
(2011) 05 AHC CK 0313
In the Allahabad High Court
Case No : Writ C No. 795 of 2001

Sadhu

APPELLANT

Vs

Upper Aayukt (Prashasan) Varanasi and Others

RESPONDENT

Date of Decision : 23-05-2011

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198(4),
229B

Citation : (2011) 05 AHC CK 0313

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—List revised.

2. No one appears for the contesting Respondent.

3. Heard learned Counsel for the Petitioner.

4. Petitioner filed a suit u/s 229-B of U.P.Z.A. & L.R. Act in the form of suit No. 245 of 1993 against gaon sabha Majhva, Pargana Koasala Tehsil Pinda district Varanasi.

5. The matter related to gaon sabha plot No. 597 area 0.72 acres. The case of the Petitioner was that he was in possession over the land in dispute since before Zamindari abolition and during consolidation operation his name was directed to be recorded but it was not done. The S.D.O. Varanasi through judgment and decree dated 23.08.1995 decreed the suit, true copy of the judgment is Annexure 2 to the writ petition. In the judgment number of plot is mentioned at some places as 597, at some places as 698 and in the operative portion as 696. However, the area mentioned at every place is 0.72 acres. The S.D.O. decreed the suit merely on the ground that Petitioner had filed certificate of his possession before Zamindari abolition and Pradhan gaon sabha Chauhan Jeet

Singh had also appeared and in written form had confirmed the possession of the Petitioner since before Zamindari abolition. Gaon sabha land is not private property of Pradhans and by giving evidence favourable to the other side they can not deflect the gaon sabha property of which they are custodian.

6. Thereafter, Respondent Nos. 5 to 9 in this writ petition Sipahai and others filed a restoration application before the S.D.O. on 06.12.1997 stating therein that they were the allottees of the land in dispute from the gaon sabha. On the restoration application notices were issued to the pradhan and the Petitioner through registered post. The registered letter sent to the Petitioner returned with the endorsement of refusal. Ultimately through order dated 08.03.1999 restoration application was allowed after condoning the delay in filing the same and judgment and decree dated 23.08.1995 was set aside and suit was restored on its original number. The said order was passed by S.D.O. (Pinda) Varanasi.

7. Against the above order Petitioner filed revision being revision No. 123 of 1999. Additional Commissioner (Administration) Varanasi Division Varanasi dismissed the revision on 10.11.2000. Through this writ petition orders dated 08.03.1999 and 10.11.2000 have been challenged.

8. Learned Counsel for the Petitioner has argued that the allotment made in favor of Respondent Nos. s 5 to 9 was challenged by him in the form of case No. 26/44 u/s 198(4) of U.P.Z.A. & L.R. Act. Collector-Varanasi through order dated 5.12.2001 cancelled the allotments and it was directed that the name of the Gaon Sabha should be entered over the land in dispute. Copy of the said order has been filed along with rejoinder affidavit. No one has appeared on behalf of Respondent Nos. 5 to 9, hence, it can not be ascertained whether that order was challenged or not ? However, the said order was passed by the Collector and it was categorically mentioned therein that the property in dispute was gaon sabha property.

9. Prima facie it appears that gaon sabha property is open to loot and people are coming forward with fantastic cases. However, in this regard court is not expressing any final opinion.

10. Even the judgment and decree dated 23.08.1995 can not be said to be in accordance with law. Gaon sabha property can not be gifted to private persons in this manner. Very strong case will have to be made out for deleting the name of Gaon Sabha from revenue records. Moreover, as mentioned in Annexure 2, Petitioner himself stated before the S.D.O. that order in his favor had been passed during consolidation proceedings. The copy of the said order should have been filed before the S.D.O. It appears that in fact no such order was passed by the consolidation courts. The said assertion by the Petitioner clearly amounted to his admission that consolidation had taken place in the area in question. If during consolidation Petitioner did not raise any objection and no order was passed in his favor then Petitioner's case was clearly barred by Section 49 of U.P. Consolidation of Holdings Act.

11. If Pradhan is in collusion with a person who illegally wants to grab the gaon sabha property then any resident of the village may come forward for protection of the property of gaon sabha even if he has got no right. Accordingly, I do not find any error in the impugned order allowing the restoration application. Let the suit be decided afresh in the light of the observation made above.

12. Writ petition is dismissed.