

Devta Deen and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Aug-29-1997

Reported in : 1998(1)AWC161

Judge : R.H. Zaidi, J.

Acts : Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Sections 198 and 198(4) and (5); [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 2155 (M/S) of 1997 and other 3 Petitions

Appellant : Devta Deen and Others

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C

Advocate for Pet/Ap. : S.M. Waseem and ;S.C. Tewari, Advs.

Judgement :

R.H. Zaidi, J.

1. In these petitions since pure questions of law are involved and as desired by counsel for the parties, they are disposed of finally by common judgment.

2. Heard the learned counsel for the petitioners, learned Standing Counsel Sri A.K. Varma and also perused the record.

3. By means of these petitions under Article 226 of the [Constitution of India](#), petitioners pray for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 11.9.1995 and 15.7.1995.

4. It appears that the proceedings under Section 198 of U. P. Zamindari Abolition and Land Reforms Act (for short the Act) were initiated against the petitioners, in respect of the land in dispute and order of ejectment dated 11.9.1995 was passed by the Chief Revenue Officer behind the back of the petitioners and without affording them an opportunity of hearing, holding that their pattas were farzi and it was not necessary to provide them an opportunity of hearing. The petitioners aggrieved by the orders dated 11.9.1995 filed a revision challenging the validity of the said order before the Commissioner of the Division. It was urged before the Commissioner that the order dated 11.9.1995 was passed behind the back of the petitioner and without affording them an opportunity of hearing. The same was, therefore, liable to be set aside. The Commissioner did not attach any weight to the said argument and dismissed the revision vide his order dated 11.9.1995, which is quoted below :--

^esjs }kjk lh- vkj- vks- dsvkns'k dks ns[kk A pafd vkoaVu esa QthZ dk;Zokgh gqbZ gS ,ao fjdk MZ esa HkhgsjQsj gqvk gS A vr% iV~Vk /kkjdxsa dks lquus dk vkSfpR; ugha Fkk A lh- vkj- vks-us lHkh fcUnqvks ij foLrkj ls izdk'k Mkyk gS A ,sls esa fjohtu fujLr A fjohtfu LV;fn ik= gSa rks os vkoaVu gsrq lEcU/kr ijxukf/kdkjh dks izkFkZuk&i;= nsafu;ekuqlkj fuLrkj.k djks, saxs A*

5. Challenging the validity of the aforesaid orders, present petitions were filed by the petitioners. Learned counsel for the petitioners vehemently urged that the orders passed by the authorities below were illegal and manifestly erroneous. They were non est in law as the same were passed in violation of provisions of Section 198 of the Act as well as in violation of principles of natural justice.

6. Sub-section (5) of Section 198 of the Act provides as under :

'198 (5) No order for cancellation of an allotment or lease shall be made under sub-section (4), unless a notice to show cause is served on the person in whose favour the allotment or lease was made or on his legal representatives :

Provided that no such notice shall be necessary in proceedings for the cancellation of any allotment or lease where such proceedings were pending before the Collector or any other court or authority on August 18, 1980.'

7. The provisions of sub-section (5) of Section 198 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, are apparently mandatory. Whenever action is taken under sub-section (4) of Section 198, it is obligatory upon the Collector to issue a show cause notice to the person in whose favour allotment or lease was made or to his legal representatives except in the cases covered by the aforesaid proviso.

8. Where the land was allotted to the petitioners by the Land Management Committee of the village and the patta was approved by the S.D.O., case was not covered by the proviso, which carves an exception to the provisions of sub-section (5) of Section 198 of the Act. It is also well-settled in law that an order passed in violation of principles of natural justice is non est in law.

9. Learned standing counsel appearing for the respondents fairly conceded that it was obligatory upon the Collector to afford an opportunity of showing cause to the petitioners before cancelling their pattas and before setting aside the order of approval. He himself suggested that the impugned orders be set aside and the Collector be directed to decide the case in accordance with law.

10. In view of the aforesaid discussion the impugned orders which have been passed in utter disregard and violation of the provisions of sub-section (5) of Section 198 as well as in violation of principles of natural justice are liable to be quashed.

11. In the result, the petition succeeds and is allowed. The impugned orders dated 11.9.95 and 15.7.95 are hereby quashed. The Collector is directed to decide the cases afresh after following the procedure prescribed under law.