

Janab and Others Vs. State of U.P. and Others

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Court : Allahabad

Decided On : May-21-2001

Reported in : 2001(3)AWC1809

Judge : S.K. Singh, J.

Acts : [Constitution of India](#) - Article 226; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 115N(3), 122C, 122C(2), (3), (4), (6), (7), 333 and 333A

Appeal No. : C.M.W.P. No. 17753 of 2001

Appellant : Janab and Others

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Ghan Shyam Joshi, Adv.

Disposition : Writ Petition dismissed

Judgement :

S.K. Singh, J.

1. This petition has been filed against the order passed by the Additional Collector/Additional District Magistrate (Finance and Revenue), Jyotiba Phule

Nagar dated 21.3.2001 by which the allotment, as was made in favour of the petitioners for housing site, was cancelled and it was directed that the land will stand restored back in Gaon Sabha.

2. A preliminary objection has been raised on behalf of the Gaon Sabha by Sri Anuj Kumar who appeared on behalf of respondent No. 2 that the writ petition as has been filed by the petitioners should not be entertained as they have an alternative remedy to approach the revisional jurisdiction of the Addl. Commissioner/Board of Revenue.

3. Learned counsel for the petitioners having placed reliance on the provisions as contained in Section 122C, sub-clause (7) of U.P.Z.A. and L.R. Act (hereinafter referred to as the Act) argued that every order passed by the Assistant Collector under sub-section (4) shall subject to the provisions of subsection (6), shall be final and the provisions of Section 333 and Section 333A shall not apply thereto. The provisions of Section 122C of the Act is hereby quoted below :

'122C. Allotment of land for housing site for members of Scheduled Castes, agricultural labourers etc.

(1) The Assistant Collector in charge of the sub-division of his own motion or on the resolution of the Land Management Committee, may earmark any of the following classes of land for the provisions of abadi sites for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and the village artisans.'

(4) If the Assistant Collector in charge of the sub-division is satisfied that the Land Management Committee has failed to discharge its duties or to perform its functions under sub-section (2) or it is otherwise necessary or expedient so to do. he may himself allot such land in accordance with the provisions of sub-section (3).

(6) The Collector may of his own motion and shall on the application of any person aggrieved by an allotment of land under this section inquire in the manner prescribed into such allotment, and if he is satisfied that the allotment is irregular,

he may cancel the allotment and thereupon the right, title and interest of the allottee and of every other person claiming through him in the land allotted shall cease.

(7) Every order passed by the Assistant Collector under sub-section (4) shall, subject to the provisions of subsection (6) and every order passed by the Collector under sub-section (6) shall be final, and the provisions of Section 333 and Section 333A shall not apply in relation thereto.'

4. Learned counsel, in support of that submission, placed reliance on a decision in Smt. Sumratiya v. Commissioner, 1996 RD 163, and argued that as no revision lay to the revisional authority in view of provisions of Section 122C (7) and, therefore, writ petition is to be entertained by this Court. I have considered the submissions made across the bar and have carefully examined the provisions contained In Section 122C, sub-clauses (4), (6) and (7) of the Act.

5. A bare perusal of the aforesaid provisions will make it clear that under sub-clause (4) of Section 122C, the Assistant Collector has been entrusted with the powers which are administrative in nature and it cannot be said that he acts as a Court while exercising that power. It is this exercise, which has been referred under sub-clause (7) of Section 122C of the Act, to be final, subject to the provisions of sub-clause (6). So far the exercise of powers by the Collector under clause (6) of Section 122C of the U. P. Zamindari Abolition and Land Reforms Act. 1950, is concerned, it relates to the cancellation of the allotment after giving opportunity to the parties to the proceedings and thus the powers being exercised in this regard, being as judicial one. It will certainly come within the forecorner of the powers as are conferred on the revisional authority under Section 333 of the Act. The finality attached to the order passed by the Collector under sub-clause (4) of Section 122C, in my opinion, in no way restricts the revisional powers of the Additional Commissioner/Board of Revenue under the Act. The power of the revisional court which has been given under the Act having not been specifically taken away, it cannot be said that there is intention of Legislature to provide two contradictory procedures for exercising the powers by the revisional authority.

6. This view clearly finds support from the decision as has been in Smt. K. Devi v. Board of Revenue, 1972 RD 228, in which the Division Bench of this Court has held, while dealing with the provisions of Section 115N (3) that the decision of the Assistant Collector shall be final and in that context, the Division Bench has held that such finality does not restrict the revisional jurisdiction conferred upon the higher Courts. Besides the aforesaid decision, yet in another case decided by this Court as in Smt. Bhoodevi v. Board of Revenue, 1994 RD 92, similar view has been taken that there is no encroachment on the powers of the revisional authority to examine the propriety, legality and otherwise in respect to any order passed by the courts below.

7. In my view, as the powers conferred under Section 333 of the Act is very wide, the revision will lie against an order passed by the Collector exercising the powers under Section 122C (6) of the Act,

8. The decision as has been referred by learned counsel for the petitioner, having been examined in detail, appears to have not taken note of the decision of the Division Bench as given in Smt. K. Devi case (supra) and the powers of the revisional authority under Section 333 of the Act has not been discussed in detail and in fact, this decision appears to have been rendered in the facts of that very case as in para 12 of that decision, the Hon'ble Judge has made an observation that even if it be assumed that the revision under Section 333 of the Act may lie it will be a futile exercise and, therefore, in my view, the decision as has been given by this Court in Smt. Sumaratiya v. Commissioner (supra) appears to be distinguishable.

9. In view of the premises aforesaid. I hold that the order passed by the Collector under Section 122C of the Act shall be subject to the revisional jurisdiction and the writ petition to this Court should not be ordinarily entertained unless it comes as an exception, as so far the powers of this Court is concerned, even if there is statutory alternative remedy, there is no fetter on the extraordinary jurisdiction of this Court while exercising jurisdiction under Article 226 of the [Constitution of India](#)

10. Having considered the facts and circumstances of the case and in view of the discussions as made above. I do not find it to be fit case for exercising the jurisdiction under Article 226 of the Constitution as the petitioners have alternative statutory remedy of filing revision against the order which has been impugned here in the instant writ petition.

11. In the result, the writ petition is dismissed without an order as to costs.

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