

(2019) 06 UK CK 0111

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2801 Of 2015

Sadbhavi Phal Evam Subzi Kalyan Samiti

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 25-06-2019

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39
Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 — Section 117, 122B, 122B(4E), 122B(4F), 131, 131A, 131B, 132, 197, 197(2)
Uttar Pradesh Zamindari Abolition And Land Reforms Rules, 1952 — Section 176A(2)
Uttar Pradesh Town Improvement Act, 1919 — Section 42
Uttar Pradesh Municipalities Act, 1916 — Section 8

Citation : (2019) 06 UK CK 0111

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : M.S. Tyagi, Vikas Bahuguna, Vinay Garg, Rahul Consul, Mukesh Rawat, S.S. Chauhan

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. This writ petition has been filed by a society called "Sadbhavi Phal Evam Subzi Kalyan Samiti". The members of the society, according to the petitioner, are landless labourers, though during the hearing the counsel for the petitioner clarified and said that all the members of the society do not belong to scheduled caste community. All the same, all the members are landless labourers.

2. There is a very strong objection raised at the bar by the counsel for the State that the writ petition of the present nature, which is ultimately for the determination of individual rights on a piece of land, cannot be maintained on behalf of an unregistered society. Individual members of the society are not before this Court or before the court below in the previous proceedings. All affidavits have been filed before the Court by one Ram Singh who claims to be

the Secretary of the Society. The counsel also apprehends that the society is a mere facade, as there isn't a bona fide representation on behalf of any landless, as is being made out.

3. All the same, purely in the interest of justice, this Court would examine the merits of the case, which has a long and chequered history.

4. Based on the report of revenue officials, such as Lekhpal, Revenue Inspector and Tehsildar, etc. dated 23.01.2000, 25.01.2000 and 28.01.2000, respectively, an order was passed by the "Gaon Sabha Brahmanwala" on 29.02.2000 under Section 39 of the U.P. Land Revenue Act, 1901 for changing the nature of the land (presently in dispute), from "river bed", as it was shown in the revenue records at the relevant time, to "banjar"*. The order dated 29.02.2000 has apparently been passed under the powers given to the Assistant Collector, under Section 33/39 of the U.P. Land Revenue Act, 1901.

5. Sections 33 and 39 of the U.P. Land Revenue Act, 1901 read as under:

"33. The annual registers. (1) The Collector shall maintain the record-of-rights, and for that purpose shall annually, or at such longer intervals as the [State Government] may prescribe, cause to be prepared an amended [register mentioned in Section 32].

* "Waste land"

The [register so prepared shall be called the annual register.

(2) The Collector shall cause to be recorded in the annual register -

(a) all successions and transfers in accordance with the provisions of Section 35; or

(b) other changes that may take place in respect of any land; and shall also correct all errors and omissions in accordance with the provisions of Section 39:

Provided that the power to record a change under clause (b) shall not be construed to include the power to decide a dispute involving any question of title.

(3) No such change or transaction shall be recorded without the order of the Collector or as hereinafter provided, of the Tahsildar or [the Kanungo].

(4) The Collector shall cause to be prepared and supplied to every person recorded as bhumidhar, whether with or without transferable rights, assami or Government Lessee a Kisan Bahi (Pass book) which shall contain -

(a) such extract from the annual registered prepared under sub-section

(1) relating to all holdings of which he is so recorded (either solely or jointly with others);

(b) details of grants sanctioned to him; and

(c) such other particulars as may be prescribed:

Provided that in the case of joint holdings it shall be sufficient for the purpose of this sub-section of Kisan Bahi (Pas book) is supplied to such one or more of the recorded co-sharers as may be prescribed.

(4-A) The Kisan Bahi (Pass book) referred to in sub-section (4) shall be prepared in such manner and on payment of such fee, which shall be realisable as arrears of land revenue, as may be prescribed.

(5) Every such person shall be entitled, without payment of any extra fee, to get any amendment made in the annual register under sub-section (2) incorporated in his Kisan bahi (Pass book).

(6) The State Government may make rules to carry out the purposes of this section, including, in particular, rules, prescribing the mode of reception in evidence, and of proof in judicial proceedings, of entries in the [Kisan Bahi (Pass Book)], and the mode of its revision and authentication up-to-date and for issue of duplicate copies thereof, and the fees, if any, to be charged for any of the said purpose.

(7) In this section, 'prescribed' means prescribed by rules made by the State Government.

