

(1970) 04 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2350 of 1965

Ramanand

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 23-04-1970

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198(4), 331

Citation : (1970) 40 AWR 516

Hon'ble Judges : H.C.P. Tripathi, J

Bench : Single Bench

Advocate : S. Sharafat Ali, for the Appellant; S.C., K.L. Grover and Mohiuddin for opposite parties, for the Respondent

Final Decision : Allowed

Judgement

H.C.P. Tripathi, J.—Plot No. 66 area three and half Bigha situate in village Jaddupur, was recorded in village papers as parti land. The Land Management Committee of the village Dehaini executed a lease for the land on 6-6-1962 in favour of the Respondent Ghani.

2. The Petitioner filed objection u/s 198(2) of the UP ZA and LR Act praying for the cancellation of the lease on the ground that the land in dispute was for the public utility and the lease, granted by the Land Management Committee, was illegal. The Sub-Divisional Officer allowed the parties to lead the evidence and after hearing them he reached the conclusion that there was no valid publication before the lease was given; that the land was for public utility; that the Respondent was not a resident in that circle and as such was not competent to obtain its lease. Accordingly he passed an order cancelling the lease.

3. Respondent No. 3 came up in appeal before the Addl. Commissioner, Faizabad. The Addl. Commissioner was of the opinion that as the disputed land was entered as usar in the village papers; there was no satisfactory evidence to show that it was used as customary common pasture land; that all the provisions of

law were substantially complied with by the Land Management Committee in admitting the Respondent Ghani as a lessee to the disputed plot. Accordingly he allowed the appeal and set aside the order of cancellation passed by the Sub-Divisional Officer.

4 In revision the Board of Revenue agreed with the Addl. Commissioner that the requirement of the rule relating to publicity being given before allotment were substantially made and dismissed the revision.

5. This writ petition is directed against the orders of the Addl. Commissioner and the Board of Revenue.

6. The learned Counsel for the Petitioner has urged two points in support of this petition. It is contended that the said lease is invalid as the land being of public utility could not be let out. That the letting out of was without publication and Respondent No. 3 was not competent to obtain the lease. It has been urged further that under the law the order passed by the Sub-Divisional Officer cancelling the lease was not appealable.

7. Sections 195, 196 and 197 of the Act invest a right in the Land Management Committee to admit any person to certain classes of land. Section 198 Sub-clause (1) lays down the order of preference in admitting persons to land Under Sections 195 and 197. Section 198 sub Clauses (2), (3) and (4) read as follows:

Sub-clause (2). The Assistant Collector-in-charge of the sub-division may on his own motion and shall, on the application of any person aggrieved by an order of the Gaon Sabhi passed Under Sub-section (1), enquire in the manner prescribed into an allotment made Under Sub-section (1) and if he is satisfied that the Gaon Sabha has acted with substantial irregularity or otherwise than in accordance with the provisions of this Act, he may pass thereon such orders as he thinks fit.

Sub-clause (3). Where an Assistant Collector in-charge of the sub division cancels an allotment the right, title and interest of the allottee or any person claiming through him shall, subject to the provisions of Section (4), cease in the land allotted thereunder which shall revert to the Gaon Sabha and any person holding or retaining possession of such land shall be deemed to be a person who has encroached upon such land and shall be liable to ejectment in the manner prescribed.

Sub-clause (4). Any person aggrieved by the order of cancellation passed Under Sub-section (2) may institute a suit to establish the right claimed by him but subject to the results of such suit the order of cancellation shall be final.

8. Sub-clause (2) makes it incumbent on the Assistant Collector-in-charge of the sub division on the application of any aggrieved person to enquire in the manner prescribed into an allotment made by the Land Management Committee and if he is satisfied that the Gaon Sabha had acted with substantial irregularity or otherwise, he may pass thereon such orders as he thinks fit Where the Assistant Collector passes an order of cancellation under this sub-section, the person

aggrieved by the order of the cancellation may institute suit to establish the right claimed by him and subject to the result of such suit, the order of cancellation shall be final. Under Sub-section (4) the order of cancellation passed by Sub Divisional Officer is final subject to the result of the suit.

9. Section 332 read with Schedule II serial No. 20 provides that the objection against an order of the Land Management Committee relating to letting out of land shall be heard by the Assistant Collector in charge of the sub division and the court of first appeal shall be the Commissioner.

10. It is urged that this indicates that an order of cancellation passed on an objection raised to the validity of the lease shall be appealable to the Commissioner. I do not agree.

11. Sub-section (4) of Section 198 makes the order of the cancellation final subject to the suit. Therefore, if the objection filed by an aggrieved person is rejected by the Sub Divisional Officer, he can go up in appeal before the Commissioner in accordance with serial No. 20 Schedule II read with Section 331 of the Act. But where the objection has been accepted by the Sub Divisional Officer and the lease has been cancelled, no appeal lies against the order of the cancellation and the only remedy open to the lessee is to file a suit. That being so, I am of the opinion that the appeal before the Addl. Commissioner was wholly incompetent and the order passed by the Board is not sustainable.

12. There is another reason also why the order of the Addl. Commissioner cannot be maintained.

Rule 173 reads:

Whenever the Collector or the Local Authority, as the case may be, intends to admit any person to land u/s 195 or 197, it shall announce by beat of drum in the (limits of Local Authority) in which the land is situated the numbers of plots, their areas and the date on which admission thereto is to be made.

13. The trial court had given a finding that the number of plots and the area were not published in accordance with Rule 173 and Section 79 of the Gram Samaj Mannual. The Commissioner has not up set this finding but has observed that the procedure prescribed for the settlement of land had been substantially complied with. It is, therefore, obvious that Rule 173 and Section 79 of the Gram Samaj Mannual were not observed in making the publication and that perhaps was the reason that no one else except Respondent No. 3 appeared to take the land.

14. In the result this petition is allowed with costs which shall be paid by Respondent No. 3 and the impugned orders of the Addl. Commissioner and the Board are quashed. Petition allowed.