

Chob Singh and Another Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-17-2000

Reported in : 2000(2)AWC877

Judge : Binod Kumar Roy and ;Lakshmi Bihari, JJ.

Acts : [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 122B; [Constitution of India](#) - Article 226

Appeal No. : C.M.W.P. No. 34573 of 1995

Appellant : Chob Singh and Another

Respondent : State of U.P. and Others

Advocate for Def. : S.C. and ;B.B. Pal, Adv.

Advocate for Pet/Ap. : Wasim Alam and ;Bharat Bhusan Pal, Advs.

Judgement :

ORDER

Binod Kumar Roy and Lakshmi Bihari, JJ.

1. The first prayer of the petitioners is to quash the order dated 13.9.1995. passed by the Sub-Divisional Magistrate, Mant, district 'Mathura in substance the English translation of which reads thus :

'R.I. (M) :

Take trouble of stopping the illegal construction by the help of the police.

Sd/-

Illegible

13.9.1995.'

1.1. The further prayer of the petitioners is to command respondent Nos. 1 to 3 not to Interfere with their possession and other co-tenure holders over the disputed land except according to law and the procedures laid therefor.

2. The petitioners describe the disputed land as a piece of land lying at a distance of about one hundred meters from their residential houses which is in their possession since the time of ancestors where they and their brothers used to keep cattle, cattle fodder, agricultural equipments and there also exists cattle sheds and wooden huts, etc. and they became absolute owners thereof with enforcement of the U. P. Z. A. and L. R. Act. From the averments made in the writ petition, it transpires that the petitioners had filed a suit for grant of injunction in which they had also filed an application for grant of an ad interim injunction on which. however, no order in their favour had been passed. The impugned order has been passed on a frivolous petition filed by respondent No. 4 the village Pradhan who was opposed in the election by them. Respondent No. 4 by filing a counter has disputed the claim of the petitioners by stating, inter alia, that there are long standing entries pertaining to title of the Gaon Sabha lands ; that the affidavits are manipulated ones ; that the Pleader Commissioner's report do not support their alleged case ; and that they were not allowed to grab the property on 13.9.1995.

3. Heard learned counsel.

4. From the document appended as Annexure-1. on which the order Impugned has been passed by the Sub-Divisional Magistrate, it appears' that the Pradhan of the Gram Panchayat had moved the Sub-Divisional Magistrate. Mant district Malhura, that about seven acres of land of Gaon Sabha which is fit for agricultural

purposes, is being sought to be illegally taken possession of by Narain Singh and Chob Singh sons of Kunwar Sen, who are the writ petitioners.

5. It is well known that in our State, there cannot be adverse possession of any Gaon Sabaha land. In fact no such case has also been pleaded by the petitioners. All what petitioners claim is that they are possessing it since the time of their ancestors and that after the enforcement of the U. P. Zamindari Abolition and Land Reforms Act, they became its absolute owner. It is not their specific case that they have title to the lands. The question as to whether they had become owner of the land in question cannot be adjudicated by us in this proceedings under Article 226 of the [Constitution of India](#). In support of their claim, no title deed or any document particularly of the Government worth name has been brought on record by the petitioners except some affidavits, the report of the Pleader Commissioner, copy of the Replication dated 5.10.1995 and counter-affidavit all filed in the suit, which are required to be considered in the suit in which respondent No. 4 alone was impleaded as party in her persona] capacity and not as Pradhan of the village.

6. The net question which remains to be answered is as to whether we should interfere with the aforementioned order passed by the Sub-Divisional Magistrate, Mant. district Mathura? Our answer is a definite no for the reason that the suit is pending and that no one can be allowed to take illegal possession of the Gaon Sabha land and if any one makes such an attempt, the State should stop it besides the disputed land has not been specified with reference to Plot and or Khata Number and or even by its boundaries In this writ petition.

7. In the result, this writ petition is dismissed.

8. The office is directed to hand over a copy of this order to Sri Alok Kumar Singh, learned brief holder for the State of U. P., within one week for its intimation to the authority concerned.