another Vs. Union of India (UOI) and Another, . and a Division Bench of this Court in the case of Committee of Management Shri Jawahar Inter College and another v. State of U.P. and others, (Special Appeal No. 164 of 2012 decided on 25.1.2012).

10. However, the question remains that although the order impugned in the revision, i.e., cancellation of the lease, is without jurisdiction, but it is apparent that the grievance of the petitioners, which is on merit, pointing out their-regularity in the process of allotment has never seen the light of the day. The right of seeking cancellation of the lease is a right conferred by the statute under sub-section (2) of section 198 of the Act at the relevant time and on the date when the application was filed, it was vested in Collector under sub-section (3) of section 198 of the Act.

11. I am of the opinion that once the irregularity in the process of allotment was pointed out by the aggrieved persons, i.e., the petitioners, it was incumbent upon the Assistant Collector in-charge, who was dealing with the matters, to

return the application for presentation before the Collector, who was competent to deal with such matters in view of amended sub-section (2) of section 198 of the Act vide U.P. Act No. IV of 1969 and in view of sub-section (3) of section 198 of the Act vide U.P. Act No. 35 of 1970, but the Assistant Collector in-charge had failed to return the application for presentation before the Collector and exercised power which was not vested in him. The learned Member, Board of Revenue although had held that the order passed by the Sub Divisional Officer is without jurisdiction, but he also failed in performing his duties being a supervisory authority of the Revenue Courts relating with such matters taking note of the statutory right conferred by the statute to the petitioner to seek cancellation of the lease in view of sub-section (2) of section 198 of the Act vide U.P. Act No. IV of 1969 and in view of sub-section (3) of section 198 of the Act vide U.P. Act No. 35 of 1970, by giving a liberty to the petitioners either to approach the Collector or by directing the Collector to look into the grievance of the petitioners on merit and pass an appropriate order on the application of the petitioners in accordance with law.

12. Sri Tyagi has submitted that the petitioner are not aggrieved persons within the meaning of sub-section (1) of section 198 of the Act and they do not fall in the eligibility zone for grant of lease and they have filed application only on the ground that on the leased land, their old trees are standing. This Court in the case of Munshi Vs. State of U.P. and Others, has held that the persons, who is in possession of the leased land and if the lease has been granted without evicting him in accordance with the provisions contained u/s 122-B of the Act, he can always be treated to be a person aggrieved and he can maintain the application for cancellation of the lease.

13. Reverting back to the facts of this case, as I have noticed and found that there can be no illegality in the order passed by the learned Member, Board of Revenue, so far as it is held that the order cancelling the lease by the Sub-Divisional Officer was without jurisdiction, but simultaneously, looking into the grievance of the petitioners on merit, which is still unredressed, this Court provides an opportunity to the petitioners to approach the Collector for cancellation of the lease granted in favour of the father of respondent Nos. 5/1 and 5/2.

14. In case such application is filed by the petitioners, along with a certified copy of the order of this Court, the Collector concerned is directed either to decide the application of the petitioners himself or by directing it to be decided by any other Additional Collector, as the case may be, without entertaining any objection to the limitation. The parties are at liberty to lead their evidence and advance their submissions before the Collector concerned. With the aforesaid observation/direction, this writ petition is disposed of.