

(1999) 09 AHC CK 0055
In the Allahabad High Court
Case No : C.M.W.P. No. 11408 of 1980

Taqdeer Singh

APPELLANT

Vs

IIIrd Additional District Judge, Jalaun and another

RESPONDENT

Date of Decision : 02-09-1999

Acts Referred:

Companies Act, 1956 — Section 3
Uttar Pradesh Municipalities Act, 1916 — Section 116, 118, 285
Uttar Pradesh Public Premises (Eviction of Unauthorised Occupants) Act, 1972 —
Section 2, 4, 5

Citation : (1999) 4 AWC 3186 : (1999) AWC 3186

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : P.K. Bisaria, M.C. Misra, Bhagwati Prasad, Pradeep Chandra and G.N. Verma, for the Appellant; S.C. and P.N. Tewari, Rakesh Bhadur and R.N. Singh. Advs., for the Respondent

Judgement

Yatindra Singh, J.—Sri Taqdeer Singh (Petitioner) has filed this writ petition for quashing the order passed by the IIIrd Addl. District Judge, Jalaun at Oral, the appellate court, dated 29.9.1990. The appellate court allowed the appeal of the Municipal Board, Oral (the Board for short) against the order of the Prescribed Authority dated 24.7.1979. In proceeding under U. P. Public Premises (Eviction of Unauthorised Occupant) Act. 1972 (the Act for short).

FACTS

2. The Board took the proceeding under the Act in respect of plot No. 802/1, area 1.75 acre (the land in dispute) for eviction of the petitioner. According to the Board, it is a cremation ground—"a public premises". The Board further says that the petitioner is unauthorised occupant and is liable for eviction under the Act, The petitioner denied this. He claims to be in cultivatory possession of the same on the basis of a lease deed from the Zamindar.

3. The Prescribed Authority by its order dated 24.7.1979 held that the land in

dispute appeared to be a public property and the Board has right to initiate the present proceedings as it was within the Municipal Limits, But the eviction proceedings were dismissed on the ground that the possession of the Board was not proved over the land in dispute and it was being cultivated,

4. The Board filed an appeal. The appellate court held :

--The land in dispute is "marghat" (cremation ground) used by the Hindus of the locality.

--The zamindar had no right to grant a lease in respect of "marghat, which by long and continuous user as "marghat" had vested in the public at large. --The written lease deed dated 1.7.1961 (Ex. Ka-1) is a forged and fictitious document. It is against the pleadings of the petitioner--he had claimed it to be an oral lease,

--The petitioner is liable for eviction and for damages at the rate of Rs. 175 per month.

The petitioner has filed this writ petition against the order of the appellate court.

POINTS FOR DETERMINATION

5. I have heard Sri G. N. Verma, counsel for the petitioner and Sri R. N. Singh for the respondents.

Following points arise for determination in the present case :

(i) What is the basis of right to cremate ? Can a cremation ground be used for a purpose other than for cremation?

(ii) What is the nature of the land in dispute ? is it a cremation ground, or is it tenancy land cultivated by the petitioner ?

(iii) is the land in dispute a public premises ? is the petitioner, an unauthorised occupant ? is he liable for eviction ?

(iv) is the petitioner entitled to any relief ? Should the writ jurisdiction be exercised in favour of the petitioner ?

1st Point : BASIS--RIGHT TO CREMATE OR BURY

6. The nature of right to cremate or right to bury is similar. One is claimed by the Hindus ; the other normally by the Muslims, though persons of other faiths also bury their dead. It is a settled law that these rights cannot be acquired or claimed as an easement. The reasons could be many. Such a right cannot be Imposed for beneficial enjoyment of a land. But there was some debate among the different High Courts regarding basis of this right. Some held the basis could be lost grant, or dedication, or custom.

7. The controversy has now been set at rest by the Privy Council in *Lakshmidhar Mishra v. Rangalal* (the *Lakshmidhar Mishra* case). It has been clarified that such rights can neither be claimed on the basis of dedication nor as a lost grant. The

true basis of these rights He in custom only. This decision was followed by a division bench of the Patna High Court.

8. The sum and substance of these decisions is that : right to cremate or bury ones dead can be claimed only as a custom : and once it is proved that there is such custom, then the Zamindar cannot change the way it is used, without providing for equally convenient alternative, as it would be against the public interest. It is for this reason that the Privy Council in the Lakshmi Dhar Mishra case, (1) decreed the suit ; (2) passed an order for removal of the Mills building, machinery and other structure ; and (3) restored the land to Its original condition so that it may be used as a cremation ground.

2nd Point : PROPERTY--CULTIVATED OR A CREMATION GROUND

The Land - a Cremation Ground

9. The land has been recorded as "marghat" since beginning of this century. The Prescribed Authority, which had dismissed the proceedings. has also held that the land appears to be a public land. This was after considering the settlement khatauni (revenue record) of 1308 F (year 1901-2), 1334 F, 1359 F and 1377 F. It was for this reason that he conceded the right to initiate eviction proceedings to the Board. Though the Prescribed -Authority on the basis of the later khatauni (1384 F) held that the land was being cultivated. The Supreme Court in Mohd. Labbat v. Mohd. Hanifa (the Labbai case) has considered the effect of the revenue entries. The Supreme Court held :

"It is also well-settled that a conclusive proof of the public graveyard is the description of the burial ground in the revenue records as a public grave-yard..... We are of the view that once a Kabarstan has been held to be a public grave-yard, then it vests in the public and constitutes a wakf and it cannot be divested by non-user but will always continue to be so whether it is used or not."

