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**Bansdeo Vs. Additional District Magistrate (Administration) and anr.**

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**SooperKanoon Citation : [sooperkanoon.com/470100](http://sooperkanoon.com/470100)**

**Court : Allahabad**

**Decided On : Feb-19-2002**

**Reported in : 2002(2)AWC1359**

**Judge : Ashok Bhushan, J.**

**Acts : [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 122B, 122B(3) and 122B(4)**

**Appeal No. : C.M.W.P. No. 7103 of 2001**

**Appellant : Bansdeo**

**Respondent : Additional District Magistrate (Administration) and anr.**

**Advocate for Def. : S.C.**

**Advocate for Pet/Ap. : R.C. Singh, Adv.**

**Disposition : Writ petition dismissed**

**Judgement :**

**Ashok Bhushan, J.**

1. Heard Sri. R. C, Singh, counsel for the petitioner and learned standing counsel appearing for respondent No. 1.

2. By this writ petition, the petitioner has prayed for quashing the order dated 6.2.2001 passed by Additional District Magistrate (Administration). Deoria.
3. The facts of the case as stated in the writ petition and supplementary-affidavit are ; the petitioner claims to be agricultural labourer. Land in dispute belonged to zamindar who settled the land with the petitioner's ancestors. Proceedings under Section 122B of U. P. Zamindari Abolition and Land Reforms Act. 1950 (hereinafter referred to as the Act) were initiated against the petitioner by issuing notice under Z.A. Form 49Ka. Reply of notice was submitted by the petitioner on 25th September, 1998 in which he claimed that petitioner is landless agricultural labourer. He further claimed that Plot No. 6 area 0.405 hectare is Banjar/Nadigandak in which the petitioner is in possession since consolidation. He further claimed that land will be treated to be settled with him under Section 123 of U. P. Zamindari Abolition and Land Reforms Act, 1950. An order was passed by Tahsildar on 2.2.2000 that petitioner belongs to Backward Class (Mallah) and is agricultural labourer, Notice under Z.A. Form 49Ka was discharged. A revision was filed by Gaon Sabha which revision was allowed by the order of Additional District Magistrate (Administration) dated 6.2.2001. The revisional court held that benefit of Section 122B (4F) can be given only to members of Scheduled Caste. It was held that possession of the petitioner is only for last one year and there is no evidence on the record that petitioner's possession is from the date of vesting. The revisional court allowed the revision, set-aside the order dated 2.2.2000 and directed the trial court to take proceedings for ejectment and realisation of damages against the petitioner. The said order dated 6.2.2001 has been challenged by the petitioner in the present writ petition.
4. A counter-affidavit has been filed by respondent No. 1 in which it has been stated that the land in dispute is recorded as banjar and in accordance with provisions of Section 117 of the Act, it is Gaon Sabha property. It has been further stated that petitioner belongs to Backward Class (Mallah) and he cannot get any benefit under Section 122B (4F) of the Act since his possession is only for last one year. It has further been stated in paragraph 11 of the counter-affidavit that consolidation operation has already been held in the village in which no steps were taken by the petitioner to get his rights declared. The claim of the petitioner is also

barred by Section 49 of U. P. Consolidation of Holdings Act. A rejoinder-affidavit has been filed by the petitioner in which holding of consolidation operation has neither been denied nor any fact has been given regarding his possession or rights on the land in dispute.

5. The only submission raised by the counsel for the petitioner, in support of the writ petition, is that there was bona fide dispute of title involved, thus, petitioner could not have been directed to be evicted in proceedings under Section 122B of the Act. The counsel for the petitioner has submitted that petitioner has claimed his possession over land in dispute since the date of vesting and he has also filed a suit under Section 229B for declaration of his title, hence there being bona fide dispute of title, the order of ejection passed by the revisional court is illegal. The counsel for the petitioner also placed reliance on a Division Bench judgment in Tahsildar/Assistant Collector v. Rai Amarnath Agarwal and Ors.. 1965 RD 39.

6. Writ petition was heard by this Court on 28.2.2001. This Court passed the following order :

-Heard.

Learned counsel for the petitioner submitted that the land in dispute was in his possession before the enforcement of the U. P. Zamindari Abolition and Land Reforms Act, therefore, the same stood settled with him under Section 9 of the said Act. On the record, neither copy of the objection nor any other documentary evidence has been filed to show that the land in dispute was abadi land and that the petitioner was in possession of the same before enforcement of the said Act.

As prayed by learned counsel for the petitioner, a week's time is granted to file a supplementary-affidavit annexing therewith copy of the objection or any other documentary evidence to show that the land in dispute was abadi land and that the petitioner was in possession of the same before the enforcement of the U. P. Zamindari Abolition and Land Reforms Act.

List immediately on expiry of one week.'

