

(1965) 03 AHC CK 0011

In the Allahabad High Court

Case No : Special Appeal No's. 524 of 1960 and 427 of 1961

State of U.P. and Another

APPELLANT

Vs

Paraspati Gram Samaj of Village Samda

RESPONDENT

Date of Decision : 16-03-1965

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 224

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 3

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115C

Citation : (1965) 35 AWR 466

Hon'ble Judges : W. Broome, J;J. Sahai, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J. Sahai, J.—These two special appeals filed by the State of U.P. are directed against the judgment of Desai, J. dated 4.5.1960, allowing writ petitions Nos. 3115 and 3116 of 1957.

2. Writ Petitions 3115 and 3116 of 1957 were filed to challenge the orders passed by the Tahsildar, Chunar (district Mirzapur) on 21-9-1957, ordering the ejectment of the Respondents of the two special appeals before us under Rule 115C and 115D of the rules framed under the UPZA and LR Rules (herein after referred to as the rules). Desai, J. came to the conclusion that the Tahsildar had no jurisdiction to try the case, relying on the definition of "Collector" as given in the UPZA and LR Act, where "Collector" includes an Assistant Collector of the first class and not an Assistant Collector second class. Since Section 224 of the Land Revenue Act did not permit powers of an Assistant Collector of the first class being conferred on a Tahsildar, the learned single Judge held that the Tahsildar, Chunar, had no jurisdiction to try the case. We would like to point out that the law has since been amended by means of U.P. Act No. XXXVII of 1958. The entry at serial No. 6 of the Schedule of U.P. Act No. XXXVII of 1958, which purports to amend Section 224 of the Land Revenue Act, 1901 reads:

For the words "Assistant Collector of the Second Class" the words "Assistant Collector of the First or Second Class" shall be substituted.

In 1961 the U.P. Act X of 1961 was enforced. Section 4 of that Act reads:

Renumber of existing Section 84 of the U.P. Land Reforms (Amendment) Act, 1958 as Sub-section (1) thereof and there-after add the following as Sub-section (2): "(2). The amendment mentioned at serial No. 6 of the said schedule shall be deemed to have come into force on the first day of January, 1953".

The result of the amendments made is to create a legal fiction, by which Section 224 of the U.P. Land Revenue Act, 1901 is to be so read that even in 1953 powers of an Assistant Collector of the first class could be conferred on a Tahsildar. That being the position, a Tahsildar would be comprehended in the expression "Collector" as occurring in Section 3 of the UPZA and LR Act and Rule 115D of the Rules.

3. Desai, J also came to the conclusion that rules 115C, 115D, 115E and 115F of the Rules were invalid. As to this, we would like to point out that since then Section 122B has been added to the ZA and LR Act. Section 122B reads:

(1) Where any property vested, under the provisions of this Act, in a Gaon Sabha or a local authority, is damaged or misappropriated by any person, or where any land so vested in it, or any vacant land or any land which it is entitled to take possession of under this Act, is occupied otherwise than in accordance with the provisions of this Act by any person, the Land Management Committee, or the local authority, as the case may be, shall take steps forthwith to recover compensation for damage to, or misappropriation of, the property and for the recovery of possession of the land together with damages caused by wrongful occupation.

(2) Where the Land Management Committee or the local authority fails to take action in accordance with the provisions of Sub-section (1) within a period of six months from the date of wrongful occupation, and one month from the date of damage or misappropriation, the Collector may, except in case involving a bonafide question of title on an application of the Chairman, Member, or Secretary of the Land, Management Committee or the Local Management Committee or the local authority, as the case may be, or on facts coming to his notice otherwise, take steps for the ejectment of the person in wrongful occupation of the land and for recovery of compensation for wrongful occupation of the land for damage to, or misappropriation of, the property.

(3) The procedure to be followed in any action taken under Sub-section (2) shall be such as may be prescribed, (4) The decision of the Collector under Sub-section (2) shall, subject to the result of a suit by the aggrieved party before a court of competent jurisdiction, be final and conclusive anything to the contrary contained in any other law notwithstanding.

(5) Rules 115C to 115H of the UPZA and LR Rules, 1952, shall be, and be always

deemed to have been, made under the UPZA and LR Act, 1950, as amended by this Act, as "if this section has been in force on all material dates." The effect of the introduction of this provision in the Act is to validate Rule 115C from its inception. In view of this amendment in the UPZA and LR Act, the view of Desai, J. that rules 115C to 115D were void can no longer stand. We would have allowed these special appeals had it not been for the circumstance that Section 122B itself provides that the Collector may try all cases "except... a case involving a bonafide question of title". In the present case, having seen the order of the Tahsildar giving rise to these special appeals, we have no doubt in our mind that a bonafide question of title was involved in the case and there was evidence to show that the Respondents in the two special appeals were in possession of the land in dispute for 10 or 11 years next proceeding the date of commencement of the proceedings Under Sections 115C to 115D against them.

4. The result therefore is that even though we uphold the contention of the State that the view of the learned single Judge is no longer tenable, in view of the amendments mentioned above, we dismiss the appeal on the ground that the Tahsildar was not competent to try the cases, in view of the provisions of Sub-section (2) of Section 122B of the UPZA and LR Act.

5. The special appeals are accordingly dismissed. In the circumstances of the case however, we direct the parties to bear their own costs.