

(1964) 11 AHC CK 0049

In the Allahabad High Court

Case No : Sp. A. No. 309 of 1960 connected with Sp. A. No. 400 of 1960

Tahsildar-Asstt. Collector 1st Class, Sadar, Mirzapur

APPELLANT

Vs

Rai Amar Nath Agarwala and Others

RESPONDENT

Date of Decision : 11-11-1964

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115C

Citation : (1965) 35 AWR 1

Hon'ble Judges : J. Sahai, J;G.C. Mathur, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. In these two Sp. Appeals, common questions of fact and law are involved and we are deciding them together by means of a common judgment.

2. Sp. Appeal No. 309 of 1960 has been filed by the Tahsildar (Asstt. Collector, 1st Class), Sadar, Mirzapur, and Sp. A. No. 400 of 1960 has been filed by the Sub-Divisional Officer, Karvi, and the Tahsildar of Karvi. By means of Sp. A. No. 309 of 1960 the judgment dt. 11-2-1960 and by means of Sp. A. No. 400 of 1960 the judgment dt. 21-3-1960 of V.D. Bhargava, J., are challenged. In both these cases, the Tahsildars passed orders under Rule 115C of the rules framed under the UPZA and LR Act (hereinafter referred to as the Act), ejecting the Respondents in the two appeals from certain plots of land on the finding that the same vested in the appropriate Gaon Samajs. The orders of the Tahsildars were challenged by means of two writ petitions which were allowed by V.D. Bhargava, J., and the orders of the Tahsildars were quashed. The appropriate Gaon Samajs have not filed any appeal against the judgments of V.D. Bhargava, J., nor have they joined in the two special appeals before us. We have carefully perused the orders passed by the Tahsildars in the two cases and the judgment of V.D. Bhargava, J., and have also heard learned Counsel for the parties.

3. It is clear that, in the cases giving rise to these special appeal's, there was

contest before the Tahsildars in which bonafide claim in respect of title was made by the Respondents. The question for consideration before us is whether, in view of the circumstance that the Respondents in both the cases bonafide asserted title over the land in dispute in themselves, the Tahsildars had jurisdiction to decide the two cases Under Rule 115C of the rules framed under the Act. A learned Single Judge (Desai, J., as he then was), in the case of Paras Nath Singh v. State of U.P. and Ors. 1960 AWR 327, held that Rule 115C was void. Mehrotra, J. in the case of Babulal Vs. G.S. Hashmi and Others, , held that a disputed question of title could not be investigated in a proceeding under Rule 115C of the rules framed under the Act. V.D. Bhargava, J., followed the decision of Mehrotra, J, and held that the Tahsildars had no jurisdiction to decide the two cases giving rise to these special appeals. It is not necessary for us now to consider these two decisions because the legislature has, in 1961, made amendments in the Act. Section 122B has been inserted in the Act. That provision reads:

(Their Lordships then reproduced Section 122B of the UP ZA and LR Act as in force on the day judgment was delivered and proceeded on as follows:).

4. The effect of the introduction of this provision in the Act is to validate Rule 115C from its inception. The provision, however, declares by means of Sub-section (2) that the Collector would be entitled to entertain and decide only those cases under Rule 115C which do not involve a bonafide question of title. In other words, the jurisdiction of the Collector or the Asstt. Collector, as the case may be, under Rule 115C is confined to decide only those cases in which a bona fide question of title is not involved. In the cases giving rise to these special appeals, a bonafide question of title was clearly involved. Consequently, we are of the opinion that the learned Asstt. Collectors had no jurisdiction to decide the two cases giving rise to these two special appeals.

5. Both the special appeals must, therefore, fail. They are dismissed with costs.