

Pushkar Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Apr-07-2000

Reported in : 2000(3)AWC1905

Judge : D.K. Seth, J.

Acts : [Constitution of India](#) - Article 226; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 122B, 122B(4D) and (4E); [Limitation Act, 1963](#) - Sections 14; [Code of Civil Procedure \(CPC\), 1908](#) - 80(2)

Appeal No. : C.M.W.P. No. 18980 of 1993

Appellant : Pushkar

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : Shree Ram Gupta, Adv.

Judgement :

D. K. Seth, J.

1. Mr. S. R. Gupta, learned counsel for the petitioner submits that in the proceedings under Section 122B of the U. P. Zamindari Abolition and Land Reforms Act, the decision of the Assistant Collector and the Collector is perverse

and as such it is to be quashed. He has based his submission of perversity on the ground that the petitioner's house is situated in plot No. 518 and not in plot No. 514, which is alleged to be the land belonging to the Gaon Sabha. According to him, plot No. 518 does not belong to Gaon Sabha. Therefore, without a survey commission and inspection determining as to whether the petitioner's structure stood situated in plot No. 514 or plot No. 518, no decision could be arrived at. Secondly, he contends that there was no evidence that the petitioner had ever encroached plot No. 514. Therefore, the finding is wholly perverse. The third point urged by him is that despite interim order, no counter-affidavit having been filed, the factual aspect cannot be denied by the respondents in this Court. The fourth point urged by him is that the burden of proof that the petitioner has encroached plot No. 514 is on the respondent and the same having not been discharged, the finding cannot be sustained.

2. The learned standing counsel, on the other hand, contends that these questions are questions with regard to the establishment of right which cannot be gone into in exercise of writ jurisdiction. According to him, the Gaon Sabha has alleged that the structure is situated in plot No. 514. It is the petitioner who had disputed the said fact and had contended that the house is situated in plot No. 518 and he had not encroached plot No. 514. Therefore, according to him, the burden of proof is on the petitioner that his house is situated in plot No. 518 and not in plot No. 514. In case he wants to establish his right with regard to disputed questions of fact, writ jurisdiction is not a proper forum where such right could be established. Whether there was no evidence or the question that the structure that is situated is on which plot are the questions which cannot be decided by this Court sitting in writ Jurisdiction in view of the disputed questions of fact, which can be decided only on the basis of evidence. Therefore, this Court cannot go into such questions. The remedy of the petitioner is in terms of sub-section (4-D) of Section 122B of U. P. Zamindari Abolition and Land Reforms Act.

3. I have heard learned counsel for both the parties at length.

4. In the present case, the Gaon Sabha had alleged that the plot No. 514 belongs to it. This question is not disputed. According to the Gaon Sabha the house of the

petitioner is situated in plot No. 514. In his defence, the petitioner had contended that the house is situated in plot No. 518 and not in plot No. 514. Therefore the assertion having been made by the petitioner, the burden of proof is on the petitioner. It was for him to apply for appointment of Survey Commissioner to survey these plots and find out the actual position. If it is not done so by him, in that event, this Court cannot come to a conclusion that the finding is perverse because there was no Survey Commissioner appointed. Unless it is sought for by the petitioner, he cannot make a capital out of it.

5. So far as the question of absence of any evidence to the extent that the petitioner has encroached plot No. 514 is concerned, it is not the case of the Gaon Sabha that the petitioner had encroached on plot No. 514. There is allegation that his house is situated in plot No. 514. Then again the question remains that the petitioner's house is not situated in plot No. 514 and it is situated in plot No. 518. This again comes back to the establishment of right by holding survey commission. Therefore, on the self same reason, this cannot help Mr. Gupta.

6. The third point that no counter-affidavit has been filed in this Court, does not seem to be sound, inasmuch as even if no counter-affidavit has been filed, the question that has been raised cannot be thrown out. Since this Court is not entitled to enter into disputed questions of fact while exercising writ Jurisdiction, therefore, this Court is not supposed to decide the disputed questions of fact and determine the title of the parties. Therefore, non-filing of the counter-affidavit is not fatal for defeating the case.

7. The fourth point that the burden of proof was on the Gaon Sabha also can be answered with the same reason as with regard to the first point. The Gaon Sabha had never alleged that the petitioner has encroached plot No. 514. On the other hand, it had contended that the structure is situated in plot No. 514. Since it is the assertion of the petitioner that the structure is situated in plot No. 518, the burden of proof rests on him. If he discharges the burden then only the onus shifts on the Gaon Sabha that there is no encroachment or that the structure is situated on plot No. 514 and not on 518.

8. Be that as it may. The entire question rests on the question of title which is to be established by adducing evidence as to whether the structure is situated in plot No. 518 or in plot No. 514. Such right can be established only in a civil court where evidence can be gone into and which is competent to decide the disputed questions of fact. The Court sitting in writ jurisdiction, is not supposed to enter into such disputed questions of fact more so, it cannot decide the question of title since it is not permissible to take evidence for the purpose of determining the title between the parties.

9. In that view of the matter, in view of sub-section (4D) of Section 122B of the U. P. Zamindari Abolition and Land Reforms Act providing for establishment of right upon being aggrieved by the order passed by the Collector, is provided through a suit in a competent court of Jurisdiction. This order having been passed on a revision by the Collector, sub-section (4E) having not stood on the way, it is open to the petitioner to establish his right through suit in terms of subsection (4D) of Section 122B of the U. P. Zamindari Abolition and Land Reforms Act.

10. In that view of the matter, this petition is not maintainable and is accordingly dismissed. No cost. It will be open to the petitioner to establish his right by filing a suit in the Court of competent jurisdiction in terms of sub-section (4D) of Section 122B of the aforesaid Act. The question of limitation may be considered by the Court taking into account the period already spent pursuing the remedy before this Court by the petitioner within the scope and ambit of Section 14 of the Limitation Act. It will be open to the petitioner to apply for leave under Section 50 of sub-section (2) of the Code of Civil Procedure and if such leave is prayed for, the Court may grant such leave.

11. The observation made above will in no way influence the Court, which can decide the title, if any suit is filed on merits and in accordance with law.