After the order of this Court, the petitioner filed a supplementary-affidavit in which copy of objection dated 25th November, 1998, has been filed and copy of the plaint of suit under Section 229B has also been annexed as Annexure S.A.-2 to the supplementary-affidavit. It is to be noted, that in the objection filed by the petitioner, the petitioner has not even laid any claim that possession over the land in dispute by him or his ancestor have been continuing from the date of vesting, rather it has been claimed in paragraph 2 of the objection that petitioner is continuing in possession from consolidation operation and the land has been settled with him under Section 123.

7. After having heard counsel for the parties and after perusing the record, it is clear that claim raised by the petitioner in the writ petition that he has been continuing in possession since, before the date of vesting and zamindar has settled the land with the petitioner's ancestor was not even raised in the objection filed in reply to the notice under Z.A. Form 49Ka. After the order of this Court dated 28th February, 2001, the petitioner has filed copy of his objection. In his objection, the petitioner has claimed his possession from the date of consolidation.

8. The submission of counsel for the petitioner that a bona fide dispute of title has arisen in the present case, hence he could not have been evicted in proceedings under Section 122B of the Act need to be considered. From the facts, which have come on the record, it is clear that there is no bona fide dispute of title raised by the petitioner in proceedings under Section 122B of the Act. The objection, which has been filed by the petitioner along with supplementary affidavit (Annexure S.A.-1), does not give any facts or grounds on which any inference can be drawn that any bona fide dispute of title has been raised by the petitioner. The claim in the objection is that possession of the petitioner and his ancestors has been continuing from consolidation operation. In paragraph 2 of the objection, the petitioner himself has described the land as Banjar/ Nadigandak. Thus, the petitioner has not claimed that the land belongs to him in his objection rather he admitted the land to be banjar. Title is the means whereby a person's right to property is established. It is the means whereby the owner of lands has the Just possession of his property. Title is evidence of ownership. Mere claim of possession of a property does not suggest title in the person possessing the

property. The mere fact that a suit has been filed by the petitioner under Section 229B does not prove that there was bona fide dispute of title raised by the petitioner in proceedings under Section 122B of the Act. The suit, admittedly, has been filed by the petitioner after proceedings under Section 122B of the Act were initiated for eviction of the petitioner from Gaon Sabha land. A perusal of the plaint, which has been filed as Annexure S.A.-2. shows that when the suit was filed, the petitioner changed his stand and has started claiming that he has been continuing in possession since before 1951. There is no bona fide in the claim raised by the petitioner. From the above facts, it cannot be said that petitioner raised any bona fide dispute of title in proceeding under Section 122B. Thus the proceedings initiated against the petitioner under Section 122B were not liable to be dropped on the ground that petitioner has raised any bona fide dispute of title. The revisional Court has recorded categorical finding that petitioner failed to give any evidence that his possession is since the date of vesting. The revisional court has further noted that petitioner belongs to Backward Class, hence he is also not entitled to the benefit of Section 122B (4F) of the Act. This Court vide its order dated 28th February, 2001. granted time to the petitioner to file affidavit annexing any other documentary evidence to show that land in dispute was abadi and that the petitioner was in possession of the same before the enforcement of U.P.Z.A. and L.R. Act. In spite of order of this Court, no evidence has been filed in this petition that petitioner has been in possession of land in dispute since before the date of vesting. Annexure-3 to the writ petition is khasra of 1407F. In the said khasra also, the land in dispute is shown to be recorded as banjar.

9. The decision relied by petitioner in Tahsildar-Assistant Collector's case (supra) does not help the petitioner in any manner since in the present case, it has been found that there was no bona fide dispute of title raised by the petitioner. In the aforesaid judgment, this Court interpreting the provisions of Section 122B as it then existed, held :

'The effect of the introduction of this provision in the Act is to validate Rule 115C from its inception. The provision, however, declares by means of Sub-section (2) that the Collector would be entitled to entertain and decide, only those cases, under Rule 115C which do not involve a bona fide question of title. In other words,

the jurisdiction of the Collector or the Assistant Collector, as the case may be under Rule 115C is confined to decide only those cases in which a bona fide question of title is not involved. In the cases giving rise to these special appeals, a bona fide question of title was clearly involved. Consequently, we are of the opinion that the learned Assistant Collector had no jurisdiction to decide the two cases giving rise to these two special appeals.'

As held above, when in the present case, there was no dispute of bona fide title raised by the petitioner, no benefit can be availed by the petitioner on the aforesaid decision.

