
(2015) 02 AHC CK 0121
In the Allahabad High Court
Case No : Writ C No. 2643 of 2015

Vijay and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 131-B, 198(4)

Citation : (2015) 127 RD 132

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : P.K. Sinha and B.R. Maurya, for the Appellant; Mahesh Narain Singh, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Anjani Kumar Mishra, J.

1. Heard Sri P.K. Sinha learned Counsel for the petitioners and learned Standing Counsel for the State respondents. This writ petition has been filed seeking amongst other the following relief:--

"(i) Issue a writ, order or direction in the nature of mandamus commanding the opposite party No. 2/District Magistrate to decide the stay application of maintaining status quo till the proceeding under section 198(4) is adjudicated"

2. It has been contended by learned Counsel for the petitioner that certain land belonging to the Gaon Sabha was settled in favour of respondent Nos. 4 to 14. This allotment was made surreptitiously and without following the procedure prescribed. In the process the land was allotted to the persons who were not eligible for such allotment. Even the approval of the resolution was granted surreptitiously.

3. Proceedings were therefore initiated for cancellation of the lease under section 198(4) of the U.P. Zamindari Abolition and Land Reforms Act. The allottees sold

the land allotted to them to builders who started raising constructions thereon. In these proceedings despite orders being passed the record pertaining to the allotment in favour of the respondent Nos. 4 to 14 was not produced.

4. It has further been alleged that during the pendency of these proceedings repeated applications were filed for interim protection. On the one hand the record of the allotment proceedings was not being produced on one pretext or other and on the other hand no orders are being passed on the repeated applications for interim relief. All the applications filed were merely being directed to be kept on record and therefore this petition for the relief noted herein above.

5. When this matter initially came before the Court on 21.1.2015 learned Standing Counsel was directed to obtain instructions in the matter. The order passed on 22.1.2015 is quoted below:--

"Learned Standing Counsel is directed to obtain instruction in the matter because prima facie it appears that land which has been allotted in favour of villagers, has been sold out to builders and constructions are being raised thereon.

In case, the land was allotted it would necessarily be conferring nontransferable rights upon the allottees and under such circumstances there appears no justification for his transfer of such land.

Learned Counsel for the Gaon Sabha may also obtain instructions in the matter.

Put up as fresh on 3rd February, 2015."

6. When this matter was heard learned Standing Counsel produced a copy of the instructions received by him. This copy is taken on record.

7. Perusal of this instructions reveal that it has been stated that an earlier petition for the same relief was filed before the instant writ petition which is a second writ petition and therefore not maintainable. It would be extremely relevant to note that the instructions are totally silent on the question as to whether the allottees had any right to sell the land allotted to them.

8. Learned Standing Counsel has tried to show that in view of section 131-B of the Act, the allottees would become bhumidhar with transferable rights after the expiry of ten years from the date of allotment and that thereafter they would be entitled to sell the same.

9. It is admitted on record that the allotment in favour of the respondents was approved on 30.6.1994. However, the instructions received do not mention the date of the sale deeds executed by the allottees in favour of third parties namely the builders. In the absence of this date the argument of learned Counsel for the petitioner regarding the benefit of section 131-B of the Act cannot be determined.

10. Confronted with the situation learned Standing Counsel sought further time to seek clarifications in this regard. However, I see no justification to grant any further time specially in view of the fact that the order dated 21.1.2015 in this

regard was very categorical and also because this aspect may be considered by the Collector in the proceedings pending before him.

11. Since there is no denial of the allegations in the writ petition that repeated stay applications were filed which were repeatedly directed to be kept on record without considering them and without passing appropriate orders thereon, in my considered opinion the petitioners are entitled to the relief claimed in the writ petition and the respondent No. 2 is liable to be directed to decide the stay applications filed by the petitioners within a specified time frame.

12. The case of the petitioner is that constructions are being raised which allegation has been denied by learned Standing Counsel on the basis of the instructions received by him. He states that no construction is being raised. In view of the said statement made by learned Standing Counsel, there appears to be no impediment in granting an interim order directing that no constructions be raised over the land in question till such time, the stay applications filed by the petitioner are disposed of on their merit by a reasoned and speaking order after hearing all concerned parties since no constructions are said to be going on, none can be aggrieved by this order.

13. Before parting with the case it appears necessary to record that the instant writ petition which arises out of proceedings under section 198(4) of the U.P.Z.A. and L.R. Act does not appear to be a second writ petition as the earlier writ petition referred to in the instructions received arose out of proceeding under Rule 115-C of the Rules framed under the Act.

14. Accordingly, and for the reasons given above I dispose of the writ petition directing the respondent No. 2 to dispose of the applications filed by the petitioners seeking interim relief as expeditiously as possible and positively within a period of four months from the date a certified copy of this order is filed before him. Needless to say, the order shall be passed strictly in accordance with law after hearing all concerned. It is further provided that till the disposal of the stay applications no party shall raise any constructions/further constructions over the land in question and thereafter the orders passed by the respondent No. 2 shall govern the field.