
(1987) 03 AHC CK 0092

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 19127 of 1986

Shankar Saran and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B,
122B(4A), 122B(4D), 122B(4E), 333

Citation : (1987) 1 AWC 755

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : Prakash Krishna, for the Appellant;

Final Decision : Allowed

Judgement

K.P. Singh, J.—By means of this writ petition the Petitioners have prayed for quashing the order passed by the Tahsildar, Moradabad dated 3-1-1986 evicting the Petitioners from plot No. 1144/2 measuring Order 14 acres and also awarding damages to the tune of Rs. 10910/- as well as the order of Additional Collector, Moradabad dated 29th September, 1986 whereby the Petitioners revision petition has been dismissed.

2. Brief facts giving rise to the present writ petition are that the opposite party No. 2 had started proceedings u/s 122-B of the U.P. Zamindari Abolition and Land Reforms Act against the Petitioners in the year 1972 and the aforesaid proceeding was decided against the Gaon Sabha on 14-3-1972, as is evident from Annexure "1" attached with the writ petition. Thereafter the Gaon Sabha again started the proceeding u/s 122-B of the UP ZA and LR Act against the Petitioners and the same was withdrawn on 28-5-1985. Thereafter in the year 1985 again proceeding u/s 122-B of UP ZA and LR Act against the Petitioners has been initiated. The Petitioners contested the claim of Gaon Sabha on the ground that the proceedings against the Petitioners were barred by the principles of res

judicata and it had also been emphasised that there did not exist any rasta claimed by the Gaon Sabha and the proceedings giving rise to the present writ petition were initiated causing great harassment and mental agony to the Petitioners. Pleas of the Petitioners in the proceedings giving rise to the present writ petition have been contained in Annexure "4" attached with the writ petition. Annexure "5" and "6" are the orders passed by the opposite party No. 3 Tahsildar, Moradabad and the Additional Collector, Moradabad against which the Petitioners have approached this Court under Article 226 of the Constitution.

3. Learned Counsel for the Petitioners has contended before me that the revenue authorities have patently erred in giving judgment for opposite party No. 2 and against the Petitioners without appreciating that the termination of the earlier proceedings against the Petitioners would operate as final against the Gaon Sabha.

4. Second contention raised on behalf of the Petitioners is that the amount of damages awarded by the revenue authorities in the facts and circumstances of the case is highly excessive and arbitrary.

5. Third contention raised on behalf of the Petitioners is that there exists a bonafide question of title and Gaon Sabha has failed to establish its title to the disputed land and has unnecessarily harassed the Petitioners several times. The proceeding giving rise to the present writ petition is an abuse of the process of the Court, therefore, the impugned orders should be quashed.

6. Learned Counsel for the contesting opposite party Gaon Sabha has submitted that the revenue authorities rightly negated the claim of the Petitioners based on the principle of res judicate and that the amount of damages awarded against the Petitioners was not excessive and that the Petitioners have an alternative remedy, therefore, the impugned orders should not be interfered with.

7. I have considered the contentions raised on behalf of the parties and I have gone through the rulings cited by the learned Counsel for the parties. I think that the proceeding u/s 122-B of the U.P. Zamindari Abolition and Land Reforms Act against the Petitioners "at the instance of Gaon Sabha is really an abuse of the process of the Court. On 14-3-1972 the proceeding against the Petitioners was terminated on the following observations:

* * *

8. Again on 28-5-1975 the opposite party Gaon Sabha failed in its attempt of evicting the Petitioners from the disputed land as is evident from Annexure "3" attached with the writ petition.

9. No doubt the principle of res judicata would not apply to the facts and circumstances of the present case because the title to the disputed land was not finally decided between the parties at the earlier occasions. To my mind the order dated 14-3-1972 contained in Annexure "1" attached with the writ petition would be final between the parties in so far as it asked Gaon Sabha to seek its remedy

against the Petitioners in a competent court as bonafide question of title to the disputed land was involved between the parties.

