
(2008) 02 AHC CK 0026
In the Allahabad High Court
Case No : C.M.W.P. No. 8981 of 2005

Smt. Prema Devi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Citation : (2008) 2 AWC 1503 : (2008) 2 UPLBEC 1491

Hon'ble Judges : V.M. Sahai, J; R.N. Misra, J

Bench : Division Bench

Advocate : Rajendra Prasad Tiwari, for the Appellant; A.N. Shukla and A.K. Mehrotra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai and R.N. Misra, JJ.—The Petitioner claims that she was in unauthorised possession over nazul land being plot No. 676 area 1.440 sq. ft. situate in a village Husainabad Pargana Haweli, Sadar, district Jaunpur. It was also claimed that a kachcha house of a Petitioner existed on the plot in dispute since 1981. The Petitioner belongs to Nishad (Mallah) caste which is a backward caste and since she was in possession for more than 24 years, therefore, the aforesaid nazul plot be made freehold in her favour in pursuance of Government orders dated 1.12.1998 and 10.12.2002. The Petitioner also made a representation to the District Magistrate on 11.4.2001. The Petitioner had deposited Rs. 32,400 on 27.3.2001 by means of a treasury challan. The Petitioner had also deposited Rs. 10,000 on 13.4.2004. She made a representation on 24.1.2005 to the District Magistrate, Jaunpur that she was in possession of the nazul plot and one Shri Kedarnath Jaiswal is trying to interfere in her possession, therefore, the plot be made free hold. This representation of the Petitioner dated 24.1.2005 had been rejected on 1.2.2005 by the District Magistrate, Jaunpur on the ground that under the master plan the plot in dispute was required for widening of the road therefore, the plot in dispute could not be made freehold and rejected the application of the Petitioner dated 13.2.2003.

The Petitioner has challenged the order dated 1.2.2005 by means of this writ petition.

2. We have heard Shri Rajendra Prasad Tiwari, learned Counsel for the Petitioner and learned standing counsel appearing for the Respondents.

3. It is not disputed by the learned Counsel for the Petitioner that the Petitioner was in unauthorised possession and occupation over the nazul plot and under the Government order the land in dispute could be made freehold. In para 6 of the counter-affidavit it has been stated that the land in dispute is a sadak pattri. It is required for widening of road under the master plan. The argument of learned Counsel for the Petitioner that under the Government orders dated 1.3.2006 and 10.3.2002 even person who are in unauthorised possession of the nazul land if they deposit the amount as required by the Government order, the land would be made free hold to them, as per the provision contained in aforesaid two Government orders. The Government orders dated 1.12.1998 and 1.12.2002 have been modified by Government order dated 4.8.2006 and it had been decided that unauthorised possession of persons on nazul land be not regularised and the earlier Government order was withdrawn. The Government order dated 4.8.2006 is extracted below :

4. From a perusal of the aforesaid Government order it is clear that no one can be granted freehold rights if one is in unauthorised possession over the nazul land.

5. Learned Counsel for the Petitioner has then urged that whatever land was required for widening of the road be taken and the rest land be made freehold to her in view of the Government order dated 4.8.2006. The application of the Petitioner has been filed as Annexure-2 to the counter-affidavit. The Petitioner himself has come up with a case that she was in unauthorised possession over the nazul plot therefore, no part of the land of the nazul plot, which is in unauthorised possession of the Petitioner can be made freehold. So far as the house of the Petitioner is concerned, which is a kachcha constructions and which has been made by the Petitioner unauthorizedly confers no right or title of the Petitioner. For the aforesaid reasons, we do not find any merits in the writ petition.

6. Learned Counsel for the Petitioner has lastly urged that the amount deposited by her for getting the nazul plot freehold may be refund to her. We are of the opinion that Petitioner is entitled for refund of the amount deposited by her.

7. This writ petition is disposed of with a direction to Respondents to refund the amount deposited by the Petitioner for getting the nazul plot freehold within a period of three months from the date of certified copy of this order is produced before the Respondent No. 2.