
(1990) 01 AHC CK 0025

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 798 of 1987

Smt. Phoola Devi

APPELLANT

Vs

Board of India, U.P. and Others

RESPONDENT

Date of Decision : 01-01-1990

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 132
Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1976 —
Section 117, 122B(4F), 132, 195
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B

Citation : (1990) 1 AWC 418 : (1990) RD 170

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

Bench : Single Bench

Advocate : M.D. Mishra, for the Appellant; S.C. and Ramesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

M.P. Singh, J.—On the joint request of the parties the case is being disposed of finally today.

2. The dispute relates to plot No. 381 measuring 1.64 acres situate in village Sultanpur, Pargana Sikanderpur, Tebsil Rasra, district Ballia.

3. The proceedings u/s 122B of U.P. Zamindari Abolition and Land Reforms Act were initiated against the Petitioner. Both the parties led oral and filed documentary evidences. The Tebsildar passed an order of ejectment of the Petitioner from the said land and also directed him to pay Rs. 1476/- as damages. This order was affirmed by the revisional courts. The present writ petition is directed against those orders.

4. Heard counsel for both the parties.

5. The learned Counsel for the Petitioner contended that in this case Tehsildar while passing the impugned order has not taken into consideration the statement

of the Pradhan of the Gaon Sabha. He has only relied on C. H. Form 45 issued by the consolidation authorities in which the land was recorded in the name of Junior High School Sultanpur. The same mistake was committed by the revisional courts.

6. In order to appreciate the controversy, statutory frame work of Zamindari Abolition and Land Reforms Act is to be considered.

7. Sub-section (4F) was inserted in Section 122B of the Act by means of Amending Act 35 of 1976 and reads as follows:

122B(4F) "Notwithstanding anything in the foregoing Sub-sections, where any agricultural labourer belonging to a scheduled caste or scheduled tribe is in occupation of any land vested in a Gaon Sabha u/s 117 (not being land mentioned in Section 132) having occupied it from before June 30, 1985 and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar, or asami does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and it shall be deemed that he has been admitted as bhumidhar with non-transferable rights of that land u/s 195.

8. In this connection reference may be made to Section 132 of the Act which gives the details with regard to the land in which bhumidhari rights shall not accrue.

132(c)(iv) Lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act V of 1954).

9. From the examination of the said provisions and the Act, there is no difficulty in holding that no bhumidhari right shall accrue in favour of any person with regard to the lands set apart for public purposes under the Consolidation of Holdings Act. Accordingly, I hold that if the land has been reserved by the consolidation authorities for a school, the purpose of such reservation was for public purposes.

10. Admittedly in this case the land was recorded in the name of Junior High School. The word "public purposes" has been the subject matter of interpretation in the case of Ram Chandra Vs. The District Magistrate of Aligarh and Others, , according to which "public purposes" means a purpose which is to the benefit of the community in general. The phrase "public purpose" as was observed by Lord Dunedin in Hamabai Framjie Petit v. Secretary of State AIR 1914 PC 20 : 1939 Bom 279 at page 295:

Whatever else it may mean must include a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.

11. In another case reported in 1952 SC 252, State of Bihar v. Kameshwar

Singh, the Supreme Court while interpreting the phrase "public purpose" observed that it was unnecessary to state in express terms in the statute itself the precise purpose for which property is being taken provided from the whole tenor and intendment of the Act it could be gathered that the property was being acquired either for public purposes of the State or for purposes of the public and that the intention was to benefit the community at large.

12. In the instant case the courts below have not considered the oral evidence. This omission to consider the evidence vitiates the orders. Learned Tehsildar is directed to hear the case again and decide it afresh on the basis of oral and documentary evidence. The question of law decided by me regarding Sections 122B(4F) and 132(c)(vi) of the UP ZA and LR Act will not be a bar for him in the way in deciding the case on facts. In case he comes to the conclusion that the Petitioner had no right and order of the consolidation authorities recording the said land in the name of the school has become final, he may record the finding accordingly. He is free to decide it in accordance with law on merit irrespective of any observation in my order.

13. The orders of the courts below suffer from the error on the face of the record. Accordingly the writ petition succeeds and is allowed without any order as to the costs.

14. The case is remanded to the learned Tehsildar to decide afresh in view of the observations made above. Since it is an old case, he is directed to dispose of the same within a period of three months from the date of the presentation of a certified copy of this order.