
(2006) 11 AHC CK 0104
In the Allahabad High Court

Sukhdeo

APPELLANT

Vs

The Collector, The Assistant Collector Ist Class/Tahsildar,
Gaon Sabha Amlikaur

RESPONDENT

Date of Decision : 06-11-2006

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 195, 198

Citation : (2007) 5 AWC 5107 : (2007) 102 RD 83

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Judgement

S.U. Khan, J.—This writ petition arises out of proceedings u/s 122-B of U.P.Z.A.L.R Act. Property in dispute is comprised in Gaon Sabha plot No. 528, area 2 Bigha 13 Biswas. The proceedings were initiated in the form of case No. 178 of 1987-88 Gaon Sabha v. Sukhdev. The petitioner pleaded that Gaon Sabha had validly allotted the land in dispute to him on 28.10.1961. He also filed copy of proceeding register of Gaon Sabha dated 28.10.1961. He also filed copy of form No. 59. Against the land in dispute, name of petitioner was mentioned in column 4 since 1366 fasli (1.7.1958 to 30.6.1959). Column 4 contains the names of unauthorised occupants. In the notice 49 Ka possession of petitioner was shown from 1395 fasli (1.7.1987 to 30.6.1988). Tehsildar/Assistant Collector gave notice to petitioner on 23.3.1988. Tehsildar through order dated 27.7.1988 directed eviction of petitioner and imposed damages of Rs. 11400/-. Against the said order petitioner filed revision which was registered as Case No. 24. Collector Banda dismissed the revision on 25.1.1990, hence this writ petition.

2. Collector held that petitioner was in possession from 1366 to 1395 fasli. Regarding the plea of valid allotment, Collector held that original Patta was not filed by the petitioner.

3. There are some authorities of this court which have held that there is no limitation to initiate the proceedings by Gaon Sabha for eviction of persons who

are in unauthorised occupation of its land. Still silence of Gaon Sabha for about 30 years was very strange. Even if there is no limitation for starting the eviction proceedings still delay of about 30 years is sufficient to refuse to pass the order of eviction. In certain cases even if possession of some one is unauthorised still eviction is not necessary or proper relief and award of damages in lieu of eviction is the appropriate relief. In respect of small pieces of land of Gaon Sabha over which the occupants have constructed their houses since long I have held that award of damages is the proper remedy in lieu of eviction vide *Budhaee Vs. Collector, Assistant Collector/Tahsildar Khaga, Gram Sabha Sanwat and State of U.P.,* . Gaon Sabha is required to allot the land to the needy persons in accordance with preference and proceedings provided u/s 195/198 U.P.Z.A.L.R Act. Accordingly, if a person is in possession for more than 12 years, instead of eviction award of damage is the appropriate relief. In view of this, even though I agree that valid allotment was not fully proved by the petitioner still due to inordinate delay of 30 years in initiating the proceedings for eviction, award of the damages is the appropriate relief instead of eviction. The amount of Rs. 11400/- awarded as damages by the impugned order will be more than the market value of the land at the time of occupation i.e. either 1958 or 1961

4. Accordingly impugned orders are set-aside in respect of eviction. Petitioner is directed to pay the awarded damages of Rs. 11400/- within six months. On payment of these damages, land in dispute shall stand settled with him. However if damages are not paid within six months then this order shall stand automatically vacated and writ petition shall stand dismissed. Damages shall be deposited before S.D.O. for being kept in concerned Gaon Sabha fund.

5. Writ petition is accordingly disposed of.