(1996) 09 AHC CK 0142

In the Allahabad High Court

Case No : C.M.W.P. No. 201183 of 1996

Ram Dhiraj and Others APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 13-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 122B(4F), 195, 198

Citation : (1997) RD 324

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Advocate : Tripathi B.G. Bhai, for the Appellant;

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Heard the counsel for the Petitioners and the learned standing counsel representing the Respondents.

2. Perused the record.

3. Feeling aggrieved by the orders passed by the Additional Commissioner and the Board of Revenue in the proceedings initiated against the Petitioners under the provisions contained in Section 122B of the U.P. Zamindari Abolition and Land Reforms Act whereunder accepting the recommendation of the Additional Commissioner, the Board of Revenue, has, after setting aside the order passed by the Sub-Divisional Officer dated 27.3.90 remanded the case to the Sub-Divisional Officer for deciding the same in consonance with the provisions of law keeping in view the provisions of Section 122B(4F) of U.P. Zamindari Abolition and Land Reforms Act, they have now approached this Court seeking redress praying for the quashing of the order passed by the Additional Commissioner and the Board of Revenue.

4. The facts in brief, shorn of details and necessary for the disposal of this case

lie in a narrow compass. The Petitioners had moved an application dated 20.12.88 claiming benefits contemplated u/s 122B (4F) of the U.P. Zamindari Abolition and Land Reforms Act praying for the correction of the Tevenue entries in respect of the land in dispute and recording of their names as "Asankramaniya Bhumidhar" thereof. Proceeding on the basis of the report of the Lekhpal and the supervisor Kanoongo submitted to the Sub-Divisional Officer, the said officer had, indicating that the Petitioners were entitled to the benefits contemplated u/s 122B (4F) of the U.P. Zamindari Abolition and Land Reforms Act, directed for the correction of the revenue entry in respect of the land in dispute which was shown as ''Nat particultivable Banjar'' land in the name of the aforesaid persons showing them as ''Asankramaniya Bhumidhar Varg 2''.

5. Subsequent to the passing of the order dated 29.4.89 the Gaon Sabha passed a resolution dated 18.6.89 praying for the settling aside of the order dated 29.4.89 and initiated proceedings for the ejectment of the Petitioners. On the basis of the said resolution an application for the purpose was filed by the Gaon Sabha but the said application was rejected by the Sub-Divisional Officer observing that the order dated 29.4.89 was not liable to be disturbed leaving it open for the Gaon Sabha to proceed in accordance with law.

6. The Gaon Sabha thereafter filed a revision challenging the order of the Sub-Divisional Officer. The Additional Commissioner came to the conclusion that the entire proceedings culminating in the order dated 29.4.81 were hastely concluded without considering the real implications of the provisions contained in Section 122B (4F) of the U.P. Zamindari Abolition and Land Reforms Act and without realising that one of the plots viz. plot No. 136 had been recorded as Talab and a land of public utility in respect whereof no claim as put forward by the applicants could be entertained. It was also observed that the materials on the record did not lead to an inference that the Petitioners were continuing to be in possession of the relevant date. In the aforesaid view of the matter the Additional Commissioner recommended to the Board of Revenue for the setting aside of the order dated 29.4.89 with a direction to the Sub-Divisional Officer to hold an enquiry in the matter and in case the Petitioners satisfied the eligibility criteria provided for u/s 122B (4F) of the U.P. Zamindari Abolition and Land Reforms Act, in that event consider their claim for being recorded as Bhumidhar of the land in dispute.

7. The Board of Revenue vide its order dated 4.1.96 accepting the reference quashed the order dated 29.4.89 and remanded the case to the trial court with the direction that the matter in question be enquired into and be decided in consonance with the provisions of law keeping in view the provisions of Section 122B (4F) of the U.P. Zamindari Abolition and Land Reforms Act.

8. The learned Counsel for the Petitioners has urged that the Petitioners fell in the category of Scheduled Caste landless agricultural labourers as evident from the certificate of the Tahsildar dated 12.11.91, the correctness of which was never disputed and, therefore, the requisite eligibility criteria having been

satisfied, there could be no Justification for reopening the matter in regard to the entitlement of the Petitioners for being recorded as ''Asankramaniya Bhumidhar'' of the land in dispute. It has also been urged that no action at the instance of the Gaon Sabha in the matter relating to the setting aside of the order passed by the Sub-Divisional Officer dated 29.4.89 was called for as the requirement of paragraphs 128 and 131 of the Gaon Sabha manual had not been complied with and the observations made by the Commissioner in respect of plot No. 136 stood belied from the revenue entries on the record which did not indicate that the said plot was a Talab as it had been shown to have been under cultivation.

