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Shardadeen Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jan-05-2005

Reported in : 2005(1)AWC919

Judge : S.U. Khan, J.

Acts : Uttar Pradesh Land Revenue Act - Sections 33 and 39; Uttar Pradesh Zamindari Abolition and Land Reforms Act; Uttar Pradesh Zamindari Abolition and Land Reforms Rules; Constitution of India - Article 21

Appeal No. : C.M.W.P. No. 67 of 2005

Appellant : Shardadeen

Respondent : State of U.P. and ors.

Advocate for Def. : V.K. Singh, S.C.

Advocate for Pet/Ap. : R.N. Singh and ;V.K.S. Chandel, Advs.

Judgement :

S.U. Khan, J.

1. This writ petition is directed against orders dated 15.3.2004 and 10.12.2004. First order has been passed by Deputy Collector, Handia, district Allahabad in Case No. 107 under Section 33/39 Land Revenue Act Durvijay Singh v.

Shardadeen.

2. The said case was initiated on the application of village Pradhan to the effect that certain Gaon Sabha plots were wrongly entered in the name of petitioner in the revenue records and with the prayer that the said plots must be re-entered in the name of Gaon Sabha after expunging the name of petitioner. The Deputy Collector held that on perusal of records it was clear that without there being any order to that effect, Lekhpal illegally recorded the name of petitioner in khatauni. It is also mentioned therein that inquiry was got conducted by Lekhpal and Naib Tahsildar who reported that in C. H. Form No. 45 (prepared at the conclusion of consolidation operation) some plots in dispute were recorded as usar some as Navin Parti and plot No. 511 as pond. In the said order it is also mentioned that as entries are farzi, hence it is not necessary to hear the petitioner. Through the second order revision filed against the first order has been dismissed by Additional Commissioner (II), Allahabad Division, Allahabad (Revision No. 141/1071/112 of 2003-04).

3. Today I have decided Writ Petition No. 14 of 2005, Chaturgun and Ors. v. State of U. P. and Ors., involving similar point. In the said judgment after discussing several decisions of Supreme Court I have held that even before cancelling allegedly farzi entries in revenue record it is necessary to hear the person in whose name entry is continuing. In the said judgment I have also held that in case revenue entry is cancelled without hearing person concerned then he can apply for post decisional hearing and recall of order.

4. Accordingly writ petition is disposed of with liberty to the petitioner to apply for post decisional hearing and recall of the order dated 15.3.04 before Deputy Collector concerned along with such objection and evidence as petitioner considers necessary within six weeks from today. If such an application along with certified copy of this order is filed and Deputy Collector is satisfied that his earlier order dated 15.3.04 was wrongly passed then he must set aside the said order otherwise the said order shall be maintained.

5. Initially for a period of six weeks petitioner shall not be dispossessed from land in dispute provided that he has not already been dispossessed. In case application

for post decisional hearing and recall of order is filed by the petitioner within six weeks then for a period of three months from the date of filing of the said application petitioner shall not be dispossessed from land in dispute provided that he has not already been dispossessed. Deputy Collector shall decide the application, if filed, within three months from date of its filing after hearing parties concerned including petitioner. State and Gaon Sabha.

6. In the impugned order it is mentioned that plot No. 511 is a pond. In respect of ponds Supreme Court in the authority of Hinch Lal Tiwari v. Kamala Devi and Ors., 2001 (3) AWC 2398, has held that seven if any portion of the pond, due to disuse, is not covered by water at any point of time in the year still it cannot be allotted to any person. In the said authority the allotment of pond was held to be illegal and void and occupant was directed to be evicted. In judgment of the High Court which was challenged before the Supreme Court in the aforesaid authority it was held as follows :

'From the report of the Sub-divisional Officer dated 3.4.2000, it is clear that the land had a character of the pond but due to passage of time, its most of the part became levelled. But some of the portion had still the character of the pond and during the rainy season, it is covered by water. The area which is covered by water or may be covered by water in the rainy season could not be allotted as abadi site to any person.'

7. The Supreme Court did not approve the said view. Para 13 of the aforesaid authority of the Supreme Court is quoted below :

'13. It is important to note that material resources of the community like forests, tanks, ponds, hillock, mountain, etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enable people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution. The Government, including revenue authorities, i.e., respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other, provided better environment for the benefit of public at large. Such vigil is the best protection

against knavish attempts to seek allotment in non-abadi sites.'

8. If any plot of land was entered as pond and vested in State/Gaon Sabha in revenue records after Zamindari Abolition and said plot or any portion thereof is in possession of someone after losing its character as pond then such plot or such portion of the plot shall atonce be got vacated from the unauthorized occupant even if his name is entered in the revenue record after providing opportunity of hearing to the said person.

9. Ponds are lifelines of villages. One of the reasons of alarming decrease in water level of the underground water particularly during recent years is drying up of the ponds. The ponds have become dry either due to disuse or by active efforts of interested persons by filling the same with earth. There are some authorities of this Court which have held that no person can mature his right through adverse possession over Gaon Sabha land as under U.P.Z.A. & L.R. Act and the Rules there is no limitation prescribed for filing suit by Gaon Sabha for ejectment of trespasser. In view of this if a person is in unauthorized occupation of a plot entered in revenue record as pond or any part thereof, he cannot mature his title by prescription however long his possession may be. In view of the aforesaid Hinch Lal Tewary authority of Supreme Court plot entered as pond in the revenue records even if it has ceased to be a pond or any portion thereof cannot be allotted to any person. No authority can pass order permitting or recording change of user of pond. In view of this even if a plot which was entered as pond after Zamindari Abolition and vested in State/Gaon Sabha or any portion thereof has been allotted to any person then the said allotment is void and liable to be ignored. There is therefore, no legal bar in cancelling the entry in revenue record of such plot or any part thereof in favour of a person after hearing him.

10. It is expected that the authorities particularly Collectors and Deputy Collectors will initiate special drive to get such plots completely vacated which were entered as ponds belonging to State/Gaon Sabha just after Zamindari Abolition and restore the same to their original position.

11. Let a copy of this order be given to Shri S.P. Mishra, learned standing counsel for communication to authorities concerned.

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