(8) Nothing in sub-sections (4) to

(7) shall apply in relation to any area which is either under consolidation operations or under record operations."

"39. Correction of mistakes in the annual register. (1) An application for correction of any error or omission in the annual register shall be made to the Tahsildar.

(2) On receiving an application under sub-section (1) or any error or omission in the annual register coming to his knowledge otherwise, the Tahsildar shall make such inquiry as appears necessary and then refer the case to the Collector, who shall dispose it of, after deciding the dispute in accordance with the provisions of Section 40.

[Provided that nothing in this sub-section shall be construed to empower the Collector to decide a dispute involving any question of title.]

(3) The provisions of sub-sections

(1) and (2) shall prevail, notwithstanding anything contained in the U.P.Panchayat Raj Act, 1947."

6. A bare perusal of Section 33 and 39 of the U.P. Land Revenue Act, 1901 shows that these powers have been given to Tehsildar (now the Assistant Collector) merely for correcting any error or omission in the annual revenue register. By these powers, the Assistant Collector cannot change the nature of the land.

Moreover, there is also a serious contention on behalf of the counsel for the State that the order dated

29.02.2000 pertains to a different plot of land i.e. another "khasra" nos., and not to the land on which the petitioner claims their right. The fact, however, remains that both the "khasras" are situated in the same "Gaon Sabha Brahmanwala" and the land was at the relevant time under the management and control of "Gaon Sabha Brahmanwala".

7. Meanwhile, based on the order dated 29.02.2000, admittedly done under Section 33/39 of the U.P. Land Revenue Act, 1901, an application was filed by the petitioner society before the Assistant Collector for entering the name of the members of the petitioner society as bhumidhars, which was rejected by the Assistant Collector in Case No. 51/2002-03 by order dated 04.12.2003. The ground for rejecting the application were that -

(a) the petitioner society i.e. "Sadbhavi Phal Evam Subzi Kalyan Samiti" had no locus standi to move the application on behalf of its members for change the nature of the land from "river bed" to "banjar" claiming rights as bhumidhar,

(b) the land has been shown in the revenue record as "river bed" on which bhumidhari right cannot be granted and

(c) "Asamis" which is the status claimed by the member of the petitioner society are in any case yearly allottees of land, and such an allotment can be extended for a maximum period of five years and no further.

8. The order dated 29.02.2000 was challenged before the Additional Commissioner in Revision No. 7/2003-04, who remanded the matter vide order dated 2.02.2005. Subsequently, the Assistant Collector on 16.05.2006 passed an order giving bhumidhari rights to the members of the petitioner society. This order was challenged by the State Government in Revision No. 977/2005-06 before the Additional Commissioner. The Additional Commissioner vide order dated 12.06.2009, which is a detail order has set aside the order dated 16.05.2006, on grounds that the Assistant Collector has no jurisdiction to change the category of land under Section 33/39 of the U.P. Land Revenue Act, 1901. Pursuant to the order dated 12.06.2009, the State Government had issued show cause notices to the members of the petitioner society under Section 122B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 read with Section 176-A (2) of the Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952. Against the said notices, a writ petition was filed by the petitioner society being Writ Petition No. 1165 of 2009 (M/S), which was disposed of by a learned Single Judge of this Court vide order dated 13.08.2009 with the following directions:

"4. In the aforesaid facts and circumstances of the case, the learned Assistant Collector 1st Class, Dehradun is directed to club the cases, which were initiated against the petitioners under Rule 176A (2) of the Rules, with the proceedings under Section 33/39 of Land Revenue Act and shall decide the matter together in

view of the observations made in the revisional court's order dated 12.06.2009, preferably within a period of six months from the date of production of certified copy of this order."

9. Ultimately the Assistant Collector vide its order dated 14.06.2010 directed the eviction of the members of the petitioner society as they were the unauthorized occupants on the land. The land which vests with the State.

