

(2003) 10 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 13122 of 1985

Sri Man Singh

APPELLANT

Vs

Addl. Collector, Tehsildar Jansath, Gaonsabha and Land
Management Committee

RESPONDENT

Date of Decision : 20-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Reserve Bank of India Act, 1934 — Section 2
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 115R,
115S, 122B, 122C, 131B
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115C, 115L,
115M, 115N, 115O

Citation : (2003) 10 AHC CK 0022

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : K.R. Sirohi, for the Appellant; K.B. Garg and V.K. Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. This petition has been filed for quashing the orders dated 30.7.1985 and 19.11.1984 passed in proceedings u/s 122-B of the U.P.Z.A. & L.R. Act by respondent Nos. 1 and 2 respectively.

3. Brief facts of the case are that a report under Rule 115-C of the U.P.Z.A. & L.R. Rules was submitted by the Lekhpal alleging that the petitioner has encroached upon one biswa and 4 biswansis land of plot No. 144 since 1391 Fasli which was the Gaon Sabha property. Notice in form 49-Ka was issued to the petitioner who filed his objection on 29.6.84 inter alia, stating that prior to 1972 the land belonged to Gaon Sabha. In the year 1972 plot No. 144 was allotted to several persons including one Zulfikar son of Rahamo who had put up a hut over the said land and had remained in possession over it for more than 11 years who

transferred the land and the hut to the petitioner in 1984 for Rs. 99/- only. It is submitted that the petitioner also had made his hut on a part of the land said to have been allotted to Zulfikar.

4. A categorical finding of fact was given by the Trial Court that the property in dispute is recorded as Nai Parti in the revenue records and is Goan Sabha property. The relevant portion of the order dated 19.11.84 of the trial Court is as under:

^izfroknh us viuk c;ku fn;k rFkk v"KQkd o rQxay ds c;ku djK;s A izfroknh us c;ku esa dgk fd mlus fookfnr Hkwfe tqyfQdkj iq= jgew ls yH Fkh A tqyfQdkj ij ;g Hkwfe iapk;r ls vk;h Fkh A fookfnr Hkwfe mlus tqyfQdkj ls [kjnhh gS ;g Hkwfe xkao IHkk lEifRr ugha gS A xokgksa us c;ku dk leFkZu fd;k gS A

m)j.k [krkSuh o [kljk ns[kus ls Li"V gksrk gS fd fookfnr Hkwfe xkao IHkk lEifRr ubZ ijrH gS A xkao IHkk dh vkoafVr Hkwfe dks fdLh dks cspus o [kjhnus dk vf/kdkj ugh gS A ;fn izfroknh us Hkwfe dh [kjhn dh gS rks og Hkh xyr gS A izfroknh dk vukf/kdkj dCtk izekf.kr gS A**

5. From the aforesaid pleadings and the order it is evident that the land over which the petitioner had made his hut was "Nai Parti" and Gaon Sabha land. It appears that in the garb of Patta the land and the hut of Zulfikar, the petitioner had also encroached upon the Gaon Sabha land and had made his hut on the land in dispute.

6. Aggrieved by the aforesaid order, the petitioner filed a revision before the Collector, Muzaffarnagar which was dismissed vide order dated 30.7.85. The revisional Court did not accept the contention of the petitioner that the order of the trial Court was not in accordance with law as it had failed to consider the fact that no orders were passed on the application of the petitioner regarding summoning the documents for allotment of plot No. 144 on Patta in favour of Zulfikar and others. The revisional Court held that the petitioner had not filed any documents in respect of allotment of plot No. 144 in his favour or in favour of Zulfikar. If the Gaon Sabha had given Patta to Zulfikar the petitioner could have proved or established it from the records. Neither any Patta nor any sale-deed had been filed by the petitioner to prove his title or title of Zulfikar over the disputed land.

7. However, in the instant case the petitioner has failed to prove that the land was allotted by L.M.C. to Zulfikar in accordance with law after obtaining prior approval of the Assistant Collector Incharge of the Sub Division or that the land in dispute was ever allotted to Zulfikar. It is not established that Zulfikar was allotted land by land Management Committee with prior approval of Assistant Collector of the division. No material has been placed before this Court that Zulfikar had any right, title or interest to transfer the land in favour of the petitioner.

8. Counsel for the petitioner relying upon Rules 115-R and 115-S of the Rules

framed under the U.P. Zamindari Abolition & Land Reforms Act, 1952 has contended that once the land is allotted, Gaon Sabha can not initiate proceedings u/s 122-B of the U.P.Z.A.& L.R. Act unless allotment in favour of the allottee is cancelled. He submits that the embargo under the aforesaid Rules 115-R and 115-S is only for a period of 10 years and thereafter the land can be transferred by the allottee as he perfects his rights after 10 years and that none of the authorities have passed any order cancelling allotment at any time. As an illustration he has relied upon Section 131-B, which came into force w.e.f. 14.1.95 and submits that even agricultural land can be transferred.

