

(1993) 01 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18645 of 1986

Ram Naresh Lal

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 12-01-1993

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 195, 198, 198(1), 198(4), 198(5)

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 173, 174, 175, 176, 177

Citation : (1993) 2 AWC 1123 : (1993) RD 233

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

Bench : Single Bench

Advocate : N.A. Khan, for the Appellant;

Final Decision : Dismissed

Judgement

R.K. Gulati, J.—The Petitioner is an Ex Registrar Kanungo Zaminia, who claims to be a landless freedom-fighter, and was allotted certain land vested in the Gaon Sabha Dildar Nagar, district Ghazipur for which a Patta was granted to the Petitioner. The allotment was made by the Land Management Committee in July, 1974. Subsequently the Collector, Ghazipur initiated proceedings u/s 198(4) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act") for cancellation of allotment as well as patta that had been made in favour of the Petitioner. By an order dated 7th February, 1982, the Collector cancelled the allotment/Patta. Against the order of the Collector the Petitioner unsuccessfully approached the Commissioner Varanasi Division in revision and thereafter the Board of Revenue U.P. at Allahabad. Feeling still aggrieved the Petitioner has preferred this writ petition

2. Having heard learned Counsel for the Petitioner, I find no substance in this petition.

3. Learned Counsel for the Petitioner contended that the reliance placed by the

Board of Revenue in Its order on the non-observance of Rule 174 of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 (for short "the Rules") was totally misplaced, inasmuch as the said Rule had been deleted from the Statute Book vide Notification No, 694/I-A-2-(11) 70, dated October 12, 1971 and It was not available to the Respondent on the date the impugned order was made, it may be observed that the allotment/Patta came to be cancelled on two grounds. Firstly, the Petitioner who was an employee in the Tensll had used his Influence to get the allotment/Patta in his name and secondly, the Petitioner was not eligible for the grant,

4. Section 198 of the Act provides an order of preference for admission of a person to land u/s 195 of the Act by the Land Management Committee. Landless freedom-fighter residing in the circle who has not been granted political pension, is listed under Clause (g) in the order of preference under which the Petitioner had staked his claim. Rules 173 to 177 of the Rules provide for procedure for allotment of the land. The Board of Revenue has found that in making the allotment in favour of the Petitioner, the provisions contained in Rule 174 of the Rules aforesaid were not observed and there was no evidence on record to show that the order of preference as contemplated u/s 198(1) of the Act was followed. Now what is contended before this Court on behalf of the Petitioner is that Rule 174 having been deleted from the Statute Book in the year 1971, its compliance was not necessary. It was cot disputed before me that compliance of Rule 174 aforesaid was not factually made. The submission that Rule 174 stood deleted by the Notification referred earlier is misconceived and factually Incorrect. By the said Notification the provisions of Rule 174 were one deleted but were, in fact, substituted which continue to exist in the Statute Book In its present form. There is no substance in this submission, which is accordingly, rejected.

5. It was next contended that the proceedings for cancellation of Patta/allotment were taken beyond the prescribed period of two years. Therefore, the impugned order was without jurisdiction. In this connection, learned Counsel for the Petitioner placed reliance on Sub-section (6) of Section 198 of the Act. It was urged that action could have been taken within two years of the date of allotment and not beyond that period.

6. Before proceeding further, it may be noticed that Sub-section (4) of Section 198, Inter-alla, authorises the Collector on his motion or on the application of any person aggrieved by the allotment of land to Inquire in the manner prescribed, Into such allotment and if he is satisfied that the allotment is Irregular, he may cancel the allotment and the lease if any Sub-section (5) of Section 198 provides for show cause notice before any action Is taken as contemplated u/s 198(4) of the Act. It says that no order for cancellation of an allotment or lease shall be made under Sub-section (4) unless a notice to show cause is served on the person in whose favour the allotment or lease was made or on his legal representatives. There is a proviso attached to that provision with which we are not concerned. Then comes Sub-section (6) of Section 198 which is

very material for the purposes of this case. That provision prescribes the time limit within which the show cause notice contemplated under Sub-section (5) is to be issued-The said provision in Its present form reads as under:

Section 198(6) "Every notice to show cause mentioned in Sub-section (5) may be issued:

(a) in the case of an allotment of land made before November 10, 1980 (hereinafter referred to as the said date), before the expiry of a period of seven years from the said date; and

(b) in the case of an allotment of land made on or after the said date, before the expiry of a period of five years from the date of such allotment or lease, or up to November 10, 1987 which ever be later.

7. It is necessary to point out that the period of "seven years referred in the above provision was substituted for "two years by the U.P. Act No. 24 of 1986 and it shall always be deemed to have been substituted. As the allotment In favour of the Petitioner was made in the year 1974, i.e. prior to November 10, 1980, his case is governed by Clause (a) of Sub-section (6) of Section 198 of the Act. Now on a plain reading of those provisions it is apparent that the show cause notice is to be given before the expiry of the specified period from the said date which in term of Section 198(6)(a) is November 10, 1980. There is no room for the contention that the show cause notice was to be issued within the time prescribed u/s 198(6) from the date of allotment or Patta Such a contention is repugnant to the plain and unambiguous language employed in the provisions under consideration and cannot be sustained. The expression "before the expiry of a period of seven years from the said date" employed in Clause (a) of Sub-section (6) of section 198 refers to November 10, 1980 where the allotment of the land had been made before that date. In the instant case, proceedings u/s 198 (4) of the Act were initiated well within two years of the relevant date, namely, November 10, 1980 and so was the show cause notice issued, as required by Sub-section (5) of Section 198 of the Act This is quite apparent from the impugned orders in which material dates have been referred. That apart, after the amendment was effected in Sub-section (6) of Section 198 of the Act by the U.P. Act No. 24 of 1986 substituting the period of seven years in place of two years and which shall always be deemed to have been substituted, the Petitioner has no legs to stand. Both the initiation of proceedings for cancellation and show cause notice were well within seven years even from the date of allotment in favour of the Petitioner. Considered from whatever angle the submission is without substance.

8. No other submission was made before me.

9. The petition is without any merit and is, accordingly rejected