

(1984) 08 AHC CK 0009

In the Allahabad High Court

Case No : Writ Petition No's. 6706, 6707, 6751 and 6755 of 1978

Shiv Lal

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 06-08-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 193, 198, 198(1), 198(2), 198(3)

Citation : (1985) AWC 17 : (1985) RD 66

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : S.D. Pathak, for the Appellant;

Final Decision : Allowed

Judgement

B.L. Yadav, J.—These four petitions under Article 226 of the, Constitution are directed against the order dated 24th April, 1978, passed by the Board of Revenue in proceedings u/s 198 of the UP ZA & LR Act (hereinafter referred to as the Act) for the cancellation of the lease deed dt. 18th May, 1970. These four petitions involve similar questions of law and facts, hence it is convenient to dispose them of by a common judgment.

2. The facts of the case in brief are that the Petitioners were granted lease by the Land Management Committee on 18th May, 1970. The said lease was mutated on 1st January, 1971. The Sub-Divisional Officer initiated proceedings for cancellation of the lease u/s 198(2) of the UP ZA and LR Act, (hereinafter referred to as the Act for the sake of brevity). A notice to this effect had been given to the Petitioner on 1st September 1973 that the lease granted in favour of the Petitioner was sought to be cancelled. The Petitioner opposed that notice and stated that the lease has legally been granted and Sub-Divisional Officer had no jurisdiction to initiate proceedings for cancellation of the lease, as the lease was granted on 18th May, 1970 and it is only the Collector who could initiate the

proceedings for cancellation in view of the provisions of Section 198 of the Act as it was then applicable.

3. The Sub-Divisional Officer on 29th September, 1974 held that he had got jurisdiction to initiate proceedings and he decided the controversy pertaining to cancellation of the lease in favour of the Petitioner. Against that order a revision was filed before the Additional Commissioner who, by his order dated 28th August, 1975, recommended to the Board of Revenue through a Reference that the Sub-Divisional Officer had no jurisdiction but the Board of Revenue by an order dated 24th April, 1978, while disposing of the Reference, held that the Sub-Divisional Officer had jurisdiction while the Collector has no such power to initiate proceedings for cancellation of the lease granted in favour of the Petitioner. The present petition has been filed with a prayer for a writ of Certiorari to quash this order of the Board of Revenue.

4. Sri S.D. Pathak appearing on behalf of the Petitioners has urged that in 1969 there was an amendment in Section 198 of the Act by U.P. Act No. IV of 1969, which came into force on 1st September, 1969. By this Amendment in Sub-section (2) thereof for the words, figures and brackets, "The Assistant Collector in Charge of the Sub-Division may, on his own motion, and shall on the application of any person aggrieved by an order of the Land Management Committee passed under Sub-section (1) enquire in the manner prescribed into an allotment made under Sub-section (1)", the words, figures and brackets, "The Collector may of his own motion and shall on the application of any person aggrieved by an allotment referred to in Sub-section (1), enquire in the manner prescribed into such allotment", were substituted. Similarly, in Sub-section (3) for the words, "An Assistant Collector in charge of the Sub-Division", the words "the Collector" were substituted.

5. The relevant statutory provision of Section 198 of the Act, in so far as it is relevant for the present controversy, is set out below:

The Collector may of his own motion, and shall on the application of any person aggrieved by an allotment of land, enquire in the manner prescribed into such allotment and if he is satisfied that the allotment is irregular, he may (i) cancel the allotment and the lease, if any and thereupon the right, title and interest of the allottee or lessee or any person claiming through him in the land allotted or leased shall cease, and such land shall revert to the Gaon Sabha; and (ii) direct delivery of possession of such land forthwith to the Gaon Sabha after ejectment of every person holding or retaining possession thereof and may, for that purpose, use or cause to be used such force as may be necessary.

6. As the lease deed was dated 18th May, 1970, (after 28th June, 1968), the aforesaid statutory provisions evince that it is only the Collector who could entertain the application for cancellation of the lease. A similar view was taken by Hon'ble T.S. Misra, J. (as he then was) in *Saeeddin v. Board of Revenue* 1982 AWC 836.

7. I have set out the aforesaid statutory provisions of the Act in detail just "Ex abundanti Cautela". The saving clause lays down that in case lease deed was executed before 28th June, 1968, in that event the Sub-Divisional Officer would have jurisdiction to entertain the application for cancellation, but as the lease deed was dated 18th May, 1970, hence only the Collector could entertain the application for cancellation of the lease, in view of the Amendment Act No. IV of 1969, amending drastically Section 198 of the Act. In the instant case proceedings for cancellation started and notice was served on the Petitioner on 1st September, 1973 and on 29th March, 1974, the Sub-Divisional Officer held that he had jurisdiction to entertain the application, his order was manifestly erroneous. It is Collector alone who has jurisdiction to entertain the application and not the Sub-Divisional Officer.

