
(2007) 05 AHC CK 0243
In the Allahabad High Court

Sri Ram Prasad Verma and Others

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 05 AHC CK 0243

Hon'ble Judges : Dilip Gupta, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This writ petition under Article 226 of the Constitution of India filed by 12 petitioners claiming to be members of the land management committee of Gram Panchayat Medenipur, post & Pargana Haweli, Tappa Beraicha, Tehsil Sadar, district Maharajganj have prayed for the following reliefs:

i. issue a writ order or direction in the nature of mandamus commanding the respondents not to make primary health center over plot No. 1314, 1315 and 1316 which is reserved for Khalihan, Panchayat Bhawan and play ground situated in village Medenipur Gram Panchayat Medenipur Pargana Haweli, Tappa Beraicha, Tehsil Sadar, district Maharajganj. ii. Issue a writ order or direction in the nature of mandamus commanding the respondents not to make primary health center in the village Medenipur except plot No. 1314, 1315 and 1316 which is earmarked in the consolidation proceeding as Khalihan Panchayat Bhawan and playground, iii. Issue a writ order or direction in the nature of mandamus commanding the respondent No. 1 to ensure the use of plot No. 1314, 1315 and 1316 as earmarked in the consolidation proceeding u/s 8-A of U.P.C.H. Act and maintain up to the stage of final record of the consolidation (C.H. Form 45).

iv. issue a writ order or direction in the nature of mandamus commanding the respondent No. 8 not to change the use of plot No. 1314, 1315 and 1316 as earmarked in the consolidation proceedings as Khalihan, Panchayat Bhawan and

play ground.

v. Issue a writ order or direction in the nature of mandamus commanding the respondents to remove any construction made over the plot No. 1314, 1315 and 1316.

vi. issue any such other and further suitable writ order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the present case.

vii. And to award the costs of the writ petition to the petitioner.

2. The assertion of the petitioners in the writ petition is that the plot No. 1314 area 0.162 hectare (old plot No. 1788) having area 0.162 hectare of Khata No. 01541, plot No. 1315 having area 0.065 hectare (old plot No. 1789) having area 0.065 hectare of Khata No. 1547 and plot No. 1316 area 0.194 hectare of Khata No. 1546 are reserved as Khalihan, Panchayat Bhawan and play grounds, respectively, which shall hereinafter be referred to as "land in dispute". It is further asserted that during consolidation operation in the village, the land in dispute plot No. 1314 (old plot No. 1788 M) has been earmarked for Khalihan, plot No. 1315 (old plot No. 1789 M) has been earmarked for Panchayat Bhawan and 1316 (old plot No. 1790 M) has been earmarked for playgrounds. After the consolidation operations are over in the year 1992, a notification u/s 52 of U.P. Consolidation of Holdings Act has been issued with regard to the area in question and the land in question is being used for the purposes for which it was reserved. Pursuant to the proposal made by the State Government, a meeting of the land management committee was held on 5th January, 2006, wherein the land management committee has decided that plot No. 1314 be allotted in favour of the Government for construction of the Primary Health Centre in the village. The petitioners have disputed passing of the aforesaid resolution and have further submitted that in any view of the matter, the resolution passed by the land management committee on 5th January, 2006 has not been approved by Sub-Divisional Officer concerned and therefore the resolution of the land management committee is null and void in the eyes of law. The Gram Pradhan of the concerned Gram Panchayat wrote a letter to the Chief Medical Officer concerned that the land in dispute has been allotted for construction of Government hospital and in this regard a map was also prepared by the department concerned. By the aforesaid letter, it was prayed for that the Chief Medical Officer concern may send the consent for the proposed Government hospital in the village, which is annexed as Annexure-"6" to this writ petition. The petitioners further asserted that Pradhan of village concerned belongs to rival political party and that is why he has written this letter without taking into consideration the resolution of the land management committee, which has not been approved by the Sub-Divisional Officer concerned. It is also submitted by the petitioners that villagers are prepared to part with the land which is other than land in dispute for construction of the primary health centre in the village. It was therefore prayed that the land in dispute which has been earmarked and reserved for public utility

could not be utilised for construction of primary health centre in village. The petitioners have also approached this Court by means of writ petition No. 67616 of 2006, which has been disposed off by this Court vide order dated 14th December, 2006, which reads as under

The writ petition has been filed by me Pradhan of the village raising the grievance that the land earmarked and reserved for construction of panchayat bhawan and Dhobi Ghaat is being used for constructing the primary health center, though there is sufficient land available for the purpose and the Gaon Sabha is willing to hand over the appropriate land for that purpose.