10. The petitioner society went in revision and the matter was again remanded back by the Commissioner vide order dated 30.09.2011. Thereafter, the Assistant Collector vide its order dated 17.08.2015 passed an order dismissing the application and directed that the name of the members of the petitioner society be deleted from the revenue records and the name of Nagar Nigam, Dehradun be recorded in the revenue record, as meanwhile the area which was earlier within the jurisdiction of "Gan Sabha Brahmawala" was included in the Municipal Corporation of Dehradun. The findings of the Assistant Collector were based on the fact that firstly the bhumidhari rights cannot be granted on a land falling in the category given under Section 132 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 i.e., inter alia, a land which is shown in the revenue record as "river bed" and secondly in any case "asami patta" ceases after a maximum period of five years as it is merely a temporary arrangement to cater to the need of the landless persons. Moreover, it was categorically held that under Section 33/39 of the U.P. Land Revenue Act, 1901, the nature of proceedings are only summary in nature and no rights are created that too the rights which will ultimately lead to bhumidhari rights!

11. Against the order dated 17.08.2015, the petitioner society filed a revision before the Additional Commissioner. The said revision was dismissed by the Additional Commissioner vide its order dated 26.10.2015. The revisional court additionally also came to the findings that the Assistant Collector is not empowered to change the category of land in view of para A-155-A of the Land Revenue Manual and since the land in dispute is recorded in the revenue record as river bed, which is a public utility land under Section 132 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, no bhumidhari rights can be given on such land. Aggrieved by this order dated 26.10.2015, the petitioner has filed the present writ petition.

12. The case of the petitioner before this Court is that the members of the petitioner society are landless agricultural labours and many of them belong to Scheduled Caste community and for the members of the Scheduled Caste community certain additional rights have been given in law which are in the nature of an exception. These rights have been violated. We shall first deal with this proposition i.e. whether the special rights given to the member of the Scheduled Caste or Schedule Tribe community under the law are being violated.

13. The provision of law being relied upon by the petitioner is contained in sub-section (4-F) of Section 122-B of the U.P. Zamindari Abolition and Land Reforms

Act, 1950, which reads as under:-

"122-B. Powers of the Land Management Committee and the Collector.

- (1) Where any property vested under the provisions of this Act in a Gaon Sabha or a local authority is damaged or misappropriate or where any Gaon Sabha or local authority is entitled to take or retain possession of any land under the provisions of this Act, the Land Management Committee or local authority, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(2).....

(3).....

(4).... (4-A).... (4-B).....

(4-C)..... (4-D)..... (4-E).....

(4-F). Notwithstanding anything in the foregoing sub-sections, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in 132) having occupied it from before [May 13, 2007] and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and [he shall be admitted as bhumidhar with non-transferable rights of that land under Section 195 and it shall not be necessary for him to institute a suit for declaration of his rights as bhumidhar with non-transferable rights in that land.

Explanation. - The expression "agricultural labourer" shall have the meaning assigned to it in Section 198"

(emphasis provided)

14. Section 131, 131-A and 131-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 describe the category of land and the process where bhumidhari rights accrue or given. The nature of land on which no bhumidhari rights can be given are given in Section 132 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, which reads as under:

"132. Land in which [bhumidhari] rights shall not accrue. - Notwithstanding anything contained in Section 131, but without prejudice to the provisions of Section 19, [bhumidhari] rights shall not accrue in -

(a) pasture lands or lands covered by water and used for the purposes of growing singhara or other produce or land in the bed of a river and used for casual or occasional cultivation;

(b) such tracts of shifting or unstable cultivation as the State Government may

specify by notification in the Gazette; and

(c) lands declared by the State Government by notification in the Official Gazette, to be intended or set apart for taungya plantation or grove lands of [Gaon Sabha] or a Local Authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause -

(i) lands set apart for military encamping grounds;

(ii) lands included within railway or canal boundaries;

(iii) lands situate within the limits of any cantonment;

(iv) lands included in sullage farms or trenching grounds belonging as such to a local authority;

(v) lands acquired by a town improvement trust in accordance with a scheme sanctioned under Section 42 of the U.P. Town Improvement Act, 1919 (U.P. Act VII of 1919) or by a municipality for a purpose mentioned in Clause (a) or Clause (c) of Section 8 of the U.P. Municipalities Act, 1916 (U.P. Act VII of 1916); and

(vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act V of 1954)."

15. Sub-section (2) of Section 197 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 prescribes as to manner in which the right to admit a person as 'asami' to a land is to be regulated. Section 197 of the Act reads as under:

"197. Admission to land mentioned in Section 132. - (1) The Land Management Committee with the previous approval of the Assistant Collector incharge of the sub-division shall have the right to admit any person as asami to any land falling in any of the classes mentioned in Section 132 where -

(a) the land is vacant land;

(b) the land is vested in the Land Management Committee; or

(c) the land has come into the possession of the Land Management Committee under Section 194 or under any other provision of the Act.