10. A Division Bench of this Court in 1965 AWR 1 Tahsildar and Assistant Collector v. Rai Amar Nath Agarwal has indicated that an Assistant Collector had no jurisdiction to decide the proceedings u/s 122-B of the UP ZA and LR Act if bonafide question -of title was involved. The order dated 14-3-1972 contained in Annexure "1" attached with the writ petition does indicate that bonafide question of title to the disputed land between the parties was involved, therefore I think that the opposite party No. 2 Gaon Sabha has unnecessarily invoked the jurisdiction of the revenue courts in initiating proceedings u/s 122-B of the UP ZA and LR Act against the Petitioners. It is clearly an abuse of the process of the Court. It is well known by now that the orders in summary proceedings also attain finality between the parties yet adherence by the opposite party No. 2 to summary proceedings against the Petitioners in the facts and circumstances of the present case is wholly unjustified.

11. The revisional court in its order dated 29-9-1986 by placing reliance upon a number of revenue decisions has negated the claim of the Petitioners regarding the finality of the order dated 14-3-1972. The perusal of the rulings mentioned in the judgment would indicate that they are inapplicable to the facts and circumstances involved in the present case. It has not been disputed before me that the alleged trespass by the Petitioners over the disputed land is continuing from much before the year 1971, therefore, the revisional court has patently erred in holding that the order dated 14-3-1972 would not be final between the parties. The revisional court has placed reliance upon the ruling reported in 1986 AWC 37Bhanwar Singh v. Gaon Sabha but it has failed to appreciate the dictum of law laid down therein. In the facts and circumstances of the present case the disputed land is the same, the trespassers are the same and the period of trespass continues from much before 1971, therefore, the revisional court has patently erred in not dropping the proceedings giving rise to the present writ petition when at the earlier occasions such proceedings had been dropped twice.

12. As regards the amount of damages it appears that the revenue authorities have not examined the evidence while awarding damages to the tune of Rs. 10,910/- against the Petitioners. There is no discussion on the question of damages in the judgment of the Trial Court and the revisional court has indicated that the learned Counsel for the applicant in revision could not specify the amount of damages in the facts and circumstances of the present case.

13. It is noteworthy that a heavy burden lay upon the Gaon Sabha to prove the damages suffered by it with regard to the disputed land. The revenue court was required to determine the amount of damages in the light of the evidence on record. To me it appears that the revenue courts have not dealt with the evidence regarding damages in the present case. The fixation of damages appears to me quite excessive and arbitrary. On the aforesaid ground also the impugned judgment suffers from patent error of law.

14. During the course of arguments it has been suggested on behalf of opposite party Gaon Sabha that the Petitioners have an alternative remedy to establish their claim to the disputed land and the writ petition should be dismissed on this ground alone. Learned Counsel for the Petitioners has placed reliance upon the ruling reported in 1985 RD 295 Rata Prasad v. State of U.P. wherein Brother B.L. Yadav, J. has observed vide para 21 as below:

It does appear that the dominate object of enacting Section 122-B and particularly proviso to Sub-section (4-E) of Section 122-B of the Act is to provide speedy, expeditious and effective remedy for the ejectment of unauthorised occupants of Gaon Sabha land. The procedure contemplated by Sub-section (4-E) of Section 122-B was for avoiding unusual dilatory process and with the object of achieving the purpose of recovering possession without recourse to prolonged litigation in a regular suit. It is common knowledge that a regular suit takes long time commencing with the trial court, first appellate court, second appellate court and the leave petition being preferred before the Hon'ble Supreme Court. In pursuing revenue and civil suits several years could have elapsed before the possession could have been recovered. It is for this object that in case a person avails the remedy of preferring revision before the Collector, he has been deprived of the remedy of the suit. It was this mischief which the Legislature intended to avoid by incorporating the proviso to Sub-section (4-E) of Section 122-B of the Act.

15. In view of the aforesaid observations it has been submitted before me that the Petitioners have no remedy by way of [suit because they had preferred a revision petition and they have failed.

16. Learned Counsel for the Gaon Sabha has invited my attention to a decision in Civil Misc. Writ No. 17893 of 1986 Isam Singh v. A.D.M.M. Nagar, wherein Brother S.K. Mookerji has indicated as below in the last but one paragraph:

...In addition to the above ground, it is also relevant to mention that u/s 122-B(4-D) of the UP ZA and LR Act it is always open for the Petitioner to file a suit in a court of competent jurisdiction to establish the right claimed by him in the property in dispute.