After hearing the learned Counsel for the petitioner and the learned standing counsel for the respondents we dispose of this writ petition requesting the respondent No. 1, the learned District Collector, Kushinagar to consider the grievance of the petitioner after verifying the facts from the original revenue records and pass appropriate order within a period of three weeks from the date of filing a certified copy of this order before him, which the petitioner is directed to file within a period of one week from today.

For a period of four weeks, status quo as on today shall be maintained regarding construction.

3. The petitioners by means of this writ petition have prayed for the relief, as stated above, for issuance of a writ of mandamus commanding the respondents not to construct primary health centre over the land in dispute, which is reserved for Khalihan, Panchayat Bhawan and play grounds and further a writ of mandamus not to make primary health centre in the village in question over the land in dispute, which is earmarked in the consolidation proceeding as Khalihan, Panchayat Bhawan and play grounds.

4. We have heard learned Counsel for the parties. Learned Standing Counsel has raised a preliminary objection regarding maintainability of the present writ petition on the ground that the petitioners are not the members of the land management committee of the village in question. However, we are proceeding to decide the matter on merits. Learned Counsel for the petitioners has relied upon a decision of this Court reported in 1971 R.D. 466 Lalji and Anr. v. Board of Revenue, U.P. at Allahabad and Ors. particularly para 4, which reads as under:

4. The U.P. Consolidation of Holdings Act, 1953 provides that when scheme of Consolidation in a village is finalised, land shall be ear-marked for public purpose. u/s 8-A of the U.P. Consolidation of Holdings Act statement of principles is required to contain details of the areas ear-marked for extension of Abadi site for Harijans and landless persons in the unit, and for such other public purposes as may be prescribed. Under Rule 24-A of the U.P. Consolidation of Holdings Rules, framed u/s 54 of the act, public purposes for which the area should be ear-marked are prescribed. According to this rule in addition to the reservation of land for extension of Abadi including the areas for Abadi sites for Harijans and landless persons, land may be ear-marked according to the local requirements for

the public purposes, viz.; manure pits, roads, pasture land thrashing floor, play grounds, primary and other schools, hospitals, panchayat ghars, cremation and graveyards, water channels etc. u/s 19 of the Act, tenure holders are required to contribute land for their holdings towards the land which is earmarked for a public purpose as required by the act and the Rules. The land so set out by the consolidation authorities n for the public purposes mentioned in the Act and the Rules, vests in the Gaon Sabha u/s 2S-C of the Act and such land cannot be utilised for any other purpose.

5. Learned Counsel for the petitioners further relied upon the observations made in para 9 of the aforesaid decision in Laiji's case (supra), which reads as under:

It is, therefore, clear that the Gaon Sabha has no authority in law to divert the use of a land ear-marked for a public purpose.

6. This Court has decided the case of Lalji (supra) on the facts of that case. The aforesaid case relied upon by learned Counsel for the petitioners do not apply to the facts of the present case and do not in any way help the petitioners because the land in dispute here is not earmarked or diverted by the land management committee, as is evidence from the narration of the averments by the petitioners itself. It is the State Government which has issued the direction for construction of primary health centre, pursuant whereof and land in dispute was earmarked for construction of primary health centre in the village in question In view of the aforesaid fact that the land covered by the provision of UP Zamindari and Land Reforms Act vested in the State of U.P., to us it appears that the State government do have power to earmarked particular portion of land for being utilized for public purposes or construction of primary health centre. It is not disputed by the petitioners that construction of the building for primary health centre is not a public purpose. In view of what has been stated above, to us it appears that the allotment of the land in Gram Sabha by the State Government for the purposes of construction of primary health centre over the plot in dispute, which is for public purpose, cannot be questioned by the petitioners.

7. In the result, this writ petition has no force and is accordingly dismissed. The interim order, if any, stands vacated. However, on the facts and circumstances of the case, there shall be no order as to costs.