9. Section 122C of the Act was brought on the Statute by U.P. Ordinance No. 8 of 1971 and was re-enacted by U.P. Act No. 21 of 1971, providing for allotment of land for housing site for members of scheduled caste and agricultural labour. Simultaneously Rules 115-L to 115-U were framed by the State Govt. The statement of objects and reasons of Act No. 21 of 1971. Rule 15N(2) provides that land should be allotted by L.M.C. with prior approval of Collector In charge of Sub Divisional Magistrate and provides that:

With a view to making provisions for housing site for members of SC/ST, village artisans and other landless labourers, the need for enactment of a new law was considered urgently, this enactment was being made.

10. Sections 115-R and 115-S as they stood at the relevant time are as under:

Section 115-R(1) Where any land or site is allotted in accordance with Rules 115-L to 115-Q and house is built thereon, then, subject to the provisions of sub rule (2), the allottee shall have no right to transfer such land, site or house within a period of ten years from the date of the allotment.

Provided that the restriction regarding the period of ten years shall not apply to the heirs of a deceased allottee.

(2) Subject to the provisions of Rules 115-L to 115-Q, all allotments of land or site shall be subject to the following conditions, namely:

(a) the allottee as well as heirs shall have a heritable interest in the land or site so allotted;

(b) the allottee and his heirs shall not be liable to ejectment;

(c) the succession shall be governed by the personal law to which the allottee was subject to;

(d) the allottee may mortgage, without possession, his interest in the land or the site allotted to him under Rules 115-L to 114-Q as security for a loan taken from a cooperative society or from Uttar Pradesh Harijan and Weaker Section Housing Corporation, or from the State Bank of India, or from any Bank, which is a Scheduled Bank, within the meaning of clause(e)of Section-2 of the Reserve Bank of India Act, 1934, for construction of a house on the land or site so allotted; and

(e) if the building is abandoned or if the owner thereof dies without any heir entitled to succeed the land or site and the building shall vest in the Gaon Sabha.

Section 115-S Subject to the provisions of Rules 115-L to 115-Q all allotments of land for building purposes shall be subject to the following terms and conditions-

(a) the allottee shall have a heritable and a transferable interest in the site;

(b) the allottee shall be liable to ejectment;

(c) succession shall be governed by the personal law;

(d) if the building is abandoned or if the site owner dies without any heir entitled to succeed, the site and the building shall vest in the Gaon Sabha.

11. The next question is whether allottee can transfer such land to outsiders who is neither heir nor successor of the allottee or landless labour ?

12. The object of legislation is to provide land for residential purposes to poor persons. If right to transfer to outsiders is given the affluent persons will purchase the land and the original allottee will again become landless persons. Sub-clause (2) of the Rules 115-R and 115(S) aforesaid provides that the allottee as well heirs shall have a heritable interest in the land or site so allotted. Further that the allottee or his heirs shall not be liable to ejectment, the succession is to be governed by the personal law and if the building is abandoned or if the owner thereof dies without any heir entitled to succeed the land or site, the building shall vest in the Gaon Sabha. These restrictions show that the right of transfer and heritance is limited to the allottee only and it is personal right and cannot be transferred to outsiders. The terms and condition that if there is no heirs entitled to succeed the land or site so allotted , the building shall vest in the Gaon Sabha also goes to show some intention. The word "transferable interest " has to be read along with the words "succession" and "heritable interest" of the heirs in the site on basis of personal law. These words used in the Rules will take colour from each other and would exclude transfer of land allotted by the Gaon Sabha and the allottee to a person who is neither himself an allottee nor has heritable interest in the land of the allottee.

13. If the contention of the petitioner is accepted it would defeat the very object of the purpose of Section 198 of the U.P. Z.A. & L.R. Act, 1950 which provides allotment of land of the Gaon Sabha to landless labourers. If the allotted land is sold, then very object of the Act would be frustrated and land meant for landless labourer will go in hands of persons who have enough land. The landless labourer will again become landless and can claim again as landless labour after two years. The word "transfer" used in the aforesaid rules must be read with the object of the Act After an allottee has perfected right after 10 years he can transfer the land to his other family members who are not his heirs and are landless labourers of the same category.