17. Section 122-B(4-D) of the UP ZA and LR Act reads as below:

4-D. Any person aggrieved by the order of the Assistant Collector or Collector in respect of any property under this section may file a suit in a court of competent jurisdiction to establish the right claimed by him in such property.

4-E. No such suit as is referred to in Sub-section (4-D) shall lie against an order of the Assistant Collector if a revision is preferred to the Collector under Sub-section (4-D).

18. It is necessary to observe that when a person files a revision petition the order in revision petition would be final between the parties and the order of the Trial court i.e. Assistant Collector shall merge into the order of revisional court.

Therefore, after the decision in revision petition filed by the aggrieved party the aggrieved party will be required to file a suit against the order of the revisional court and the remedy under Sub-section (4-D) is against the order of the Collector.

19. I am unable to accept the contention of the learned Counsel for the Petitioners that the Petitioners have no alternative remedy to establish their claim to the disputed land in view of provisions of Section 122-B(4-E) of the Act. I think, that the Petitioners have an alternative remedy to seek their title to the disputed land because the order in revision has been passed by the Additional Collector and against his order a suit under Sub-section (4-D) of Section 122-B of the Act has been provided.

20. In *Thakuri Vs. State of U.P. and Another*, a learned Member has made the following observations vide para 6:

...If a revision is filed, before the Collector, regular suit will not be filed against the order of the Assistant Collector in view of the provisions of Sub-section (4-E) but the remedy of regular suit will be available against the order passed by the Collector in revision. By the ordinance revisions under Sections 333 and 333-A of the Act are barred against the order of the Assistant Collector or Collector, but the remedy of regular suit is made available to the aggrieved party against the order of the Assistant Collector or Collector as the case may be. The order passed by the Assistant Collector, 1st Class and Collector under amended Section 122-B of the UP ZA and LR Act are not revisable u/s 333 or Section 333-A of UP ZA and LR Act.

21. The bare reading of Section 122-B (4-D) and (4-E) of the Act indicates that there is some contradiction in the two provisions, The Collector is the revisional authority and against his order a suit has been contemplated under Sub-section (4-D). Thereafter, it is difficult to say that the order of the Assistant Collector which is merged in the order of the revisional court cannot be challenged in a regular title suit. The suggestion by the learned Member Board of Revenue to the effect that no suit against the order of the Assistant Collector shall lie during the pendency of the revision petition before the revisional court cannot be readily accepted because of the wording of the provisions of Sub-section (4-E). Had the Legislature intended so it would have expressed itself as below:

No such suit as is referred to in Sub-section (4-D) shall lie against an order of the Assistant Collector if a revision is preferred to the Collector under Sub-section (4-A) and is pending.

22. As I have indicated that the order of Assistant Collector would merge in the order of the revisional court, therefore, the aggrieved party would be required to file a suit against the order in revision, I am unable to agree with brother B.L. Yadav, J. that when an aggrieved party avails the remedy of preferring revision before the Collector, he would be deprived of the remedy of the suit. It would be better for the Legislature to make necessary amendments in Section 122-B of

the UP ZA and LR Act so as to clarify its intention in enacting Sub-section (4-E) of Section 122-B of the Act.

23. I have already indicated above that the proceeding u/s 122-B of the Act against the Petitioner giving rise to the present writ petition is clearly an abuse of the process of the Court in the circumstances; of the present case. The revenue courts have patently erred in entertaining the proceeding against the Petitioners at the instance of Gaon Sabha and their judgment also suffer from patent errors of law in determining the amount of damages against the Petitioners and also in assuming the title of the Gaon Sabha to the disputed land in a summary proceeding when Gaon Sabha did not establish its claim to the disputed land as directed through the order dated 14-3-1972 contained in Annexure "1".

24. As I have indicated above that the Petitioners have an alternative remedy against the impugned orders, but according to me opposite party No. 2 is guilty of the abuse of the process of the Court, therefore, I do not want to throw the writ petition on the ground of alternative remedy.

25. In the result the writ, petition succeeds and the impugned judgments of the revenue courts contained in Annexure "5" and "6" are hereby quashed and the proceeding u/s 122-B of the Act against the Petitioners is hereby dropped. It would be open to the opposite party No. 2 to seek its remedy in a regular title suit and establish its claim regarding the damages against the Petitioners in a competent suit. Parties are directed to bear their own costs.