
(2003) 11 AHC CK 0040
In the Allahabad High Court
Case No : C.M.W.P. No. 1966 of 1988

Ram Bahori and Another

APPELLANT

Vs

Gaon Sabha and Others

RESPONDENT

Date of Decision : 14-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 122B(4), 229B
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115C

Citation : (2005) 3 AWC 2112 : (2005) 2 AWC 2112 : (2005) 98 RD 656

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

Anjani Kumar, J.—Heard learned counsel appearing on behalf of the petitioners and the learned standing counsel representing the respondent Nos. 1 and 2 as well as learned counsel appearing for Gaon Sabha.

2. Petitioners aggrieved by the orders passed by the Prescribed Authority as well as the Revisional Authority under the provisions of Section 122B of the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the "Act") approached this Court by means of present writ petition under Article 226 of the Constitution of India.

3. The facts leading to the filing of present writ petition are, in short, that on receipt of a notice under Rule 115C of U.P. Zamindari Abolition and Land Reforms Rules, 1950, the petitioners filed their objections and have also instituted a suit u/s 229B of the aforesaid Act before the appropriate Court, copy of plaint of the suit is annexed as Annexure-1 to the writ petition. The Tehsildar concerned declared the petitioners to be unauthorised occupants of the land, which was the

subject matter of the suit. Aggrieved thereby, the petitioners preferred a revision before the Revisional Authority. Initially during the pendency of the revision before the revisional court, the petitioners made a representation before it that in view of the pendency of the suit filed u/s 229B of the aforesaid Act since the plots in dispute are the same and parties are also same, therefore, the proceedings of the revision may be stayed till the disposal of the suit, but the revisional court refused to decline the same. It is noteworthy to mention that during the pendency of the revision before the revisional court the suit, referred to above, filed by the petitioners u/s 229B of the Act has been decreed in favour of the petitioners and the petitioners have been declared asami of the plots in dispute. The said order of the trial court declaring the petitioners to the asami dated 23rd January, 1987 is annexed as Annexure-3 to the writ petition. It is contended by learned counsel for the petitioners that the aforesaid order dated 23rd January, 1987 was filed by the petitioners before the revisional authority, but the revisional authority without considering the effect of the aforesaid declaration made in favour of the petitioners dismissed the petitioners' revision. The petitioners thereafter filed an application for review of the aforesaid order dismissing the revision, as stated above, but the said application was also rejected by the revisional authority.

4. In view of the provisions of the Sub-section (4)(a) of Section 122B of the Act, since the petitioners have been declared asami, the order passed by the Tehsildar dated 16th October, 1986 and the order passed by the revisional court dated 5th May, 1987 dismissing the revision filed by the petitioners as well as the order dated 4th November, 1987 rejecting the application for review deserve to be quashed and are hereby quashed.

5. In the result, the writ petition succeeds and is allowed. The order passed by the Tehsildar dated 16th October, 1986 (Annexure-2) and the order passed by the revisional court dated 5th May, 1987 (Annexure-4) dismissing the revision filed by the petitioners as well as the order dated 4th November, 1987 (Annexure-5) rejecting the application for review are hereby quashed. However, on/the facts and circumstances of the/case, the parties shall bear their own costs.