10. in the context of aforesaid judgment, it will also be relevant to note the changes brought in Section 122B of the Act by Legislature which clearly suggest the change of legislative policy from the date when Section 122B was first inserted in the Act by U. P. Act No. 28 of 1961. Section 122B of the Act, as inserted by U. P. Act No. 28 of 1961, is quoted as below :

'122B. Power of the Land Management Committee and the Collector.--(1) Where any property vested under the provisions of the Act. In a Gaon Sabha or a local authority, is damaged or misappropriated by any person, or where any land so vested in it, or any vacant land or any land, which it is entitled to take possession of under this Act is occupied otherwise than in accordance with the provisions of this Act by any person, the Land Management Committee, or the local authority, as the case may be shall take steps forthwith to recover compensation for damage to, or mis-appropriation of, the property and for the recovery of possession of the land together with damages caused by wrongful occupation.

(2) Where the Land Management Committee or the local authority fails to take action in accordance with the provisions of Sub-section (1) within a period of six months from the date of wrongful occupation and one month from the date of damage or mis-appropriation, the Collector may, except in a case involving a bona fide question of title, on an application of the Chairman, Member or Secretary of the Land Management Committee or the local authority, as the case may be, or on the facts coming to his notice otherwise, take steps for the ejection of the person in wrongful occupation of the land for damage to, or misappropriation of,

the property.

(3) The procedure to be followed in any action taken under Sub-section (2) shall be such as may be prescribed.

(4) The decision of the Collector under Sub-section (2) shall, subject to the result of a suit by the aggrieved party before a Court of competent jurisdiction, be final and conclusive anything to the contrary contained in any other law notwithstanding.

(5) Rules 115-C to 116-H of the U. P. Zamindari Abolition and Land Reforms Rules, 1952, shall be and be always deemed to have been, made under the U. P. Zamindari Abolition and Land Reforms Act, 1950, as amended by this Act, as if this section had been in force on all material dates.'

11. Sub-section (2) of Section 122B clearly mentions that Collector may except in case involving bona fide question of title take steps for ejection of the person from wrongful occupation of the land. Section 122B was further amended by U. P. Land Law Amendment Act, 1975. By U. P. Act No. 30 of 1975 Sub-sections (2), (3) and (4) of existing Section 122B were substituted by new Sub-sections and Sub-sections 4A to 4F were also added. Section 4B provided :

'If during the course of enquiry any proceeding under this section, the person in occupation of land referred to Sub-section (1) has produced any evidence of title to such land which appears to the Collector to raise bona fide question of title, then the Collector shall, by order require such person to file a suit, for declaration of his title under Section 229B in competent court within a period of one month from the date of such order and stay further proceedings in the mean time.'

12. The problem of unauthorised occupation of Gaon Sabha land was felt not being able to be effectively managed by the existing provisions, hence further amendments were made in Section 122B by U. P. Land Law Amendment Act, 1976. After various amendments in Section 122B. this section which now stands after amendments made by U. P. Act No. 9 of 1997 is as follows :

'122B. Powers of the Land Management Committee and the Collector.--(1) Where any property vested under the provisions of this Act in a Gaon Sabha or a local authority is damaged or misappropriated or where any Gaon Sabha or local authority is entitled to take or retain possession of any land under the provisions of this Act and such land is occupied otherwise than in accordance with the provisions of this Act, the Land Management Committee or Local Authority, as the case may be, shall Inform the Assistant Collector concerned in the manner prescribed.

(2) Where from the information received under subsection (1) or otherwise, the Assistant Collector is satisfied that any property referred to in Sub-section (1) has been damaged or misappropriated or any person is in occupation of any land, referred to in that Sub-section, in contravention of the provisions of this Act, he shall issue notice to the person concerned to show cause why compensation for damage, misappropriation or wrongful occupation as mentioned in such notice be not recovered from him or, as the case may be. why he should not be evicted from such land.

(3) If the person to whom a notice has been Issued under subsection (2) falls to show cause within the time specified in the notice or within such extended time not exceeding three months from the date of service of such notice on such person, as the Assistant Collector may allow in this behalf, or if the cause shown is found to be insufficient, the Assistant Collector may direct that such person may be evicted from the land and may for that purposes, use, or cause to be used such force as may be necessary and may direct that the amount of compensation for damage, misappropriation or wrongful occupation be recovered from such person as arrears of land revenue.

(4) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation or wrongful occupation referred to in the notice under Sub-section (2) he shall discharge the notice.

(4A) Any person aggrieved by the order of the Assistant Collector under Sub-section (3) or Sub-section (4) may, within thirty days from the date of such order prefer, a revision before the Collector on the grounds mentioned in clauses (a) to

(e) of Section 333.

(4B) The procedure to be followed in any action taken under this section shall be such as may be prescribed.

(4C) Notwithstanding anything contained in Section 333 or Section 333A, but subject to the provisions of this section :

(i) every order of the Assistant Collector under this section shall, subject to the provisions of Sub-section (4A and 4D), be final ;

(ii) Every order of the Collector under this section shall, subject to the provisions of subsection (4D), be final.

