
(1982) 05 AHC CK 0061

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 6346 of 1974

Ram Swarup

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 27-05-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 132, 195, 197, 198, 198(2)

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 173

Citation : (1982) AWC 505 : (1983) RD 97

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

Bench : Single Bench

Advocate : G.N. Sharma, for the Appellant; V.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Singh, J.—This writ petition arises out of proceedings for cancellation of lease in favour of the Petitioner on the ground that the Petitioner did not plant requisite number of trees over the disputed land and the disputed land was not let out to the Petitioner in accordance with law.

2. It appears that an application was moved by one Sohan Lal making complaint against the Petitioner. The Sub-Divisional Officer had taken action against the Petitioner and cancelled the lease under the provisions of Section 198(2) of the U.P. Zamindari Abolition and Land Reforms Act (See Annexure "A-1" attached with the writ petition). Thereafter, the Petitioner preferred an appeal which was also dismissed by the appellate court through its judgment dated 18-8-1970. Thereafter the Petitioner preferred a revision petition which has also been dismissed by the revisional court through its order dated 31-7-1974. Aggrieved by the judgments of the revenue courts the Petitioner has approached this Court under Article 226 of the Constitution.

3. The learned Counsel for the Petitioner has contended before me that the lease

was granted to the Petitioner in accordance with Para 53 of the Gaon Sabha Manual, hence the revenue courts had no jurisdiction to cancel the lease in favour of the Petitioner u/s 198 (2) of the U.P. Zamindari, Abolition and Land Reforms Act. In this connection it has been contended that the lease in favour of the Petitioner was not granted under the provisions of Section 195 or 197 of the UP ZA & LR Act, hence the provisions of Section 198 were not at all attracted to the facts and circumstances of the present case. It has also been contended that the violation of Rule 173 onwards was also not involved in the facts and circumstances of the present case as the lease in favour of the Petitioner was, granted under Para 58 of the Gaon Sabha Manual.

4. Second contention raised on behalf of the Petitioner is that on the complaint against the Petitioner, the Petitioner was liable to ejectment and proceedings should have been taken u/s 202 of the UP ZA & LR Act and in proceedings for cancellation of lease the authorities have wrongly ordered for ejectment of the Petitioner.

5. The learned Counsel for the Gaon Sabha has submitted in reply that the lease was granted to the Petitioner under the relevant sections of the UP ZA & LR Act. According to him the right conferred upon the Petitioner was that of an Asami, hence the lease was under the provisions of Section 195 of the UP ZA & LR" Act and the provisions of Para 58 of the Gaon Sabha Manual are only directions issued by the Government for carrying out the purposes of the Act, hence it is not correct to contend that the lease was granted under para 58 of the Gaon Sabha Manual and that it could not be cancelled under the provisions of Section 198 of the UP ZA & LR Act.

6. Secondly, he has submitted that both the remedies are open against the Petitioner. A suit could also be filed u/s 202 of the UP ZA and LR Act, and when the lease granted in favour of the Petitioner was not in accordance with law, proceedings could be taken u/s 198(2) of the UP ZA & LR Act and the Petitioner could be ejected under the provisions of Section 198 (3) of the UP ZA & LR Act. The learned Counsel for the Gaon Sabha has tried to support the judgments of the revenue courts.

7. I have considered the contentions raised on behalf of the parties. Para 58 of the Gaon Sabha Manual reads as below:

In villages in which the uncultivated area is 10 percent or less of the total area of the village the uncultivated land shall be reserved for planned use, i. e. for fuel plantation, fruit orchards, pastures and compost pits etc., and the Bhumi Prabandhak Samiti (Land Management Committee) should in no circumstances let out the same. Where, however, the uncultivated land in, a village exceeds 10 per cent of the total area of the village only that much of the cultivated land which is in excess of the 10 per cent of the total area of the village and is cultivable or capable of cultivation may be let out by the Bhumi Prabandhak Samiti (Land Management Committee) and the rest should be utilized for the

purposes mentioned above. The area of uncultivated land (10 per cent of the total area) so reserved for planned use shall be in addition to the area which was on the date of vesting already in use as abadi, cremation or burial ground, threshing floors, roads, pathways or was covered by ponds and tanks...

The Bhumi Prabandhak Samiti...

The Committee should also encourage...

Section 197 read with Section 132--The Bhumi Prabandhak Samiti (Land Management Committee) can let out lands of Gaon Sabha community orchards on the condition that the lessee consents to be responsible for the proper maintenance of the planted trees till such time as they become full grown as to preclude the land from being cultivated further. Such lessees would be asamis of the Gaon Sabha and would be liable to ejectment when the land becomes unfit for cultivation. If the Bhumi Prabandhak Samiti (Land Management Committee) so likes, it can get trees planted by the lessee by supplying seeds or saplings to him, whereafter the lessee shall cultivate the land on the above conditions. Sirdari rights shall not accrue to such lessees."

8. Para 58 itself indicates that the direction is concerning Section 197 read with Section 132. In this view of the matter I am unable to accept the contention of the learned Counsel for the Petitioner that the lease having been granted under Para 58 of the Gaon Sabha Manual, hence it could not be cancelled under the provisions of Section 198 (2) of the UPZA&LR Act. To my mind, the letting to the Petitioner was u/s 195 read with Section 132 of the UPZA & LR Act and the lease in favour of the Petitioner could be cancelled under the provisions of Section 198 (2) of the UP ZA & LR Act. On the findings of fact recorded by the revenue courts that the lease in favour of the Petitioner was not in accordance with rule 173 etc. and was also not in accordance with the provisions of Paragraph 58 of the Gaon Sabha Manual itself, and the lease in favour of the Petitioner was a collusive one, I think that the Petitioner has no good cause to press in the present writ petition and the writ petition deserves to be dismissed.

9. As regards the Petitioner's contention that he could be evicted only u/s 202 of the UP ZA & LR Act for not using the land for the purposes for which it was let out to him, I think that when the lease itself was not granted to the Petitioner in accordance with the provisions of Para 58 of the Gaon Sabha Manual and various rules of the UPZA&LR Act were not complied with while granting lease in favour of the Petitioner, the authorities could cancel the lease and in that connection the ejectment of the Petitioner could be ordered under the provisions of Section 198 (3) of the UP ZA & LR Act. When two remedies against a person are available and the revenue courts have adopted one of them, I think that they were within their jurisdiction and they have not patently erred in passing the impugned orders in any manner.

10. In the result, both the contentions raised on behalf of the Petitioner fail and the writ petition is dismissed. Parties are directed to bear their own costs.