(2) Notwithstanding anything contained in any other provision of this Act, the right to admit any person as asami of tank, pond or other land, covered by water shall be regulated by the rules made under this Act."

16. Under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950, Rules have been framed known as "U.P. Zamindari Abolition and Land Reforms Rules, 1953. Section 176-A of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 reads as under:

"176-A. (1) On receipt of the list in Z.A. Form 57-B with the order of the Assistant Collector in-charge of the Sub-Division, the Chairman of the Land Management Committee shall call the person whose selection for allotment of

land has been approved by the Assistant Collector in-charge of the Sub-Division and shall furnish to him a certificate in Z.A. Form 58 executed by him. If the land sought to be allotted is a land referred to in Section 132, the person concerned shall be furnished with a certificate in Z.A. Form 59 and shall be asked to execute a counterpart in Z.A. Form 59-D:

Provided that no lease shall be made to an asami for a period exceeding five years."

(emphasis provided)

17. As we have seen an "Asami" cannot be given a land on lease beyond a period of five years, though an exception is created in a case of a person belonging to scheduled caste or scheduled tribe, under sub-section (4-F) of Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950, which has already been referred above. The admitted case of the petitioner throughout has been that its members who were landless had the status of "asamis", and that some of its members (not all) belong to scheduled caste community.

18. Sub-section (4-F) of Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 indeed creates an exception in favour of a person belonging to scheduled caste and scheduled tribe community to the extent that though the land management committee and the Collector has powers to evict an unauthorized occupant from the land, which vests with the "Gaon Sabha", but this cannot be done in the case of a member of a scheduled caste or scheduled tribe community, when the land he is occupying is covered under Section 117.

19. Learned counsel for the petitioner has relied upon the judgment of Hon'ble Apex Court in the case of Manorey alias Manohar v. Board of Revenue (U.P) and others reported in 2003 AIR (SC) 4102, where it has been held that a scheduled caste who is an unauthorized occupant of "Gaon Sabha" land is not liable to be evicted provided he fulfils the condition given in sub-section (4F) of Section 122-B. The reliance is placed on para 8 of the judgment, which reads as under:

"8. First, the endeavour should be to analyze and identify the nature of the right or protection conferred by sub-section (4F) of Section 122-B. Sub-sections (1) to (3) and the ancillary provisions up to sub-section (4E) deal inter alia, with the procedure for eviction of unauthorized occupants of land vested in Gaon Sabha. Sub-section (4F) carves out an exception in favour of an agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe having land below the ceiling of 3.125 acres. Irrespective of the circumstances in which such eligible person occupied the land vested in Gaon Sabha (other than the land mentioned in Section 132), no action to evict him shall be taken and moreover, he shall be deemed to have been admitted as Bhumidhar with non-transferable rights over the land, provided he satisfies the conditions specified in the sub-section. According to the findings of the Sub-Divisional Officer as well as the appellate authority, the appellant does not satisfy the conditions. If so, two legal consequences follow. Such occupant of the land shall not be evicted by taking

recourse to sub- secs. (1) to (3) of Section 122-B. It means that the occupant of the land who satisfies the conditions under sub-section (4F) is entitled to safeguard his possession as against the Gaon Sabha. The second and more important right which sub-section (4F) confers on him is that he is endowed with the rights of a bhumidhar with non- transferable rights. The deeming provision has been specifically enacted as measure of agrarian reform, with a thrust on socio-economic justice. The statutorily conferred right of Bhumidhar with non-transferable rights finds its echo in clause (b) of Section 131. Any person who acquires the rights of Bhumidhar under or in accordance with the provisions of the Act, is recognised under Section 131 as falling within the class of Bhumidhar. The right acquired or accrued under sub-section (4F) is one such right that falls within the purview of Section 131 (b)."

20. Undoubtedly, the above decision of the Hon'ble Apex Court clarifies the legal position of an exception being created in favour of a member of a scheduled caste or scheduled tribe community. All the same, this exception cannot be created in favour of a member of a scheduled caste or scheduled tribe community, who is in occupation of a land which vests with an urban or semi urban local body, and also where the nature of the land in occupation of a scheduled caste or schedule tribe is not of the category covered under Section 132 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. Admittedly, on the date, i.e. from when the petitioners claim their rights which is 29.02.2000, the land vested with the Municipal Corporation, Dehradun and not with a "Gaon Sabha", and secondly the land, in any case even this exception in favour of scheduled caste or schedule tribe cannot be created regarding a land which is in the nature of land described under Section 132, which the present land is.

