

(2009) 08 AHC CK 0057
In the Allahabad High Court

Sanskritik Grah Nirman Sahkari Samiti Ltd. and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 219

Citation : (2010) 1 AWC 239

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Sri M.N. Singh learned Counsel for the petitioner and the learned standing counsel for the respondent Nos. 1, 2 and 3 and Sri Ajit Singh for the respondent No. 4.

2. The challenge is to the order dated 10.4.95 as upheld by the learned Commissioner in revision vide order dated 23.11.05 whereby the entries allegedly in favour of the petitioner have been expunged.

3. The contention advanced on behalf of the petitioner is that the petitioner society is in possession of plot Nos. 268M, 270M and 281M total area of 20 bighas and 3 biswas situate in Mauja Bingawan Pargana/Tahsil, Kanpur, district Kanpur Nagar. It is submitted that the land in question was recorded in the name of the tenure holder since 1359 fasli and the said tenure holder executed a sale deed in favour of one Umesh Chandra Bharadwaj. The said Umesh Chandra Bharadwaj had executed a registered sale deed in favour of the petitioner society in 1966 whereafter the petitioner society is in continuous possession of the land in dispute.

4. It is alleged that an ex parte report had been submitted by the revenue authority behind the back of the petitioner, and the S.D.M. vide order dated 10.4.95 directed the name of the petitioner society to be expunged from the revenue record. It is further alleged that the petitioner had no knowledge about

the same and after obtaining a copy of the khatauni they preferred a revision u/s 219 of the U.P.Z.A. and L.R. Act which has been dismissed.

5. The main contention raised on behalf of the petitioner is that even if the proceeding had been undertaken for expunging the name of the petitioner society then the same ought to have been done after giving an opportunity of hearing, and having not done so, the impugned orders are in violation of principles of natural justice.

6. The submission advanced is that long standing entries should not be ordinarily expunged summarily and at least an opportunity should be given before passing such an order. In support of his submissions learned Counsel for the petitioner has relied upon a decision in the case of Chaturgun and Others Vs. State of U.P. and Others,

7. Learned standing counsel and Sri Ajit Singh learned Counsel for respondent No. 4 contend that the entries in favour of the petitioner society are fictitious and manipulated inasmuch as they are not in possession of any valid title over the land and that the entries have been manipulated which were rightly expunged by the S.D.M. They further contend that there is no requirement for interference by this Court under Article 226 of the Constitution. It is further submitted that the nature of the proceeding being summary in nature, the petition should not be entertained against such an order.

8. Having heard learned Counsel for the parties and the submissions raised on their behalf, the petitioners have a remedy of getting their rights declared by filing a regular suit. Nonetheless, keeping in view the law laid down in the judgment referred to hereinabove, the order expunging the entries that have continued for decades together ought not to have been passed without putting the petitioner to notice.

9. In view of this no useful purpose would be served by keeping the writ petition pending before this Court. The impugned order dated 10.4.95 as well as the order of the learned Commissioner dated 23.11.2005 are hereby set aside. The S.D.M. respondent No. 3 shall be at liberty to pass a fresh order in accordance with law after giving an opportunity of hearing to the petitioner.

10. The writ petition is allowed. No order as to costs. Learned Counsel for the petitioner prays that the S.D.M. be directed to dispose of the matter expeditiously. The S.D.M., Kanpur Nagar shall proceed to conclude the proceedings as expeditiously as possible but not later than six months.