8. Sri K.B. Garg appearing for the Respondents urged that u/s 3(4) of the Act Collector has been "defined to include Assistant Collector in Charge of the Sub-Division, hence the Sub-Divisional Officer correctly entertained the application. This argument of Sri Garg proceeds on a misconception of the actual legal position and changes introduced by the Legislature in the definition of Collector u/s 3(4) of the Act. The relevant portion of the original Notification is being set out below:

9. Notification No. 1756/1-A-1073-53 published in the U.P. Gazette dated 10-6-1953:

In exercise of the powers conferred by Clause (4) of Section 3 of the UP ZA and LR Act, 1950 (U.P. Act No. 1 of 1951), the Governor is pleased to empower all the Sub-Divisional Officers in U.P. except those in the districts of Almora, Garhwal, Tehri Garhwal and Rampur to discharge all the functions of the Collector under the said Act.

10. The aforesaid notification, however, was subsequently superseded by another Notification No. 365/1-A-2-1(2)-68 dated 5-12-68 which is reproduced below:

In exercise of the powers under Clause (4) of Section 3 of the UP ZA and LR Act, 1950 (U.P. Act No. 1 of 1951) and in supersession of Notification No. 1756-1-A-1073-53 dated 11-6-53, the Governor is pleased to empower all the Sub-Divisional Officers In U.P. to discharge all the functions of a Collector under the said Act, except those u/s 193 of the said Act.

11. In view of the aforesaid provisions it is abundantly clear that after December 5, 1968, even though the general powers of the Collector was to be exercised by the Sub-Divisional Officers in U.P., but the power u/s 198 of the said Act was to be exercised only by the Collector. Hence the power u/s 198 in connection with the cancellation of lease was to be exercised only by the Collector and not by the Sub-Divisional Officers, even though the definition clause provides that the word "Collector" may include Assistant Collector Ist Class, empowered by the State Government to discharge the functions of Collector. In view of the facts stated above, the Collector as specified in Section 198 of the Act to entertain the

application for cancellation of lease may not be in the sense of a Court, but certainly he has been entrusted special powers to adjudicate upon the legality or otherwise of a lease granted in favour of the tenure holders. He has been given power as "persona designata", which obviously means that the persons or authorities specially constituted are empowered to entertain and adjudicate upon a particular type of litigation.

12. The meaning of the "Court" has, however, been explained in Halsbury's Laws of England, IVth Edition, Volume X, page 313, Paragraph 701, which runs as follows:

Originally the term "Court" meant among other things the Sovereign's place. It has acquired the meaning of place where justice is administered and, further, has come to mean the persons who exercises judicial functions under the authority derived either directly or indirectly from the Sovereign. All tribunals however, are not courts in the sense in which the term is here employed. Courts are tribunals which exercise jurisdiction over persons by reason of sanction of law and not merely by reason of voluntary to their jurisdiction. Thus arbitrators, committees of clubs and the like, although they may be tribunals exercising judicial functions are not "courts" in this sense of the term.

13. In this connection I turn next to consider some decided cases having bearing on the subject. In *Shri Virindar Kumar Satyawadi Vs. The State of Punjab*, Venkatarama Ayyar delivering the judgment of the Supreme Court observed as follows:

It is a familiar feature of Modern legislation to set up bodies and tribunals, and entrust to them work of a judicial character, but they are not Courts in the accepted sense of that term, though they may possess, as observed by Lord Sankey L.C., In *Shell Co. of Australia v. Federal Commr. of Taxation* 1931 AC 275 296 (A), some of the trappings of a Court. The distinction between Courts and tribunals exercising quasi-judicial functions is well established, though whether an authority constituted by a particular enactment falls within one category or the other may, on the provisions of that enactment, be open to argument.

... ..

It is unnecessary to traverse the same grounds once again. It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it.

14. It is sufficient to indicate that here u/s 198 of the Act the Collector is "persona designata" which means specially empowered tribunal and it has been given jurisdiction to entertain applications for cancellation of the lease and to decide the controversy between the parties on merits after taking relevant

evidence from the parties and after hearing them. Hence that power cannot be deemed to have been delegated to the Sub-Divisional Officers simply because Section 3(4) of the Act, the definition clause indicates that "Collector" includes Sub-Divisional Officer or the Assistant Collector First Class.

15. In view of the discussion made above, the aforesaid connected writ petitions succeed and are allowed. A writ of Certiorari is issued quashing the orders dated 24-4-78 passed by the Board of Revenue and the order dated 29-3-74 passed by the Sub-Divisional Officer, Naraini, Banda (Writ Petition No. 6706 of 1978 Sheo Lal v. Board of Revenue, U.P. the order dated 24-4-78 passed by the Board of Revenue and the order dated 28-8-75 passed by the Additional Commissioner, Jhansi Division, Jhansi and the order dated 29-3-74 passed by the Sub-Divisional Officer Naraini, Banda (Writ Petition No. 6707 of 1978 Ram Babu v. Board of Revenue the order dated 24-4-1978 passed by the Board of Revenue and the order dated 29th March, 1974 passed by the Sub-Divisional Officer, Naraini, Banda (Writ Petition INO. 6751 of 1978--Raj Kishore v. Board of Revenue and the order dated 24th April 1978 passed by the Board of Revenue and the order dated 29-3-1974 passed by the Sub-Divisional Officer, Naraini Banda (Writ Petition No. 6755 of 1978 Hanuman v. Board of Revenue. In consequence thereof the proceeding initiated and pending before the Sub-Divisional Officer u/s 198(2) of the Act for cancellation of the lease in favour of the Petitioner are also quashed.

16. In the circumstances of the case, however, there shall be no order as to costs.

17. A copy of this judgment may also be placed on the connected files.