(4D) Any person aggrieved by the order of the Assistant Collector or Collector in respect of any property under this section may file a suit in a Court of competent jurisdiction to establish the right claimed by him in such property.

(4E) No such suit as is referred to in Sub-section (4D) shall lie against an order of Assistant Collector if a revision is preferred to the Collector under Sub-section (4A).

Explanation.--For the purposes of this section, the expression 'Collector' means the officer appointed as Collector under the provisions of the U. P. Land Revenue Act, 1901 and includes an Additional Collector.

(4F) Notwithstanding anything in the foregoing Sub-sections, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in Section 132) having occupied it from before June 30, 1985 and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asomi, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and it shall be deemed that he has been admitted as bhumidhar with non-transferable rights of that land under Section 195.

(5) Rules 115-C to 115-H of the U. P. Zamindari Abolition and Land Reforms Rules, 1952, shall be and be always deemed to have been made under the U. P. Zamindari Abolition and Land Reforms Act, 1950, as amended by the Uttar Pradesh Land Laws (Second Amendment) Act, 1961, as if this section has been in force on all material dates and shall accordingly continue in force until altered or repealed or amended in accordance with the provisions of this Act.'

13. The changes in legislative policy with regard to unauthorised occupation of Gaon Sabha land was noticed by this Court in *Rajendra Tesari v. Gaon Sabha*, 1992 RD 49. It was held in the aforesaid Judgment :

'Considering the aforesaid legislative history of Section 122B. It is clear that grabbing of Gaon Sabha property was being done in large scale and the provision for speedy action suchscrupulous persons became necessary. However, the Legislature took care of the persons having bona fide title over the land and it was thought proper that they may not be evicted in these summary proceedings. But the Important question was whether the burden should be placed on Gaon Sabha or local authority to initiate the proceedings for suit for eviction of such person or persons concerned should be asked to get his title declared from competent court of jurisdiction by filing a suit. The Legislature in its wisdom thought it proper to place the burden on the person concerned and, in my opinion rightly for two reasons ; firstly that for the protection of public property, where there is no body to have any individual interest, it could not be reasonably expected from Gaon Sabha or local authority to take swift and sure action for eviction of unauthorised occupants by filing suit, and to pursue the same for years which is usual feature in our legal system. Further the constitution of Gaon Sabha or local authority : are subject to frequent changes due to elections and the loyalties also change with the same. It cannot be thus expected from the Gaon Sabha and local authorities that they shall pursue the long and cumbersome procedure of suit necessary for eviction of unauthorised occupants who are possessed with some evidence showing the bona fide question of title over the land in dispute. Secondly in proceedings under Section 122B the question of title could not be decided and if the proceedings were allowed to be dropped on the ground that bona fide question of title is involved, the Gaon Sabha or the local authority could be deprived of their

properties without their being any adjudication or the final determination of the question of title between Gaon Sabha and person in possession which cannot be in any manner desirable and advisable. The purpose appears that on basis of evidence showing bona fide question of title, his ejection in summary manner should not be done. However, he can be legally required to get his title cleared by filing suit in the competent court of Jurisdiction and then only he shall be entitled to retain possession.'

14. The provisions of Sub-section (3) to Section 122B now requires that if the cause shown is found to be insufficient, the Assistant Collector may direct that such person may be evicted from the land. The key words are, if the, cause shown is found to be insufficient. The requirement which was earlier there that if a bona fide question of title is involved, the Collector will not proceed under Section 122B has been purposely done away so that a person raising any kind of dispute may not take shelter of the provisions that there is a bona fide dispute of title so that he may be saved from proceedings under Section 122B. In case where Gaon Sabha is recorded in the revenue records as owner of land, there can be only exceptional cases in which any bona fide dispute of title can be raised by a person. From the decision in Rqjendra Tewari's case (supra). It is clear that Gaon Sabha should not be deprived possession of its properties on the ground that bona fide dispute of title is being raised by the person in occupation unless he gets his title cleared by filing a suit in competent court of Jurisdiction.

15. From above discussions, it is clear that the legislative intendment, which is evident by amendments brought in Section 122B and the pronouncement of this Court, is that a proceeding under Section 122B is not to be dropped merely on the ground that person in occupation raises some dispute of title. The requirement now provided under Section 122B (3) is that unless the person in occupation shows sufficient cause for being in possession, the Assistant Collector may direct that such person be evicted. It has already come on the record that petitioner has already filed suit for declaration of his title. It goes without saying that outcome of the proceedings under Section 122B are always subject to final adjudication of the title and these proceedings are always subject to final adjudication.

16. In view of the above discussions, the submission raised by the counsel for the petitioner is devoid of merit and cannot be accepted.

17. The writ petition lacks merit and is accordingly dismissed.

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