
(2008) 02 AHC CK 0040
In the Allahabad High Court

Smt. Vakila

APPELLANT

Vs

State of U.P. and Gaon Sabha/LMC

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 132, 198(4)

Citation : (2008) 2 AWC 1326

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Sri Sanjeev Kumar Pandey, learned Counsel for the petitioner.

By this writ petition petitioner has prayed for quashing the order dated 4.8.2006 passed by Additional Collector directing for cancellation of lease granted to the petitioner as well as the order dated 26.12.2006 passed by Additional Commissioner dismissing the revision.

2. The petitioner was granted lease by the approval of the Assistant Collector dated 14th August, 1991 along with several other persons. A report was submitted by Sub Divisional Officer, Modinagar dated 4th April, 2006 to the effect that by order dated 16th March, 1995 the land was allotted for agricultural whereas the land which has been allotted is a land of river and is for public utility within the meaning of Section 132 of U.P. Zamindari Abolition and Land Reforms Act, 1950 which could not be recorded. The recommendation was made for cancelling the lease. A case was registered and suo-moto exercise of power notices were issued to the petitioner. An objection was filed by the petitioner to the effect that the land was allotted by the Land Management Committee for agricultural purposes and it has wrongly been recorded as river in C.H. form No. 45 and it should be corrected as bhumidhari. It has further been stated that the name of petitioner was recorded as Asankramaniya bhumidhar and the petitioner

is in possession. The Additional Collector took a view that the land is a land within the meaning of Section 132 of U.P. Zamindari Abolition and Land Reforms Act, 1950, hereinafter referred to as "the Act", and the same could not have been allotted and the allotment is cancelled. The revisional court affirmed the order.

3. Learned Counsel for the, petitioner, challenging the order, contends that the petitioner is Asami of the land within the meaning of Section 132 of the Act and he has right to retain possession of the land as provided u/s 133 and 146 of the Act. He submits that even though the entry of Asankramaniya bhumidhar is there in the record in the name of petitioner but the petitioner is entitled to continue in possession. He further contends that the lease was not liable to be cancelled even if the land is recorded as river.

4. I have considered the submissions made by the learned Counsel for the petitioner and perused the record.

The petitioner himself has filed the extract of revenue entry of Kisan Bahi which is annexure-1 to the writ petition, which clearly indicates that petitioner is recorded as lease holder as Asankramaniya bhumidhar of the land in dispute. The petitioner in the objection has also claimed that he having allotted the land by the Land Management Committee, her name as Asankramaniya bhumidhar has rightly been recorded. It has been stated that in the consolidation record the land is still shown as river whereas said word "river" ought to have been corrected when the lease was granted to the petitioner.

5. The factual matrix, as emerge from the material on record, clearly Indicates that the petitioner's allotment of the land was not an Asami but the allotment was made as Asankramaniya bhumidhar which is recorded in record and which is specific case of the petitioner in the written objection filed to the reply of notice u/s 198(4) of the Act. Learned Counsel for the petitioner in his submissions, has tried to improve the case by relying on Section 132, 133 and 146 of the Act. On the land which is covered u/s 132 of the Act no bhumidhari right can accrue as laid down by Section 132 of the Act itself. It is true that certain lands which are covered u/s 132 of the Act can also be allotted as Asami by the Land Management Committee but by virtue of Section 197 Sub-section (2) of the Act the right to admit any person as Asmaiz of any tank, pond or other land, covered by water shall be regulated by the rules made under this Act. The allotment of tank, pond or other land are governed by the Government Orders issued u/s 126 of the Act. The present case is not a case where allotment has been made within the meaning of Section 197(2) of the Act. Government Orders with regard to allotment of tank, pond or other land covered by water. In the present case the Land Management Committee has exercised power u/s 195 of the Act in allotting the land to the petitioner. The Additional Collector has rightly come to the conclusion that the lease cannot be granted of land which is covered u/s 132 of the Act. The reference of Section 133 and 147 of the Act does not help the petitioner in the present case since petitioner is not granted Asami lease as

contemplated u/s 197(2) of the Act. Leaned counsel for the petitioner has tried to make submissions defending the title and right as Asami but there is no foundation for the above submissions.

6. There is one more reason for not accepting the above submissions of learned Counsel for the petitioner. Section 198 Sub-clause (9) of the Act contains the deeming clause with regard to any land specified in Section 132 as a sirdar or bhumidhar with non-transferable rights prior to a specified date. Section 198(9) of the Act quoted below:

198(9) Where any person has been admitted to any land specified in Section 132 as a sirdar or bhumidhar with non-transferable rights at any time before the said date and such admission was made with the previous approval of the Assistant Collector in charge of the sub-division in respect of the permissible area mentioned in Sub-section (3), then notwithstanding anything contained in other provisions of this Act or in the terms and conditions of the allotment or lease under which such person was admitted to that land, the following consequences, shall, with effect from the said date ensue, namely:

(a) the allottee or lessee shall be deemed to be an asami of such land and shall be deemed to be holding the same from year to year, and the allotment or lease of the land to the extent mentioned above shall not be deemed to be irregular for the purposes of Sub-section (4);

(b) the proceedings, if any, pending on the said date before the Collector or any other court or authority for all cancellation of the allotment or lease of such land, shall abate.

7. The above provision indicates that allotments, made prior to "said date" i.e., November 10, 1980, of land specified u/s 132 as sirdar or bhumidhar shall be treated to a asami year to year, thus, the above deeming clause comes in operation with regard to land allotted prior to November 10, 1980. The allotment to the petitioner in the present case is allotment which was made with the approval dated 14th August, 1991 subsequent to specified date. The Legislature itself confined deeming clause as Asami with regard to only those sirdar or bhumidhar who were allotted land prior to November 10, 1980. The said legal fiction or benefit cannot be extended to the allottees of land specified u/s 132 of the Act who were allotted land after the said date, i.e., November 10, 1980.

8. Thus, the petitioner's submission that he became Asami of the land specified u/s 132 of the Act, cannot be accepted. The allotment in favour of the petitioner, being allotment of land which was recorded as river, was illegal and has rightly been set aside. No grounds have been made out to interfere in the impugned order in exercise of writ jurisdiction by this Court. The petition is dismissed.