

(2013) 11 AHC CK 0153
In the Allahabad High Court
Case No : Misc. Single No. 2015 of 1994

Sarwari Begum and Others

APPELLANT

Vs

Mohd. Ashfaq and Others

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2014) 122 RD 178

Hon'ble Judges : Sibghat Ullah Khan, J

Bench : Single Bench

Advocate : Shafiq Mirza, for the Appellant;

Final Decision : Dismissed

Judgement

Sibghat Ullah Khan, J.—Heard Shri Shafiq Mirza, learned Counsel for the petitioners and perused the written submissions filed by him. All the petitioners are closely related with each other. Petitioner No. 2 Afroz Jahan is wife of Mohd. Shafi and petitioner Nos. 3 and 4 Mohd. Javed and Mohd. Hanif are sons of Mohd. Shafiq. Petitioner No. 1 Sarvari Begum is wife of Mohd. Nazeer and Mohd. Nazeer appears to be brother of Mohd. Shafiq. Each petitioner was allotted two acre land of Gaon Sabha. The allotment was approved on 15.8.1987. The subsequent Pradhan Mohd. Ashfaq respondent No. 1 in this writ petition filed application for cancellation of Patta. Tehsil report had also been filed regarding illegal allotment to the near relations of Pradhan. On the request of Mohd. Ashfaq both the matters were consolidated and registered as case No. 643/758 u/s 198(4) of U.P.Z.A. & L.R. Act. Mohd. Ashfaq v. Sarvari Begum. As far as cancellation application filed by Mohd. Ashfaq is concerned the objection of the petitioners was accepted by Chief Revenue Officer Gonda and it was held that as competent officer had not permitted him to file the case, hence, he could not file the case. However, Tehsil report had also come, hence, matter was decided on merit. Petitioners did not deny that they were very close relations of the Pradhan who made the allotment, however, as a counterblast they stated that respondent No. 1, the subsequent Pradhan had also made allotment to his

near relations.

2. In the report of Tehsildar it had been mentioned that over the land in dispute instead of agricultural activities sand was being dug. However, the C.R.O. Gonda who decided the matter on 12.9.1991 held that it was irrelevant for consideration of application for cancellation of Patta.

3. Thereafter the C.R.O. held that from the perusal of khataunis of the relevant time it was apparent that the opposite parties and their father had lot of agricultural land and they were not deserving persons. Accordingly, through order dated 12.9.1991 Patta was cancelled. Against the said order petitioners filed revision No. 6 of 1991-92 Board of Revenue dismissed the revision on 4.2.1994, hence, this writ petition.

4. The first and foremost point argued by the learned Counsel for the petitioners is that Tehsil authorities had made ex parte inspection and on the basis of that patta could not be cancelled. It was reported that in the inspection it was found that sand was being dug from the land in dispute. This point has actually been decided by the Courts below in favour of the petitioners and it has been held that at that ground patta could not be cancelled. Accordingly, the argument is misconceived.

5. It is experience of the Court that more often than not provision of allotment of Gaon-sabha land which is meant to benefit the lowest stratum of the society is utterly abused and only influential, wealthy people are allotted the land. Wife and two sons of the same person and probably his real brother have been allotted in total 8 acre land.

6. Petitioners admitted that they were very close relations of Pradhan. As far as the finding that petitioners and their father were having lot of agricultural land is concerned, it has nowhere been denied in the writ petition. In this regard reference may be made to paragraphs 11, 18 and 26. In para 26 it has specifically been admitted as follows:

That as far as Khatauni extract from 1395 to 1400 Fasli is concerned only 3.45 acres of land was recorded in the names of the husbands of petitioner Nos. 1 and 2 and in the names of father of the petitioner Nos. 3 and 4.

7. In the entire writ petition it has not been stated that petitioners were landless agricultural labourers. In para 30 of the writ petition it has been stated that that "It is not the case of opposite parties that they were persons of the category A to D mentioned in the aforesaid sections".

8. Accordingly, it is clear that petitioners admit that they were not agricultural labourers.

9. Under clauses c & d of section 198(1) of U.P.Z.A. & L.R. Act first landless agricultural labourers belonging to scheduled caste, scheduled tribes or other agricultural labourers are to be given preference. However, if in the entire village/

circle there is no landless agricultural labourer only then land can be allotted to a bhoomidhar residing in the circle and holding land less than 3.125 acres (1.26 hectares) as per Clause "e" Given the scale of poverty in the villages, there must be several landless agricultural labourers. Even among Bhumidhars under Clause "e" first land is to be allotted to those persons who possess either no land or less land in comparison to other tenure-holders. Similarly, if out of two landless persons, father of one is having agricultural land and father of the other has no agricultural land then the other person is to be preferred. Allotting the land by the Pradhan to his close relations is pure loot of the Gaon-Sabha property.

10. In a case in Dina Nath Vs. State of U.P. and Others, . I had held that grant of patta by Pradhan to his close relations was illegal. The Supreme Court approved the said judgment in Dina Nath Vs. State of U.P. and Others .

11. Accordingly, I do not find least error in the impugned orders. Writ petition is dismissed. Petitioner shall at once be evicted and for the period starting from the date of Patta, i.e. 1987 till actual eviction each petitioner shall be liable to pay damages to the Gaon-Sabha @ Rs. 2500/- per year which shall be recovered like arrears of land revenue.