Similar principles should apply in respect of a cremation ground.

10. The property in dispute has been recorded in the khatauni Ziman (class) 15 (iii), i.e., grave yard and cremation grounds other than those Included in land held by tenants, grove holder or rent-free grantees or in any grove held by a Zamindar or in the abadi area. This is so mentioned in para 124 of the Land Records Manual. This shows that the land was a cremation ground, and was not cultivated. This cremation ground was not in the land of a tenant, or a grove holder or any grove held by a Zamindar. True, it was also not in the "abadi" area at that time. But this is immaterial ; it is admitted that it is within the municipal limits. The revenue records show that the land was a public cremation ground and this is also so held by the lower appellate court. This finding is neither perverse nor so unreasonable that no reasonable person could have reached it. It cannot be set aside in the writ Jurisdiction. At this stage, let's consider the case of the petitioner that the land is his cultivated tenancy holding.

Land--Not Cultivated

11. The petitioner's case was that the land was let out to him by the Zamindar at the annual rent of Rs. 8. This grant according to him was oral and he was cultivating the land. Later on he filed a written lease deed dated 1.1.1967 Exhibit Ka-1. This is contrary to the case set up by him. It is for this reason that the appellate court has held that this document (Ex Ka-1), was forged, and was prepared after filing of the written statement : no reliance can be placed upon it- So far as recent possession was concerned, the appellate court held that petitioner was recorded in 1384 F (1976-77) as unauthorised occupant (Bila Tasflya) for last seven years. This confirmed the case of the Board that the petitioner has illegally occupied the land in dispute in the recent past. Neither any rights were claimed on the basis of adverse possession nor any rights could be given on the basis of short length of possession. Apart from it, the Supreme Court in Labbai's case held that revenue records are good evidence and once it is held that ground is a cremation ground. It will continue to be so irrespective of the fact someone has illegally cultivated It. There is no infirmity in the reasoning or the finding of the appellate court. It cannot be interfered with.

3rd Point : IS IT A PUBLIC PREMISES ?

Premises

12. The word "law relating to land tenure" and "premises" has been defined in Section 2(aa) and 2 (b) of the Act. "Premises" include land and the property in dispute is undoubtedly a land. It is not held by the petitioner as a tenure holder under any "law relating to land tenure". It is admitted case that Zamindari has not been abolished and U. P. Tenancy Act is applicable. But I have already held, in Civil Misc. Writ Petition. No. 2525 of 1979 : Municipal Board and another v. SDO and others decided on 26.7.1999, that U. P. Tenancy Act is not a law relating to land tenure within the meaning of Section 2 (aa) of the Act. In any case, petitioner is in illegal possession and is not holding the land as a right or as a tenure holder even under the U. P. Tenancy Act. The land is a "premises" within the meaning of the Act.

Public Premises

13. The public premise has been defined u/s 2 (e) of the Act. It includes any premises entrusted to the management of a local authority. The Board is a local authority. Is the management of the property in dispute entrusted to the Board? The court below has held that the management of the cremation is vested in the Board u/s 116 (f) of the Act and 118 (f) of the U. P. Municipalities Act. 1916 (the Municipalities Act). I have my reservation for this reasoning. But the management of the property is vested in the Board for two other reasons. The first reason is that Section 285 of the Municipalities Act, gives power to the Board in respect of opening and closing of the cremation ground. This is sufficient to entrust the management of the cremation ground to the Board. The second reason is that the property is a public cremation ground and is within the municipal limits of the Board. The Board is an elected body and collectively

represents the residents of the locality. The Board cannot leave it to be misused by some trespassers as has been done in the present case. The Board has to manage it on behalf of the people.

4th Point--WRIT JURISDICTION-DISCRETION

14. The appellate court has held : the property is a public cremation ground ; the lease deed in favour of the petitioner is forged ; and the petitioner is in illegal possession of a public cremation ground. I have upheld these finding. Even if I had held that management of cremation ground was not entrusted to the Board and it is not a public premises within the meaning of the Act, I would not have exercised writ jurisdiction in petitioner's favour. The writ jurisdiction, being discretionary, should not be exercised in favour of person who has no rights and is Illegally occupying a public utility land.

A CAVEAT

15. The land in dispute has been held to be a public cremation ground. The Board can use it only for that purpose and no other. The Board, like Zamindar, has no right to change its form of use. It would be against the public Interest to permit the Board to do so. However, it would be open to the Board to change the form of its use or do otherwise in accordance with Section 285 of the Municipalities Act or any other law.

CONCLUSION

16. The property is a pubic cremation ground--a public premises. The petitioner is in illegal possession of the same. The writ petition has no merit. It is dismissed with observation that the Board has no right to change the form of its use except in accordance with law. The petitioner shall pay the costs of the Board.