
(2012) 11 AHC CK 0097
In the Allahabad High Court
Case No : Writ Petition No. 173 of 2008

Shanti Prakash

APPELLANT

Vs

Additional Commissioner and Others

RESPONDENT

Date of Decision : 08-11-2012

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B(4F)

Citation : (2012) 11 AHC CK 0097

Hon'ble Judges : Anil Kumar, J

Final Decision : Allowed

Judgement

Anil Kumar, J.—Heard Sri Sharad Dwivedi, learned Counsel for petitioner, learned State Counsel and perused the record.

Facts as submitted by learned Counsel for petitioner submits are that the petitioner belonging to scheduled caste community, land of a Gaon Sabha recorded in Revenue record as Gata No. 484 area 3150 by means of the order dated 9.10.1997, passed by the SubDivisional Magistrate, Mohan Lal Ganj, Lucknow after completing all the necessary formalities has been granted in his favour by way of Patta as per the provisions as provided under section 122B (4F) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act (hereinafter referred to as Act).

2. Thereafter the Pradhan of Gaon Sabha who has got ambiguity against the petitioner moved an application dated 16.9.2000 for recall of order granted of Patta in favour of the petitioner, in which an order 15.4.2005 has been passed by the competent authority thereby cancelling the Patta granted in favour of petitioner.

3. Aggrieved by the said facts, the petitioner filed a revision (Revision No. 396/20042005), dismissed by means of order dated 13.12.2007 (Annexure No. 1). Hence, the present writ petition filed by the petitioner for redressal of his grievances.

4. Learned Counsel for petitioner submits that the impugned orders passed in the present case are contrary to the record as the petitioner, fulfills all the necessary ingredients/conditions as provided under section 122B (4F) of the Act for order the Patta in his favour.

5. He further submits that the ground which was taken by the official respondents thereby cancelling the Patta granted in favour of the petitioner that he is not 14 years old at the time when the Patta was granted to him is also incorrect and wrong. In support of his argument, he placed reliance on the supplementary affidavit filed along with Civil Misc. Application No. 87782 of 2012 and on the basis of the averment as made in paragraph No. 3 of the said supplementary affidavit as well as documents which are annexed as Annexure Nos. SA1 and SA2. Accordingly, states that the ground for cancellation of Patta is totally incorrect and wrong rather contrary to record. Hence, the impugned orders under challenge are liable to be set aside.

6. Learned State Counsel on the other hand while supporting the impugned orders under challenge in the present case submits that as the petitioner does not fulfill the requisite criteria as given in respect to grant of Patta under section 122B (4F) of the Act, so the Patta granted in favour of petitioner correctly cancelled, so there no illegality or infirmity in the impugned orders, writ petition liable to be dismissed.

7. I have heard learned Counsel for parties and perused the record.

8. Admitted fact which emerged out in the present case are that in the year 1997 after completing all the necessary formalities/approval, SubDivisional Magistrate, Mohan Lai Ganj, Lucknow granted a Patta in favour of the petitioner under section 122B (4F) of the Act, cancelled by means of the impugned orders under challenge in the present writ petition on the ground that the petitioner does not fulfill the requisite criteria in respect to grant of Patta because as per receipt of "Vahya Rogi Ticket No. 18700 dated 30.1.2001 of Dr. Shyama Prasad Mukherjee Hospital", the age of the petitioner was not 14 years when the Patta was granted to him in the year 1997, however, the said facts prima facie appears to be contrary to the documents filed by the petitioner along with supplementary affidavit dated 24.9.2012 as annexed as Annexure Nos. SA1 and SA2 i.e. Marksheet of the Junior High Schools and the certificate issued by Head Master of the concerned institution inter alia stating therein that date of birth of the petitioner is 10.7.1997, thus, there is a dispute in respect to the date of birth of the petitioner at the time of grant of Patta in the year 1997 whether he is 14 years old or not. So, I feel that it will be appropriate, the said factual controversy should be decided by the revisional authority after providing adequate opportunity to the parties to lead evidence in support of their case.

9. For the foregoing reasons, the impugned order dated 13.12.2007 (Annexure No. 1) passed by Additional Commissioner, Mohan Lai Ganj, Lucknow is set aside and the matter is remanded to the said authority to decide the same in

accordance with law after giving ample opportunity to the parties concerned to lead oral/documentary evidence and hearing on merit. The said exercise shall be completed by the O.P. No. 1 expeditiously preferably within a period of four weeks from the date of receiving a certified copy of this order.

10. For a period of four months or till the decision is taken by the O.P. No. 1 whichever is earlier, parties are directed to maintain status qua as exists today.

11. With the above observations, writ petition is allowed.