
(2013) 11 AHC CK 0182
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 62918 of 2013

Shamsher Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2014) 1 ADJ 106 : (2014) 1 AWC 445 : (2013) 121 RD 872

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Dan Bahadur Yadav, for the Appellant; Amresh Singh, for the Respondent

Final Decision : Dismissed

Judgement

Amreshwar Pratap Sahi, J.—Heard learned counsel for the petitioners.

The petitioners have come up before this Court questioning the correctness of the orders passed cancelling the lease of the petitioners for plantation under the Government Order dated 30.12.1985.

The said Government order is stated to have been issued by the State Government u/s 126 of the U.P.Z.A. & L.R. Act, 1950.

The lease of the petitioners has been cancelled on the ground that according to the terms of the said Government order the plantation had to be carried out within three years which was not done and secondly the petitioners were not eligible persons as they are members of the same family owning more than 4 hect. of land.

2. Learned counsel for the petitioners submits that a complaint was made by a stranger, namely, respondent No. 6 and without verifying the facts the impugned order was passed ex parte.

3. Having considered the submissions raised, it appears that the order passed for cancelling the lease by the Sub Divisional Magistrate was passed on some

inspection report, according to which the trees had not been planted within the period of three years as envisaged in the terms of the lease, but at the time of inspection certain plants, recently placed in a part of the holding, were found. Secondly, it was also recited in the order that the petitioners belonged to the same family owning more than 4 hect. of land and were therefore not entitled for grant of such lease. The order recites that the notices had been dispatched to the petitioners and in spite of service they did not turn up to file any objections.

4. Sri Dan Bahadur Yadav, learned counsel for the petitioners submits that the said recital is absolutely wrong and the proceedings went ex parte, against which a revision was filed, which has been entertained and observations have been made on merits, yet the same has been dismissed as not being maintainable. He, therefore, contends that if an appeal is maintainable in terms of the Government order before the Collector then any observation made by the revising authority would militate against the petitioners if they file an appeal.

5. So far as the question of maintainability of an appeal is concerned, the observation made by the Commissioner is correct inasmuch as in terms of the said Government order the Collector is the authority who has the power to deal with any such matter in an appeal being filed against the order of cancellation. In the instant case, the petitioners themselves chose to file a revision.

6. If the lease has been granted under the Government orders which is relatable to Section 126 of the 1950 Act then it will fall within the meaning of a proceeding as contemplated u/s 333 of the 1950 Act and in such a situation the revision cannot be said to be suffering from a patent lack of jurisdiction. The Commissioner, therefore, has affirmed the order even though he has observed that an appeal can be filed in terms of the Government order.

In order to avoid any further litigation in the matter, I have proceeded to examine the contention on merits as well in relation to the claim of the petitioners of having planted the trees. For this learned counsel for the petitioners has relied on a report dated 23.9.2009 submitted by the Sub Divisional Officer, Pooranpur to contend that the trees were found in existence.

7. I have perused the said report, which indicates that upto 2009 no trees had been planted and the lease had been executed on 12.7.2006. It is at the time of inspection on 15.9.2009 that certain plants are said to be in existence over part of the land which were recently planted. The conclusion, therefore, drawn was that no plantation was carried out on the disputed land for three years as contemplated under the Government order. The finding of the Sub Divisional Magistrate which has been affirmed in revision is based on the said report. The petitioners have been unable to bring on record any other material contrary to the same to demonstrate that there was a physical existence of the trees over the disputed holding in the intervening period of three years.

8. Sri Yadav submits that receipts are available with the petitioners indicating that the petitioners had purchased saplings for being planted on the said land.

The existence of a receipt cannot be a proof of the existence of the trees or the sapling over the land in dispute which is dependent upon physical verification. The report dated 23.9.2009 is founded on a physical verification of the holding carried out on 15.9.2009. In the said circumstances, the receipts cannot be treated to be a proof in support of the physical existence of the trees that were supposed to have been planted within the period of three years.

Consequently, on merits as well the petitioners have been unable to make out any case for interference in the exercise of jurisdiction under Article 226 of the Constitution of India.

There is no merit in this petition. Dismissed.