

(1987) 03 AHC CK 0007

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 15548 of 1984

Ram Singh and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 30-03-1987

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 126

Citation : (1987) RD 203

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : V.S. Chaudhary, for the Appellant;

Judgement

K.P. Singh, J.—This writ petition arises out of proceedings u/s 122B of the UP ZA and LR Act.

2. It appears on the report of Lekhpal proceedings for ejectment of the Petitioners u/s 122B of the UP ZA and LR Act (hereinafter referred to as the Act) were initiated. In the aforesaid proceedings Lekhpal and Pradhan were examined who had deposed that the Petitioners were not in possession over the disputed land yet the Tahsildar through his Order dated 27.10.1983 ordered for ejectment of the Petitioners and also awarded damages to the tune of Rs. 957/- payable to the Gaon Sabha as is evident from Annexure II attached with the writ petition. Thereafter an application was moved that the arguments were not complete, therefore the matter may be fully heard and then decided. That application appears to have been dismissed on 28.11.1983 (See Annexure HI). Thereafter, the Petitioners preferred a revision petition which has been dismissed through the Order dated 23.4.1984 contained in Annexure V.A review petition was also filed which also failed. Aggrieved by the orders of the revenue courts the Petitioners have approached this Court Under Article 226 of the Constitution.

3. On 27.7.1986 a learned Single Judge of this Court has granted interim prayer to the Petitioners in the following words:

Meanwhile if damages awarded against the Petitioners have not already been realised, the same shall not be realised until further order of this Court.

4. This case came up for admission before me on 23.3.1987. The learned Counsel for the Petitioners has contended before me that the Petitioners were not in possession over the disputed land so no damages should be realised from them. If this relief is granted to the Petitioners, they shall be satisfied with their fate as they had never been in possession over the disputed land. I reserved the case on that day and directed it to be listed for orders on 30.3.1987.

5. After hearing the learned Counsel for the Petitioners in this case I think that no damages should be realised from the Petitioners in the facts and circumstances of the case mentioned above. In Hans Raj v. Gaon Sabha 1980 AWC 39 a learned Member, Board of Revenue, has indicated in his judgment vide para. 6 as below:

When the applicant did not claim possession damages could not have been imposed on the applicant in view of Rajaswa Anubhag-12 G.O. No. 8639/75-Sa-911 12-2384/75, dated 10.9.1975 and Board's Order No. 11693/G-5-639/73, dated 22.10.1975.

6. In another case Chhota Lai v. Gaon Sabha, reported in 1982 AWC 87 a learned Member, Board of Revenue has also indicated that when the trespasser asserted on oath that he had left possession of the disputed land voluntarily no damages could be imposed upon him vide Rajaswa Anubhag - 12 G.O. No. 8639/75-Sa-12-2884/75, dated 10.9.1975 and BO No. 11693/G-5-639/73, dated 22.10.1975.

7. Shri Girish Chandra Chaturvedi, Ayukt Avam Sachiv, Uttar Pradesh Administration also has issued communication to all the District Magistrates of Uttar Pradesh excluding districts Pauri Garhwal, Tehri Garhwal, Uttarakashi, Chamoli, Almora and Pithoragarh and in that communication he has said as below:

Kuchh sbroton se is sambandh ken yah prashna uthaye gaye hain ki atikraman hatao abhiyan men prarambhki gai bedakhli ki karyawahi ka nistaran swechhapurvak kabza hat jane ki dasa men kis prakhar kiya jai. In uthaye gaye prashno ke sambandh men mujhe nimnankit adesh jari karne ka nirdesh hua hai:

Anadhikrit kabzon ke ve mamle jinme abhi zamindari vinash niyamawali ke niyam 115-gha ke antargat karyawahi prarambh nahi hui hai swechcha se kabza hat jane ki dasa men hon prarambh nahi ki jayegi aur jin mamlon men karyawahi to prarambh ho chuki hai kintu abhi antim adesh nahi huye hain we mamle drop kar diye jayenge.

Anadhikrit kabzon ke jitne mamlon men kabiz vyakti swechha se kabza chhod denge unme khatauni ki shreni 4 men ankit indraz ki kharij karne ki karyawahi turant ki jay. Is prakhar se uplabdh karai gai bhumi ka avantan shighrat apurvak kara diya jai chahe khatauni men ankit shreni 4 ki pravisht ki kharij karne ka

adesh abhi na bhi huwa ho.

8. In another communication No.11693 from Secretary, Board of Revenue, U.P. Lucknow, dated 22.10.1975 vide paragraph 3 it has been indicated as below:

Krishi hetu bhumi abantan ki navin paddhati men yah bhi vyavastha hai ki Gaon Sabha bhumi par anadhikrit rup se kabiz vyakti yadi swechcha se kabza hata le to uske viruddha bedakhli tatha kshatipurti lagane ki karyawahi na ki jai. Is sambandh men shasan ne yah nishchay kiya hai ki yadi bedakhli ke mamle men antim adesh hone se purv jo vyakti swechchha se apna kabza hata leta hai uske viruddha kshatipurti lagane ki karyawahi na ki jai. Is silsile men shasnadesh sankhya 8639/75-Sa-12-2904/75, dinank 10 September, 1975 ki oar bhi dhyan akarshit kiya jata hai.

9. A suggestion has been made that the G.O. mentioned above cannot dilute provisions of the Act and if the ejectment of the Petitioners is covered by the provisions of the Act, the G.O. cannot confer any benefit upon the trespassers. In my opinion, the suggestion on behalf of the Gaon Sabha is of no avail. Chapter VII of the UP ZA and LR Act includes Section 122B as well as 126 of the aforesaid Act. The proceedings giving rise to the present writ petition had been initiated u/s 122B of the Act. The provisions of Section 126 of the Act read as below:

(1) The State Government may issue such orders and directions to the Land Management Committee as may appear to be necessary for purposes of this Act.

(2) It shall be the duty of the Land Management Committee and its office bearers to forthwith parry out such orders and comply with such directions.

10. In Tarachand v. Gaon Samaj Abdulla Nagar Urf Nonta 1964 AWR 1 a learned Single Judge of this Court held that the provisions of Para. 59 of the Uttar Pradesh Gaon Samaj Manual are mandatory. On the reasonings given in the aforesaid ruling it appears to me that the G.O. mentioned above would be covered by the provisions of Section 126 of the Act and the G.O. would be treated as directions under the Act and it should be respected by all concerned. It cannot be ignored by the revenue courts on the ground that the direction is against the provisions of the Act. To my mind the suggestion made on behalf of the Gaon Sabha in this connection has no merit.

11. It is true that the Petitioners are guilty of laches in pursuing their remedies. The orders of the revisional court cannot be assailed by the Petitioners on merits. The order of the Tahsildar contained in Annexure II attached with the writ petition is really against the G.O. mentioned above, therefore, the award of damages against the Petitioners is wholly unjustified in the facts and circumstances of the present case.

12. In the result, for the foregoing discussions the writ petition fails and is accordingly dismissed in limine but it is made clear that if the damages awarded by the Tahsildar have not been realised from the Petitioners as yet, the same shall not be realised from them. In case the damages have been realised from

the Petitioners it would be open to them to claim refund thereof in accordance with law. Parties shall bear their own costs.