9. From the facts and circumstances brought on record, it is apparent that the entire claim of the Petitioners for their being recorded as ''Asankramaniya Bhumidhar'' of the land in dispute or in other words their claim in regard to their tenurial rights in the land in dispute was based on the provisions contained in Section 122B (4F) of the U.P. Zamindari Abolition and Land Reforms Act.

10. This Court had an occasion to consider the implications arising under the aforesaid provision in its decision in the case of Ramdin and Ors. v. Board of Revenue and Ors. 1994 RD 395, wherein the contention that if the requisite conditions contemplated u/s 122B (4F) of the Act were fulfilled, any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe has to be deemed to be admitted as bhumidhar with non-transferable rights of the land in his occupation, u/s 195 of the Act, notwithstanding the provisions contained in Section 198 of the Act or the Rules prescribed under the Act regulating the manner in which a person could be admitted as a Bhumidhar with non-transferable rights in respect of land vesting in the Gaon Sabha was held to be totally misconceived and not at all acceptable, clarifying that the deeming clause contained in Section 122B (4F) of the Act providing that it shall be deemed that the occupant had been admitted as Bhumidhar with non-transferable rights of the land in his occupation u/s 195 has to be treated to be confined in its operation to the proceedings contemplated u/s 122B of the Act, observing further that the right conferred under the deeming clause contained u/s 122B (4F) of the Act has to be taken so as to confer a right only made available to an unauthorised occupant of the land envisaged u/s 122B, who satisfied the eligibility criteria prescribed therein, to protect his possession and does not create a title in him.

11. As pointed out by this Court in its aforesaid decision, the fiction contemplated under the provision in question could not be deemed to create such right or title in favour of an occupant which could only accrue on the grant of the lease in accordance with the procedure prescribed u/s 198 of the Act and that it is only thereafter that such person could get the revenue entries in the record of rights (Khatauni) corrected and not merely on the basis of the statutory fiction in question.

12. This Court had approved of the decision of the Board of Revenue in the case of Rohit v. Rajaram 1982 AWC (Rev.) 75, wherein it was held that if a person is

not recorded in the revenue papers, he is not entitled to get his name recorded as tenure-holder by filing an application u/s 122B (4F) of the Act.

13. In the aforesaid view of the matter, the position that emerges on the facts and circumstances brought on record is that the order dated 29.4.89 which was manifestly illegal stands quashed by the Board of Revenue vide its order impugned in the present case. The question which arises, therefore, is as to whether in such a situation any interference by this Court is called for in the present proceedings under Article 226 of the Constitution of India when disturbing the impugned order will result in the revival of such a manifestly illegal order.

14. In its decision in the case of Ashok Kumar Pandey and Ors. v. Basic Shiksha Adhikari, Mau and Ors. Special Appeal No. 127 of 1992, decided on 22.4.92, a Division Bench of this Court had observed that powers in writ Jurisdiction should not be exercised to set aside one illegal order to restore another illegal order reiterating the view of another Division Bench of this Court in its decision in the case of S.K.J.P.K. Inter College v. District Inspector of Schools 1988 UPLBEC 739, pointing out that quashing of an order which amounted to putting premium upon and giving judicial imprimatur to another wrong, namely conferment of a right upon certain persons who were not entitled to it cannot be justified.

15. It is, therefore, obvious that the discretionary extraordinary jurisdiction envisaged under Article 226 of the Constitution of India should not be exercised for quashing an order though found to be erroneous in law when the quashing of such an order will result in the revival of another manifestly illegal order.

16. In the present case, no useful purpose will be served by interfering with the impugned order passed by the Board of Revenue as its ultimate result is that the manifestly illegal order dated 29.4.89 passed by the Sub-Divisional Officer stands quashed. The Board of Revenue has, however, remanded the case to the Sub-Divisional Officer for re-examining the controversy in the proceedings u/s 122B of the U.P. Zamindari Abolition and Land Reforms Act initiated against the Petitioners seeking their ejectment from the land in dispute keeping in view the provisions of Section 122B (4F) of the U.P. Zamindari Abolition and Land Reforms Act.

17. Considering the observations and the findings recorded by the Additional Commissioner which have not been disturbed by the Board of Revenue, it will be appropriate that the proceedings consequent upon the said order be concluded in accordance with the law in the light of the decision of this Court in the case of Ramdin (supra).

18. In view of my conclusions indicated hereinabove, this writ petition is dismissed with the observations made hereinabove.