14. In this case the petitioner could not prove his title or title of Zulfikar over the

land. Legislature intended to prevent the allottee from selling of Gaon Sabha land to outsiders. If any other construction than purposive construction is given to the aforesaid rules the allottee may sell the Gaon Sabha land for personal gain meant for landless persons and land will be grabbed by sale by rich and also strangers who do not live in the village and thus the Gaon Sabha will be devoid of all its land after some time. This cannot be the purpose of the Act. The interpretation given by the counsel for the petitioner therefore, can not be accepted. The provision has to be given purposive construction to advance the object of the Act and not any other construction which will defeat its purpose.

15. The intention of the legislature appears to be that the Gaon Sabha shall always remain the absolute owner and the allottee will perfect his title of ownership for limited purpose of transfer by succession to his heir even after 10 years. In case he has no heir, the land will vest in the Gaon Sabha otherwise object of allotting land to landless villager will be defeated.

16. Counsel for the petitioner has relied on a decision reported in 1993 RD 133 Prabhu v. L.M.C. in which it has been held that-

Once the land has been allotted to some other person, the Gaon Sabha ceases to be the owner of the allotted land.... It is no business of the Gaon Sabha to initiate proceedings for ejectment in respect of the land which does not belong to it.

17. Thus, the whole object of the Act is to provide housing site to landless labour and SC/ST. Landless labour has been defined in Section 122-B as having the same meaning as in Section 198 of the Act. Rule 115-R(2)(a) in 1984 when the said land is said to have been purchased by the petitioner. Rule 115R(2)(a) had been amended vide notification dated 27.10.77 and word transferable was deleted.

18. The relevant portion of Section 198 of the U.P.Z.A. & L.R. Act, 1950 at the relevant time was thus:

198. Order of preference in admitting persons to land under Sections 195 and 197-(1) in the admission of persons to land (bhumidhar with non-transferable rights) asami u/s 195 or Section 197 (hereinafter in this section referred to as allotment of land), the Land Management Committee shall, subject to any order made by a Court u/s 178, observe the following order of preference-

...

(c) landless agricultural labourer residing in the circle and belonging to a schedule Tribe;

(d) any other landless agricultural labourer residing in the circle;

(e) abhumidhar (*****) asami residing in the circle and holding landless than 1.26 hectares (3.125 acres);

Explanation - For the purposes of this sub-section-

(1) landless refers to a person who or whose spouse or minor children hold no land as bhumidhar, sirdar or asami and (***) also held no land as such within two years, immediately preceding the date of allotment; and

(2) "agricultural labourer" means a person whose main sources of livelihood is agricultural labour.

19. These provisions show that right to transfer the land by an allottee as landless labour was taken away to fulfil the object of the Act and the land of Gaon Sabha allotted to a landless labour shall be used by the landless and his family only. Value of even a hut with land of about 160 yards must be more than Rs. 100/-.

20. It is the duty of the Court to construe a statute which will advance the object of the enactment. The Court must adopt persuasive interpretation to ensure that true intention of the statute is carried out as held by the Apex Court in *Atul Castings v. Bawa Guru Nachan Singh* 2001 (3) SCC 133.

21. Similarly in the case of *B.R. Enterprises Vs. State of U.P. and Others*, it was held that interpretation which subserves the object of the Act, regard be had to the history of law and the statement of objects and reason should be adopted.

22. In *Raipur Development Authority v. Anupam Sahkari Grih Nirman Samiti* 2004 (4) SCC 357 it was held that interpretation which subserves the legislative intent should be preferred.

23. In *Gayatri Devi Pansari v. State of Orissa* it was held that a Government order should be construed to promote its object keeping in view the purpose substance and object of the Act.

24. The land in dispute was not legally held by Zulfiqar as well as the petitioner.

25. In the case of *Budhan Singh v. Babi Bux and Ors.* 1970 SC 1880 the Court construed the word "land held" as legally held though word "legally" was not in the statute.

26. In order to achieve and advance the object and purpose of Section 122-C of the U.P.Z.A. & L.R. Act, it is held that the allottee has no transferable right for transfer of the land to a person outside his family or landless labour without prior approval of Assistant Collector Incharge of the Sub Division. If the allottee dies heirless the land will vest in the Gaon Samaj so that it may be allotted to another landless persons. The Rules 115-R and 115-S itself were amended with this object. Transfer of land by way of sale much less for allegedly consideration to an stranger outside family for Rs. 99/-, is an attempt to defraud and avoid registration.

27. No other point has been pressed or argued by the counsel for the petitioner.

28. There is no illegality or infirmity in the impugned order passed by the Courts

below. For these reasons it is not a fit case for interference under Article 226 of the Constitution of India.

29. The petition is dismissed. No order as to cost.