

(1989) 02 AHC CK 0068

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 831 of 1989

Smt. Mubarukunisha

APPELLANT

Vs

The Additional District Magistrate (Rural) and Others

RESPONDENT

Date of Decision : 23-02-1989

Acts Referred:

Uttar Pradesh Bhoodan Yagna Act, 1952 — Section 14, 15A

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198

Citation : (1989) 1 AWC 546

Hon'ble Judges : N.N. Mithal, J;A.N. Varma, J

Bench : Division Bench

Advocate : T.P. Singh, for the Appellant; Krishna Ji Khare, for the Respondent

Final Decision : Allowed

Judgement

A.N. Varma, J.—This petition is directed against the order dated 1st October, 1988 passed by the Additional District Magistrate, Allahabad in purported exercise of power u/s 15A of U.P. Bhoodan Yagna Act, 1952 cancelling the allotment of plot No. 97 measuring 2 bighas 18 biswas in favour of the Petitioner.

2. Shortly stated the relevant facts are that the Petitioner was allotted the aforesaid plot u/s 14 of the above mentioned Act. Respondent No. 2, Bal Mukund, made an application before the Additional District Magistrate, Allahabad claiming that the land belonging to him is in abadi, that the Petitioner wrongly got the same allotted in her favour even though she was neither a landless agricultural labourer nor was she a person whose main source of livelihood was agricultural labour or cultivation. On the contrary she was the wife of the Pradhan of the village who had extensive land measuring 20 to 22 bighas. It was further stated that the husband of the Petitioner had acquired more land and in support of this allegation various extracts of Khasra and Khatauni were filed.

3. On an application moved by Bal Mukund, the Additional District Magistrate called for a report from the Tahsildar who after making inquiry submitted a

report in favour of the Petitioner stating that she was a landless agricultural labour and that the land had been legally and properly allotted to the Petitioner.

4. The Additional District Magistrate by the impugned order cancelled the Patta executed in favour of the Petitioner on the ground that her husband owned agricultural land measuring 2 Bighas 13 Biswas and 12 Biswansis. That being so the Petitioner could not be characterised as landless agricultural labourer and consequently the allotment made in her favour was irregular and was liable to be cancelled. On this finding the Patta granted in favour of the Petitioner was cancelled by the impugned order and it was directed that the land would be deemed to have vested in Bhoodan Yagna Samiti.

5. Sri. T.P. Singh, learned Counsel for the Petitioner, has challenged the aforesaid order on the ground that in the first place the land belonging to the husband of the Petitioner could not be taken into account in determining, whether the Petitioner was, at the relevant time, a landless agricultural labourer. Secondly the land, referred to in the order as belonging to the Petitioner, was inherited by her husband after allotment was made in favour of the Petitioner. On both these counts it was alleged that the said land could not be taken into account in cancelling the Petitioner's Patta.

6. Sri. Krishna Ji Khare, appearing for the Respondent, on the other hand urged that several objections had been raised by Bal Mukund against the allotment of the disputed land in favour of the Petitioner. The first objection was that the disputed land was in abadi and that it did not and could not vest in Bhoodan Yagna Samiti. Secondly, the Petitioner could not be said to be a landless agricultural labourer as her husband possessed extensive land measuring 20 to 22 Bighas. It is urged that the Additional District Magistrate did not consider these objections and wrongly directed that the land to have vested in Bhoodan Yagna Samiti.

7. Having heard learned Counsel for the parties, we are of the opinion that the contention raised by the learned Counsel for the Petitioner that the land belonging to the Petitioner's husband could not be taken into account in determining the question whether the Petitioner was a landless agricultural labourer is well founded. The term "landless agricultural labourer" has been defined in the explanation added to Section 14 of the aforesaid Act which reads as under:

EXPLANATION

For the purposes of this section, the expression "landless agricultural labourer" means a person whose main source of livelihood is agricultural labour or cultivation and who at the relevant time either holds no land or holds land not exceeding 0.40468564 hectares (one acre) in Uttar Pradesh as bhumidhar, asami or Government lessee.

8. From this definition it is apparent that in judging whether the allottee holds

land in excess of the limit mentioned in the explanation one has to go entirely by the land held by that individual and not by his or her spouse or any other family members. We do not agree with Mr. Khare that in construing the explanation to Section 14, reference may be made to the term "landless" as defined in the explanation to Section 198 of the U.P. Z.A. and L.R. Act, 1950.

The U.P. Bhoodan Yagna Act 1952 is a special enactment and it comprehensively defines the term "landless agricultural labourer". That being so, there is no warrant for taking recourse to the definition of the term "landless" as given in the U.P. Z.A. and L.R. Act.

9. The Additional District Magistrate was, therefore, clearly wrong in taking into account the land held by the Petitioner's husband. In this view, it is unnecessary to go into the further question whether the said land was acquired by the Petitioner's husband before or after the relevant date-relevant for the application of U.P. Bhoodan Yagna Act.

10. The learned Counsel for the Respondent is, however, right in contending that the Additional District Magistrate did not address himself to the crucial question whether the Petitioner is a person whose main source of livelihood is agricultural labour or cultivation. The objection raised by Bal Mukund was that she was the wife of the Pradhan of the village who held extensive land. This plea necessarily implies that the Petitioner was not a person whose main source of livelihood was agricultural labour or cultivation. The Additional District Magistrate should, therefore, have examined this question in depth and come to a positive conclusion as to whether the Petitioner was, at the relevant time, a person whose main source of livelihood was agricultural labour or cultivation. This issue was relevant and material for proper disposal of the application/objection filed by Bal Mukund. The Additional District Magistrate should, therefore, determine this issue.

11. So far as the argument of Sri. Khare that the disputed land formed part of the village abadi and could not vest in the Bhoodan Yagna Samiti is concerned, that is an issue which we leave to the Additional District Magistrate to be determined in accordance with law. We may, however, note the contention of Sri. T.P. Singh in this connection. The submission was that Bal Mukund did raise this objection before the Naib Tahsildar and that the same had been decided against him. That being so, it is not open to Bal Mukund to raise such an objection at this stage in view of the Scheme of U.P. Bhoodan Yagna Act under which such an objection can not be raised now. This again is a matter which the Additional District Magistrate shall decide in accordance with law. If the issue is not legally shut out, the Additional District Magistrate will decide the objection raised by Bal Mukund.

12. In the result, the petition succeeds and is allowed. The impugned order passed by the Additional District Magistrate Allahabad is quashed. The Additional District Magistrate, Allahabad is directed to dispose of the case afresh according

to law having regard to the observations made hereinabove. Costs on parties.