

**Kali Charan Vs. Additional District Magistrate, Agra and Others**

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**Court :** Allahabad

**Decided On :** Feb-17-2000

**Reported in :** 2000(2)AWC1669

**Judge :** D.K. Seth, J.

**Acts :** [Constitution of India](#) - Article 226; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 120B (4A), (4C), (4D), (4E) and 122B

**Appeal No. :** C.M.W.P. No. 23383 of 1993

**Appellant :** Kali Charan

**Respondent :** Additional District Magistrate, Agra and Others

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

**Advocate for Pet/Ap. :** A.S. Diwakar, Adv.

**Judgement :**

**D. K. Seth, J.**

1. In this petition orders passed on revision under subsection (4A) of Section 122B of the U. P. Zamindari Abolition and Land Reforms Act (hereinafter called as the 'Act') has been challenged. The question involves disputed question of fact which can be established by a person aggrieved by an order under sub-section (4A) of

Section 122B of the Act, in a suit in terms of subsection (4D) of the said Act.

2. Sub-section (4D) of Section 122B of the U. P. Zamindari Abolition and Land Reforms Act prescribes that 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 the Court of competent jurisdiction to establish the right claimed by him in such property. Sub-section (4E) does not preclude filing of suit against the order of Collector passed under subsection (4A) of Section 122B of the Act, though It precludes a suit against the order passed by the Assistant Collector, if revision is preferred to the Collector under sub-section (4A).

3. In the case of *Kajoda v. Asstt. Collector, Finance and Revenue Mathura and others*, 1996 (2) AWC 1042 :1996 ACJ 620, it was held that order under Section 122B of the Act can be challenged in a suit under sub-section (4D) of Section 122B of the Act. If a revision is filed, suit is barred. But the order in revision can be challenged in suit in view of subsection (4E) of Section 122B of the Act. Disputed question of fact can best be decided in a suit which is an appropriate remedy and writ cannot be maintained.

4. In the case of *Babu Lal v. Collector, Jhansi*, 1997 ALJ 13, it was held that the order of the Collector under sub-section (4A) of Section 122B of the Act is final but subject to sub-sections (4D) and (4E). Subsection (4D) enables the aggrieved party to file suit for establishing title. Sub-section (4E) is not a bar in challenging order under sub-section (4A). There is no contradiction in subsections (4C), (4D) and (4E).

5. In the case of *Shambhoo Nath v. Chief Revenue Officer/Addl. Collector. Allahabad*. 1996 (3) AWC 1432, it was held that in a proceeding under Section 122B of the Act. if title is involved, the same can be conclusively determined In suit. Subsection (4E) is not an absolute bar. Sub-section (4D) enables filing of suit by aggrieved person, against both orders subject to sub-section (4E). There is no contradiction in the respective sub-sections. Sub-section (4E) makes it clear that a suit against order under sub-section (4A) is maintainable.

6. Since the Collector has passed the Order under sub-section (4A). the embargo provided in subsection (4E) is not attracted. Therefore, the writ petition is dismissed in view of adequate alternative remedy. Inasmuch as sitting in writ Jurisdiction it is not possible for this Court to ascertain the question of title relating to the property. It will be open to the petitioner to file a suit within a period of three months from today, if he is so advised. However, Interim orders, if any passed in this petition shall continue for a period of three months from date. It will be open to the petitioner to seek advantage of Section 14 of the Limitation Act, if circumstances so demand.

7. This writ petition is dismissed as not maintainable with the aforesaid observation.

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