

**(1958) 03 AHC CK 0027**

**In the Allahabad High Court**

**Case No : Civ. Miscellaneous Writ No. 2370 of 1956**

Syed Mohd Zamin

APPELLANT

Vs

S.D.O. Manjhanpur Allahabad

RESPONDENT

**Date of Decision : 20-03-1958**

**Acts Referred:**

Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115C, 115F, 26A

**Citation : (1958) 28 AWR 647**

**Hon'ble Judges : J.k. Tandon, J**

**Bench : Single Bench**

**Advocate : Sri S. Haidar Shaukat Abidi, for the Appellant;**

**Final Decision : Allowed**

## **Judgement**

Tandon, J.—This petition u/Art. 226 of the Constitution has asked for a writ of certiorati quashing the order, dated 12-3-1953 passed by the Sub-Divisional Officer, Manjhanpur, district Allahabad, which directed the Petitioner to pay Rs. 250/- as compensation for damage done to three plots Nos. 90, 91 and 92 in village Rasulpur Soni, Pergana Karari. These plots were Banjar formerly. In any case they were available for being leased out in 1953. The Petitioner claims that the Gaon Samaj of the village concerned granted these plots to him by a Patta, dated 24-6-1953 and also put him in possession of the plots. Thereafter, it is alleged certain persons who were ill disposed towards him sentan(sic) anonymous petition to the Sub-Divisional Officer concerned complaining against the action of the Gaon Samaj in granting the Patta of the plots to the Petitioner and also accusing the Petitioner of having removed from the plots several Dhaka and other trees growing over it. On this anonymous petition the Sub-Divisional Officer directed the Tahsildar and the Supervisor Kanungo concerned to make an inquiry which, it is alleged these persons conducted on 23-7-1955 on the back of the Petitioner. On 30-7-1955 the Kanungo submitted a report to the Sub-Divisional Officer, who thereupon recorded a case u/R. 115C, of the UP ZA ana LR

Rules, 1952 and called upon the Petitioner to show cause why he should not be evicted and also pay compensation for making unlawful encroachment. This notice was contested by the Petitioner who relied on the Patta in his favour made by the Gaon Samaj of the village concerned. He also pointed out that, proceedings were also held by the Tahsildar on the basis of this Patta in correction of papers case No. 94 of 1953 of village Rasulpur Soni, pergana Karari district Allahabad and that the Tahsildar by his order, dated 1-12-1953 confirmed the said Patta. His reply, therefore, was that he was the tenancy holder of the plots in question and had rightfully entered into possession thereof.

2. The order of the Sub-Divisional Officer dated 12-3-1956 by which he disposed of the show cause notice issued u/R. 115C of the UP ZA and LR Rules, 1952 shows that the Sub-Divisional Officer held that the Petitioner was a Sirdar of the plots in question through a Patta granted to him by the Gaon Samaj. He, however, while holding that the Petitioner was Sirdar directed him to pay Rs. 250 as compensation for the trees which were on it. It is against this order directing the Petitioner to pay Rs. 250/- that the present petition is directed.

3. R. 115C of the UP ZA and LR Rules, 1952 imposes a duty on the Land Management Committee to manage etc. the property vested in the Gaon Samaj u/s 117 sub-R. (2) further requires that the Chairman and Secretary and every member of the Committee shall report all cases of injury to or interference with the property to the Collector and to request him to get the encroachment etc. removed or damage repaired. Rr. 115D, 115E and 115F provide the procedure for taking action on any such report. U/R. 115D the Collector can call upon the person against whom the report is made to repair the damage or remove the encroachment or to carry out any work as the exigency of the situation may require. U/R. 115E the person who is so asked to repair etc is required to appear in reply, and the Collector has been authorized to make such order as may be necessary after hearing him and giving him an opportunity of being heard. U/R, 115F (2) the Collector has been given the power to assess the amount of damage, if any, caused to the property of the Gaon Samaj and to recover it as arrears of land revenue.

4. It would appear from the scheme of these rules that the property in respect of which action can be taken under them, including the awarding of compensation for any damage done, must be the property of the Gaon Samaj. In the present case what, however, appeared was that all the three plots Nos. 90, 91 and 92 had been granted to the Petitioner who after these plots had been granted to him, was their sirdar. The plots, therefore belonged to him and no longer belonged to the Gaon Samaj. As sirdar of these plots the trees in the holding belonged to him in view of R. 26 of the UP ZA and LR Rules, 1952. The trees also in respect of which the compensation was awarded by the SDO, therefore, belonged to the Petitioner, and not to the Gaon Samaj. The Gaon Samaj could not, under the circumstances, claim that any encroachment had been made on its property, much less that any property belonging to it had been damaged or

removed. Whatever trees, if any, were removed by the Petitioner, were trees which belonged to him in view of his status as Sirrdar of these plots read with R. 26A of the Rules.

5. The learned Sub-Divisional Officer has nowhere said in his order how these trees belonged to the Gaon Samaj and how any compensation could be asked to be paid by the Petitioner to the Gaon Samaj if these trees belonged to the Petitioner. He has remained satisfied by saying that an order for payment of compensation would meet the ends of justice. There is no authority in Rr. 115C to 115F to entitle a Sub-Divisional Officer to make an order of this kind. The order passed by him is patently wrong and without jurisdiction.

6. In view of what has been said above, it is not necessary to go into other questions raised in this case as the petition must succeed on this ground alone.

7. The petition is accordingly allowed. The order of the Sub-Divisional Magistrate, dated 12-3-1956 directing the Petitioner to pay Rs. 250 as compensation for trees removed from the three plots Nos. 90, 91 and 92, is quashed. The applicant will be entitled to get his costs from the opposite party.