
(2016) 01 AHC CK 0142
In the Allahabad High Court
Case No : MISC. Single No. 5622 of 2006.

Rameshwar

APPELLANT

Vs

Board of Revenue U.P.Allahabad and Others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122-B (4-f),
229-B

Citation : (2016) 34 LCD 533 : (2016) 131 RD 323

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Pankaj Kumar Srivastava, Advocate, for the Appellant; C.S.C., N.P. Ojha, Niradesh Kumar Dixit and R.N. Gupta, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J. - Heard Sri Pankaj Kumar Srivastava for the petitioner and Sri N.P. Ojha for the respondents.

2. The writ petition has been filed against the orders of Sub Divisional Officer dated 25.6.2001, Additional Commissioner dated 12.4.2006 and Board of Revenue, U.P. dated 12.6.2006 passed in suit under Section 229-B read with Section 122-B (4-F) of U.P. Act No.1 of 1951(hereinafter referred to as "the Act").

3. The dispute relates to plot no.185/1340, area 0.053 hectare of village Islamabad, pargana Mohammadi, district Khiri. The land in dispute was allotted by the Land Management Committee to Ram Asarey, respondent-5. The allotment was duly approved by the Sub Divisional Officer by order dated 24.2.1976. Thereafter the petitioner filed an application under Section 198(4) of the Act for cancellation of patta. The application of the petitioner was dismissed by the Additional Collector. The petitioner challenged the aforesaid order in revision which was also dismissed by order dated 3.12.1998.

4. Thereafter the petitioner filed a suit under Section 229B read with Section 122-B(4-F) of the Act. The suit was contested by Ram Asarey before the trial court. The petitioner relied upon the narrative sent by Naib Tehsildar to Tehsildar dated 13.7.1994 for the purpose of Case No.240/125 under Section 198(4) of the Act and examined himself as PW-1, Durga Prasad son of Dori as PW-2 and Lalloo son of Umed as PW-3. The respondent on the other hand filed the order of Additional Commissioner dated 3.12.1998 passed in Revision No.656/94-95 and irrigation receipts of the order dated 1994, 1995 and 1996 and examined himself as DW-1 and Parasuram son of Sheetal Prasad as DW-2 and Ram Rakhan son of Mahaveer as DW-3. The Sub Divisional Officer after hearing the parties by order dated 25.6.2001 held that the petitioner claimed his possession since before 30.6.1975 but no evidence has been filed in this behalf. The only evidence of the petitioner is narrative sent by Naib Tehsildar to Tehsildar in which it has been stated that prior to 1994 the petitioner was in possession of the land in dispute and in the year 1994 he was dispossessed and allottee was given possession over it. From the statement of the witnesses of the petitioner, the possession over the land in dispute since 30.6.1975 was not proved. On the other hand from the evidence of the defendant his possession over the land in dispute was proved. Although State of U.P. and Gaon Sabha were impleaded as defendants in the suit but notices under Section 80 CPC and under Section 106 of U.P. Panchayati Raj Act, 1947 were not given to them. On this finding the suit was dismissed. The petitioner filed an appeal registered as Appeal No.807/2000-2001 from the aforesaid order. The appeal was heard by the Additional Commissioner, who by order dated 12.4.2006 upheld the finding of the trial court and dismissed the appeal. The petitioner thereafter filed second appeal no.48 of 2005-06 against the aforesaid order, which has been dismissed by the Board of Revenue, U.P. by order dated 12.6.2006. Hence, this writ petition has been filed.

5. The counsel for the petitioner submits that Naib Tehsildar in his narrative has clearly mentioned that allottee were not in possession over the land in dispute at the time of allotment of land. The boundary marks of plot nos. 184 and 185 belonging to the petitioner as well as plot no.185/1340(disputed land) were not on the spot and the petitioner was in possession over the land in dispute. This report of Naib Tehsildar fully confirmed the possession of the petitioner, which was otherwise corroborated by the statements of independent witnesses Durga Prasad and Lallo but the courts below have illegally ignored the evidence on record and findings of the courts below are illegal.

6. I have considered the arguments of the counsel for the petitioner.

7. So far as the narrative of Naib Tehsildar dated 30.7.1994 is concerned, it is not evidence and no reliance can be placed upon it. In this narrative itself Naib Tehsildar has mentioned that the land in dispute was falling within the limits of municipality as such the land would vest in municipality and no right under Section 122B(4-F) of the Act can accrue to the petitioner on such land.

8. So far as the oral evidence are concerned, the petitioner adduced two

witnesses while Ram Asarey also adduced two independent witnesses. All the three courts have relied upon the statements of the witnesses of Ram Asarey. Thus, findings of fact recorded by the revenue courts on appreciation of oral evidence cannot be re-appreciated by this Court nor a different finding can be recorded by this Court. The petitioner has failed to prove that the findings of fact recorded by the court below are vitiated, in any way.

9. The counsel for the petitioner relied upon a judgment of Supreme Court in Manorey alias Manohar v. Board of Revenue, U.P. and others, 2003(21) LCD 1075 and contended that the right under Section 122-B (4-F) of the Act is a statutory right and the authorities are bound to give effect to. In this case the authorities found that the petitioner has failed to prove his possession before the relevant date. Thus no right can be given to the petitioner. The writ petition has no merit and it is dismissed.