

(1977) 02 AHC CK 0021
In the Allahabad High Court
Case No : Second Appeal No. 41 of 1974

Tahsildar and Another

APPELLANT

Vs

Shyam Lal and Others

RESPONDENT

Date of Decision : 25-02-1977

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115D

Citation : AIR 1977 All 466

Hon'ble Judges : Hari Swarup, J; D.M. Chandrashekhar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hari Swarup, J.—This appeal has been filed against the judgment of the learned single Judge by which he allowed the writ petition filed by the present respondents against the order of the Tahsildar, directing initiation of proceedings to take possession of the plots in dispute in exercise of the powers under Rule 115-D of the U. P. Zamindari Abolition and Land Reforms Rules (hereinafter referred to as the Rules). The petition was allowed on the ground that the Tahsildar had no power to take proceedings under Rule 115-D. Reliance was placed on the decision of this Court in Paras Nath Singh v. State of U. P. (1961 R. D. 60) in which it was held that the Tahsildar was not empowered to take proceedings.

2. The proceedings under Rules 115-G to 115-F of the Rules are taken by virtue of the provisions of Section 120-B of the U. P. Zamindari Abolition and Land Reforms Act (hereinafter called the Act). The learned Standing Counsel has produced a copy of the notification dated 7-1-1964, By notification No. 3937/I-A-1165 (I)/54 the Governor of U. P. appointed all Tahsildars to be the Assistant Collectors of the First Class. By another notification No. 3937 (A)/I-A-1165 (I)/54 all Assistant Collectors of the First Class appointed under the aforesaid notification were empowered to discharge all the functions of a Collector

mentioned in Section 122B of the Act. In view of these two notifications it is not possible to hold that the Tahsildar who had issued the order of ejectment on June 16, 1969, was not empowered to pass such order. The error in the learned single Judge's order has crept in because the notifications mentioned above were not brought to his notice.

3. The next question which is urged and which was not decided by the learned single Judge was whether there was any bona fide dispute of title involved in the case so as to take the case out of the purview of Rule 115-D of the Rules. The facts mentioned in the counter-affidavit are sufficient for holding that there could not be any bona fide dispute of title in the case. It has been stated in the counter-affidavit that the petitioners had instituted a suit u/s 229B of the Act in respect of the present land and that suit was dismissed by the Judicial Officer, Kheri on July 20, 1969. In the rejoinder-affidavit, this fact is not denied, but it is stated that the suit had been wrongly dismissed. There is no allegation, however in the rejoinder-affidavit to show that the judgment passed in the suit had been challenged by the petitioners in appeal. In such circumstances, the decree in the suit must be deemed to have become final and it cannot be held that there was any bona fide dispute of title involved in the case. The impugned order passed by the Tahsildar cannot, therefore, be deemed to suffer from any manifest error of law or error of jurisdiction.

4. We accordingly allow the appeal, set aside the judgment of the learned single Judge and dismiss the writ petition. As no one has appeared to oppose this appeal, we direct the parties to bear their own costs.