21. In the present case the members of the petitioner society are ultimately claiming bhumidhari rights on a land which is a "river bed" on the records of the revenue. It is a land which comes under Section 132 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, on which bhumidhari rights can never be given, even to the members of the petitioner society who are of scheduled caste community. This is for two reasons: Firstly because sub-section (4-F) of Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 refers to an agricultural labourer belonging to scheduled caste or scheduled tribe, who is in occupation of a land vested in "Gaon Sabha", under Section 117 of the Act (not being land mentioned in Section 132). The admitted position in the present case is that by a notification/order of the Governor on 06.02.1999, the area of "Gaon Sabha Brahamwala" was included in the municipal corporation area as the Nagar Palika area during the expansion of the then existing Dehradun Nagar Palika to a municipal corporation and the area of "Gaon Sabha Brahamanwala" was included in the municipal corporation. Therefore on 29.02.2000, when the land was converted in favour of the members of the petitioner society under the provisions of Section 33/39 of the U.P. Land Revenue Act, 1901, it was not a land which was vesting with the "Gaon Sabha" but at the relevant time it vested with the Municipal Corporation, Dehradun. Sub-section (4-F) only speaks of a land which

is vested in "Gaon Sabha". This is for obvious purposes, as a land vesting with other authorities i.e. other than "Gaon Sabha", would ex facie mean the land is in an urban area, where provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 would by and large not apply. Secondly, in any case the rights can be created in favour of a member belonging to a scheduled caste or scheduled tribe community on the land which is under the management and control of the "Gaon Sabha" under Section 117 (not being land mentioned in Section 132), as the language of sub-section (4-F) of Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 clearly stipulates. The present land is of a category mentioned under Section 132 of the Act. Admittedly the land which has been converted in the present case is a land recorded as river bed, hence it comes under the category of section 132. While giving benefit to the members of the scheduled caste and scheduled tribe community under sub-section (4-F) of Section 122-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950, the entire Section 122-B has to be read in toto. Whereas sub-section (1) prescribes eviction from a property vested under the "Gaon Sabha" or a "local authority", sub-section (4-F) narrows down the category of the land to the one which is only vesting with the "Gaon Sabha". On this aspect, the learned counsel for the State has relied upon a decision of Allahabad High Court in the case of Rameshwar v. Deputy Director of Consolidation reported in (2002) All LJ 1746, where this distinction has been elaborated. The relevant provision would be para 8, which reads as under.

"8. Section 122 -B(1) of the Z.A provides for eviction from the land not only vested in a Gaon Sabha but also in a local authority i.e. to say sub-section (1) specifically refers to Gaon Sabha and local authority but Section 122-B (4-F) only provides for benefit over land vested in a Gaon Sabha. It does not refer to local authority. This shows that the benefit under Section 122-B(4- F) is available only in respect of land vested in Gaon Sabha and does not extend to land vested in the State or in any other authority apart from Gaon Sabha. The Board of Revenue in its two decisions (quoted below) has rightly taken the view that benefit under Section 122-B (4-F) can be given in respect of land vested in Gaon Sabha. Of course a person has to fulfil other conditions mentioned in that sub-section before the benefit can be given."

22. Additionally it has also been categorically held in the order dated 12.06.2009 passed by the Additional Commissioner that firstly the Assistant Collector could not have passed the order dated 16.05.2006 under Section 33/39 of the U.P. Land Revenue Act, 1901 as the proceedings contained in Section 33/39 of the U.P. Land Revenue Act, 1901 are summary nature of proceedings where power has been given only to make corrections of errors or omissions in the annual register. What is more important is that these powers have been given to the Collector and not to the Assistant Collector. Therefore the order was in any case without jurisdiction.

23. In view thereof, the contention of the petitioner cannot be accepted for

various reasons as stated above. The writ petition is therefore liable to be dismissed and is hereby dismissed.

24. Towards the end of the argument, however, the learned counsel for the petitioner Mr. M.S. Tyagi has apprised this Court that the land is being taken away from their possession for colonisation and he apprehends that it may be given in favour of property builders. It is hence made clear that this land can only be utilized for public purposes, and for no other purposes, as that is the mandate of law.