

Sidique Vs. Additional Collector, Badaun and Others

Sidique Vs. Additional Collector, Badaun and Others

SooperKanoon Citation : sooperkanoon.com/474262

Court : Allahabad

Decided On : Dec-18-1997

Reported in : 1998(2)AWC1386

Judge : Sudhir Narain, J.

Acts : [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 6, 9, 117 and 122B

Appeal No. : C.M.W.P. No. 42926 of 1997

Appellant : Sidique

Respondent : Additional Collector, Badaun and Others

Advocate for Def. : S.C. and ;V.K. Singh, Adv.

Advocate for Pet/Ap. : Rajiv Joshi, Adv.

Judgement :

Sudhir Narain, J.

1. This writ petition is directed against the order dated 3.5.1997 passed by the Assistant Collector, respondent No. 2 directing ejectment of the petitioner from the disputed land and imposing damages to the tune of Rs. 2.160 and further the order dated 5.12.1997 passed by respondent No. 1 dismissing the revision against

aforesaid order.

2. The proceedings were taken against the petitioner for ejectment from 121 sq. yards of land of plot No. 232 situated in village Saljana Mulsim. Pargana Asadpur. Tahsil Glonor. district Badaun. The petitioner filed objection stating that the property is his ancestral property and his house is existing prior to enforcement of U. P. Zamindari Abolition and Land Reforms Act (in short referred to as the Act). The parties led evidence. Respondent No. 2 recorded finding that the land in question was recorded as Abadi which was vested in Gaon Sabha. The petitioner failed to prove that he was in possession prior to enforcement of the Act. He directed the ejectment of the petitioner from the disputed land and imposed damages to the tune of Rs. 2.160. The petitioner being aggrieved against said order filed revision. Respondent No. 1 has dismissed the revision by the impugned order dated 5.12.1997.

3. I have heard Shri Rajiv Joshi. learned counsel for the petitioner.

4. The learned counsel for the petitioner submitted that the Abadi land does not vest in the Gaon Sabha. He has placed reliance upon the decision of Board of Revenue Cheda Singh v. Gaon Sabha, 1980 RD 21. wherein it has been observed that under Section 9 of the U. P. Zamindari Abolition and Land Reforms Act. all wells, trees and the buildings in the Abadi with the area appurtenant thereto shall be deemed to be settled with existing owner or occupier by the State Government. Section 117 of the Act specifies the property which shall vest in the Gaon Sabha. It includes 'Abadi sites', i.e., 'vacant land in an Abadi and does not include land in the Abadi site which is occupied by a well or a building or is appurtenant thereto'. All the Abadi site vests in the State Government as per clause (i) (a) of Section 6 of the Act. Section 9 of the Act. confers power on the owner/Intermediary who has building on the Abadi land on the date of vesting. It is deemed to be settled with him by the State Government.

5. The land which is not covered by any building or land appurtenant to such building, shall not be deemed to have been settled with the State Government. If any person occupies any portion of Abadi site subsequent to the date of vesting or makes construction on such land, he shall not be entitled to the benefit of Section

9 of the Act. It shall be treated as Abadi site and will be deemed to have been vested in Gaon Sabha as provided under Section 117 of the Act. It has been found that the petitioner had no building on the date of vesting. He is not entitled to get the benefit of Section 9 of the Act. The Gaon Sabha in these situations, was Justified in taking proceedings for ejection against the petitioner under Section 122B of the Act. In view of the above, the impugned orders do not suffer from any manifest error of law.

6. As the land is an Abadi land, unless there is any other reason, the Land Management Committee may consider the application of the petitioner in respect of the allotment of land for Abadi purpose in accordance with the provisions of the Act.

7. Subject to the observations made above, the writ petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com