
(2016) 09 AHC CK 0166
In the Allahabad High Court
Case No : Writ C No. 30139 of 2016

Sri Sanjay Gandhi Smriti Junior High School	APPELLANT
Vs	
Addl. Commissioner (Judicial-1)	RESPONDENT

Date of Decision : 30-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 29C
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 195

Citation : (2016) 133 RD 625

Hon'ble Judges : Anjani Kumar Mishra, J.

Bench : Single Bench

Advocate : C.S.C., Ashish Kumar Gupta, Manu Singh and Vishal Khandelwal, Advocates, for the Respondents; Hari Mohan Srivastava and Neeraj Srivastava, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.- Heard Sri H.M. Srivastava, learned counsel for the petitioner, Sri Vishal Khandelwal, respondent no.5 and Sri Manu Singh for the Land Management Committee, respondent no.11 as also the learned Standing Counsel for the State-respondents.

2. The writ petition arises out of proceedings under Section 198(4) of the U.P. Zamindari Abolition and Reforms Act and seeks a writ of certiorari quashing the order dated 07.12.2012 passed by the Collector, Etah and the order dated 16.03.2016 passed by the Additional Commissioner(Judicial) whereby the order of the Collector has been affirmed.

3. Additionally a mandamus has been sought, directing the respondent no. 2 to consider the prayer of the petitioner no.2 for changing the nature of plot no.204, recorded as a cremation ground.

4. The contention of the learned counsel for the petitioner is that an area of

0.4050 Hectare of plot no.204 was allotted to the petitioner a private, Junior High School in accordance with law in the year 1981; the School is running over the plot in question since the year 1989 and is a duly recognised School. The land in question is therefore being used for a public purpose. The proceedings for cancellation of the lease were initiated more than 10 years after the allotment was made and were therefore, highly belated. It is also contended that plot no.204 is not recorded as Marghat in the revenue records.

5. It is lastly contended that earlier also the matter had come up before this Court. Vide judgment and order dated 06.09.2012, the petition of the petitioner was allowed and the matter was remanded to the Collector to consider whether the proceedings were barred by limitation, as prescribed in Section 198(6)(1) b of the Act. This aspect has not been considered in the order impugned despite the categorical directions of this Court in its order of remand.

6. Learned counsel appearing for the respondents have supported the impugned order. They have submitted that the Courts below have considered the question of limitation and have held that the allotment, in favour of the petitioner, to be void, ab initio.

7. The land in question was recorded as Marghat in the revenue records, having been so reserved, during consolidation operations. It was public utility land governed by the provisions of Section 132 of the Act and could not have been subject matter of an allotment. The Court below have also observed that dismissing the proceedings on the ground of limitation would lead to failure of justice.

8. I have considered the submissions made by the parties and have perused the record.

9. At the very outset, it would be relevant to note that this Court repeatedly enquired from Sri H.M. Srivastava, appearing for the petitioner as to the provision of law where under the Gaon Sabha was competent to allot land to a private Junior High School. Despite, long arguments, Sri H.M. Srivastava has not been able to submit even a word of this important query of the Court.

10. The Gaon Sabha is competent to allot the land vested in it in accordance with the provisions contained in Section 195 of the Act. The actual procedure and the order of preference for eligible persons entitled to allotment of land mentioned in Section 195, is provided under Section 198 of the Act. The same is extracted below -

"Section 198. In the admission of persons to land as [Bhumidhar with non-transferable rights] or asami under Section 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 under Section 178, observe the following order of preference :

(a) landless widow, sons unmarried daughters or parents residing in the circle of

a person who has lost life by enemy action while in active service in the Armed Forces of the Union;

(b) a person residing in the circle, who has become wholly disabled by enemy action while in active service in the Armed Forces of the Union;

(c) a landless agricultural labourer residing in the circle and belonging to a ? [Schedule Caste, Schedule Tribe, other backward class or a person of general category living below poverty line];

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

(e) a Bhumidhar, 3[***] or asami residing in the circle and holding land less than 1.26 hectares (3.125 acres);

(f) landless person residing in the circle who is retired, released or discharged from service other than service as an officer in the Armed Forces of the Union;

(g) a landless freedom fighter residing in the circle who has not been granted political pension;

(h) any other landless agricultural labourer, not residing in the circle, but residing in the Nyaya Panchayat circle referred to in Section 42 of the United Provinces Panchayat Raj Act, 1947 and belonging to any of the following categories in the order of preference:-

(i) persons belonging to the Schedule Castes or Schedule Tribes;

(ii) persons belongs to other backward classes;

(iii) persons belonging to the general category living below poverty line:

<ï>Explanation</ï> - 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, (***) 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 source of livelihood is agricultural labour;

(3) "Freedom-Fighter" means an inhabitant of Uttar Pradesh who is certified by the Collector to have participated in the National struggle for freedom during the period between 1930 and 1947 and who in connection with such participation, is similarly certified to have-

(a) undergone a sentence of imprisonment for a period of at least two months; or

(b) been in jail for a period of at least three months by way of preventive detention or as an under trial; or

(c) been subjected to at least ten stripes in execution of a sentence of whipping ;
or

(d) been declared an absconding offender ; or

(e) suffered a bullet injury; and includes a person who was involved in the Peshawar-Kand or who was a recognised member of the Indian National Army or former India independence League; but does not include a person who was granted pardon on account of his tendering apology or expressing regret for such participation.

(4) "other backward classes" means the backward classes of citizens specified in Schedule-I of the Uttar Pradesh Public Services (Reservation for Schedule Castes, Scheduled Tribes and other Backward Classes) Act, 1994 (U.P. Act No.4 of 1994);

(5) "persons of general category living below poverty line: means such persons as may be determined from time to time by the State Government."

11. A close scrutiny of the provision extracted above makes it abundantly clear, that there exists no provision where under any allotment could have been made in favour of a private junior High School. The allotment is, therefore, clearly fraudulent and contrary to the provisions of the Act itself. The subordinate authorities have therefore, committed no illegality in cancelling the lease. They are also correct in holding that this allotment was void ab initio because it could not have been made in favour of the Private Junior High School. A transaction which is void can be ignored even in collateral proceedings.

12. The contention, therefore, raised by learned counsel for the petitioner that the proceedings for cancellation were barred by time, is devoid of substance and is repelled.

13. Additionally learned counsel for the petitioner has tried to submit that an Educational Institution was running on the land in question. The petitioner is performing a public function and therefore the educational institution should be permitted to continue over the land in question and the matter requires to be referred to the State Government for change in the user of the land, which, as on date, is recorded as Marghat.

14. In this connection it would be relevant to note that the allotment in favour of the petitioner, as already noticed herein-above, is void ab-initio. Neither there exists any provision of law where under land belonging to the Gaon Sabha could have been allotted to a Private High School, nor despite repeated queries, learned counsel for the petitioner has not been able to point out any such provision of law. It is therefore clear, on the face of the record, that the allotment in favour of the petitioner was a product of fraud and collusion.

15. Any interference or any observation or direction as has been sought by the petitioner would amount to perpetuating the illegality and the fraud to which the petitioner is a party.

16. Even otherwise, the land in question is recorded as Marghat, having been so reserved during consolidation operations. In view of Section 29-C of the U.P.

Consolidation of Holdings Act, such a reservation cannot be changed. The alternative submission made by the learned counsel for the petitioner is therefore cannot be accepted.

17. Accordingly, the writ petition is completely devoid of merit and is therefore, dismissed.