
(1995) 09 AHC CK 0012
In the Allahabad High Court
Case No : C.M.W.P. No. 27058 of 1995

Sumratiya and Others

APPELLANT

Vs

Commissioner, Moradabad Division and Others

RESPONDENT

Date of Decision : 22-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122C(1),
122C(4), 122C(6), 122C(7), 333
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115P(4),
115P(5)

Citation : (1995) 09 AHC CK 0012

Hon'ble Judges : S.P. Srivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—Heard the learned Counsel for the petitioners.

2. Perused the record.

3. The Petitioners feel aggrieved by an order passed in the proceedings u/s 122C(6) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 where under the Upper Ziladhikari (Prashasan) has upheld the allotments made in the proceedings u/s 122C(1) of the said Act which had been approved by the competent authority vide its order dated 2.6.1995.

4. It appears that Smt. Savitri Devi, a newly elected Pradhan along with Smt. Ratiya, the wife of a past member of the Gaon Sabha and certain other members of the Gaon Sabha filed an application seeking cancellation of the order dated 2.6.1995 passed by the competent authority raising various objections.

5. The Additional Collector in the impugned order has, after examining the relevant record, found that the proceedings for the allotment of the land in question for housing sites was not vitiated on account of any error and there was

no illegality in the proceedings for the allotment in question. It was also observed that the newly elected Pradhan had filed the application on account of personal enmity with the earlier Pradhan during whose tenure the proceedings had been undertaken.

6. It may be noticed that the order passed by the Additional Collector dated 8.9.1995 was challenged by the Petitioners by means of a revision u/s 333 of the U.P. Zamindari Abolition and Land Reforms Act. The Additional Commissioner vide his order dated 12.9.1995 had, however, dismissed the aforesaid revision on the ground that it was not maintainable in view of the prohibition contained in Section 122C(7) of the U.P. Zamindari Abolition and Land Reforms Act.

7. Learned Counsel for the Petitioners has urged that the view of the Additional Commissioner is manifestly erroneous inasmuch as this Court in its decision in the case of Smt. Bhoodevi v. The Board of Revenue and Ors. reported in 1994 RD 92, had clarified that the fact that the allotment under Sub-section (4) is final "subject to the provisions of sub-section (6) of Section 122C of the Act", as comprehended by Sub-Section (7) of Section 122C unfolds the intendment of the Legislature that allotment under Sub-section (4) made by the Assistant Collector is final subject to the power of the Collector to cancel the same under Sub-section (6) of the Section 122C of the Act or under Rule 115P(4) of the Rules. The finality attached to an order under Rule 115P(4), vide Sub-rule (5), cannot restrict the revisional powers of the Board under the Act as what is given under the Act cannot be taken away by the Rules. It was further observed in the aforesaid decision that any decision that may be taken finally either upholding the allotment or cancelling the same shall be amenable to the revisional powers of the Board under Sections 333 and 333A of the Act.

8. I have considered the above submissions. In the circumstances of the present case, the allotment in question proposed by the Land Management Committee had been approved by the competent authority vide his order dated 2.6.1995. It was this order which was sought to be challenged in the proceedings u/s 122C(6) by means of an application as indicated above. This application was dismissed by the Collector. The provisions contained in Section 333 of the U.P. Zamindari Abolition and Land Reforms Act vest the Board of Revenue with the jurisdiction to call for any record of any suit or proceeding decided by any subordinate court in which no appeal lies or where an appeal lies but has not been preferred and if such subordinate court appears (a) to have exercised a Jurisdiction not vested in it by law, or (b) to have failed to exercise a jurisdiction so vested, or (c) to have acted in the exercise of jurisdiction illegally or with material irregularity ; the Board may pass such order in the case as it thinks fit.

9. The provisions contained in Section 333A however, vest the Commissioner or Additional Commissioner with the jurisdiction to call for and examine the record of any suit or proceeding referred to in Section 333 decided by any court subordinate to him for the purpose of satisfying himself as to the legality or propriety of an order passed in such suit or proceeding and if he is of the opinion

that such order should be varied, cancelled or reversed, he shall refer the case with his opinion thereon for the orders of the Board, and the Board shall thereupon pass such orders as it thinks fit.

10. A perusal of the provisions contained in Section 122C(7) of the U.P. Zarnindari Abolition and Land Reforms Act and the provisions contained in Section 333A of the said Act clearly indicate that keeping in view the rule of harmonious construction, the second part of Section 122C(7) of the Act providing that the provisions of Sections 333 and 333A of the Act shall not apply in relation to the order passed by the Collector under Sub-section (6) of Section 122C of the Act, in form and substance operates as a proviso or exception to Sections 333 and 333A of the Act and has to be treated as such an exception or proviso to the aforesaid sections and tacked with them as such. The second part of Section 122C(7) of the Act indicated above appears to have been totally overlooked in the decision in the case of Bhoodevi (*supra*).

11. In any view of the matter, considering the findings recorded by the Collector, the Impugned order does not appear to suffer from any such error much less manifest error of law, which could warrant any interference in the proceedings u/s 333 or 333A of the said Act.

12. In the circumstances, therefore, even if it be assumed that a revision made u/s 333 of the U.P. Zarnindari Abolition and Land Reforms Act lies, it will be a futile exercise to remit the case for consideration before the Commissioner.

13. Considering the totality of the circumstances and the facts brought on record, no Justifiable ground is made out for any interference by this Court, while exercising the extraordinary Jurisdiction envisaged under Article 226 of the Constitution of India.

The writ petition is accordingly dismissed.