

**Badri Vs. Additional Collector, Ghazipur and Others**

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**Court :** Allahabad

**Decided On :** Apr-17-1998

**Reported in :** 1998(3)AWC1706

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

**Acts :** [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 122B, 122B(4D) and 122B(4E); Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 115C; [Constitution of India](#) - Article 226

**Appeal No. :** C.M.W.P. No. 11642 of 1987

**Appellant :** Badri

**Respondent :** Additional Collector, Ghazipur and Others

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

**Advocate for Pet/Ap. :** Namwar Singh, Adv.

**Judgement :**

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

1. The order dated 5.5.1987 (Annexure-10 to the writ petition) passed by the Additional Collector, Ghazipur in Revision No. 83/140 has been assailed in the present writ petition.

2. Shri Sanjay Singh, learned counsel for the petitioner contends that by the said order, the revision which was preferred against the order passed by the Assistant Collector in a Proceedings being proceeding No. 306 under Section 122B, read with Rule 115C, of the U. P. Zamindari Abolition and Land Reforms Act and the rules framed thereunder was allowed and the matter was remanded for decision afresh by the Assistant Collector. According to him, the said order suffers from infirmity to the extent that the revislonal authority did not apply his mind and despite being sufficient material being placed before him had remanded the case without considering the materials.

3. Shri Upadhyaya, learned Standing Counsel on the other hand contends that against the decision of the Collector, the petitioner is entitled to file a suit under sub-section (4D) read with sub-section (4E) of Section 122B of the said Act. Since a suit is not prohibited against the order of Collector passed in revision by reason of sub-section (4E) of Section 122B of the said Act, therefore, on the ground of alternative remedy, this writ petition should be dismissed. He also contends that the Assistant Collector has not given sufficient reasons supporting his conclusions and findings and, therefore, the Collector had rightly remanded the case for decision afresh.

4. I have heard both Mr. Singh and Mr. Upadhyaya, learned counsel at length.

5. So far as the question of alternative remedy. It appears that subsection (4E) of Section 122B of the said Act does not bar from filing of suit against the order passed by the Collector in revision though it prohibits filing of the suit against the order of the Assistant Collector if a revision is preferred. Sub-section (4D) of Section 122B of the said Act clearly lays down that suit can be filed either against an order passed by the Assistant Collector or by the Collector and sub-section (4E) does not preclude for filing suit against the order of Collector but prohibits filing of suit against the order of Assistant Collector if a revision is filed against the same before the Collector. Therefore, the same presupposes that suit after an order is passed by the Collector in revision is not barred. Thus so far as the contention of Mr. Upadhyaya appears to have force in it and there is no dispute with regard to the proposition sought to be advanced by him.

6. The present question as contended by Mr. Singh, learned counsel for the petitioner, has to be looked into on the facts and circumstances of the case. In my view, whether the suit is maintainable is dependent on the facts and circumstances of each case. In order to bring the facts and circumstances within the purview of sub-section (4E) read with sub-section (4D) of Section 122B of the Act, it is necessary that the petitioner must be aggrieved by an order passed by the Collector in revision or by the Assistant Collector determining the rights which he wants to establish through the suit. Admittedly, the Assistant Collector had decided the case in favour of the petitioner. Therefore, the petitioner cannot have any cause of action for filing a suit against the order of the Assistant Collector. Then a revision was preferred by the opposite parties for which it was no more open to file a suit either by the opposite parties or by the petitioner against the order of the Assistant Collector.

7. So far as the order of the Collector is concerned, the opposite party is not aggrieved, therefore, he cannot file a suit. At the same time, the petitioner though aggrieved but the Assistant Collector having not decided the rights of the parties, it was no more open to the petitioner to establish his right after an order passed by the Collector remanding the case. In the absence of any decision on the right of the petitioner, it is not open to him to file a suit for establishing his right which has since been remanded by the Collector in revision. Therefore, existence of alternative remedy does not preclude the petitioner from assailing the order of the Collector passed in revision in writ Jurisdiction. Inasmuch as he has no remedy available through suit in the facts and circumstances of the case as observed earlier.

8. Now so far as the question of validity of the order passed by the Collector in revision is concerned, the same has to be looked into on the basis of the order that has been passed and the material placed before this Court. So far as the merits of the case are concerned, it is not necessary to go into the same in writ Jurisdiction. Then again sufficient materials are not before this Court so as to arrive at a conclusion with regard to the disputed question of fact that has been sought to be decided in the proceedings. The question admittedly is a question of fact which is admittedly disputed and as such this Court refrains from deciding the same.

Though vehement submissions have been advanced by the learned standing counsel relying on the order passed by the Assistant Collector that the same has not been rightly passed and the same does not disclose proper material but, in my view, it appears that it discloses some material but whether that should be sufficient to warrant a remand or not is not necessary to be gone into in this proceedings. In view of the fact that the Collector has not decided the said issue. It has not been pointed in the order passed by the Collector that there are insufficient materials in the order of the Assistant Collector. On the other hand, the Collector had recorded the submissions of both sides including the submission that the revision was barred by limitation but it has not recorded in its finding either on the question of limitation or on the question of merit. It is also not giving any conclusion on the basis of material before it. After having recorded the submissions of both the sides, he has recorded his views to the extent that after having looked into the records and evidence, the revision is being allowed and the order of the Assistant Collector is being set aside and the matter is being remanded for decision afresh. But no where in the order he has recorded his views as to how and why the revision is being allowed and on what ground the order of the Assistant Collector is being set aside and what prompted him to remand the case.

9. Though the Collector while deciding the case is not expected to support his reason as that of the Judgment but still then he must indicate his mind so as to enable the Court to arrive at a decision with regard to the decision making process. In the absence of such materials, the order appears to be unsustainable. In the circumstances the order dated 6.5.1987 passed in Revision No. 83/140 by the Collector is hereby quashed. Accordingly, a writ of certiorari do issue. The revision shall be treated to be pending before the Collector who after-giving opportunity to both the parties shall decide the revision afresh including the question of limitation and all other questions that might be raised in the revision in accordance with law having regard to the facts of the case without being influenced by any observation made in this order which are tentative and only for the purpose of deciding the question involved as to whether the order of remand was valid or not and not on merits. If the Collector so feels after considering the matter afresh in accordance with law, it may even remand the case from which he

has not precluded but for reasons which he should record in the order itself if he deems fit and proper. Since the matter is pending for long, it is desirable and expected that the Collector would expedite the matter and decide the same as early as possible preferably within a period of six months from the date of production of certified copy before its communication to the Collector who will decide the same after giving notice to both the parties and opportunity of hearing as permitted in law.

10. The writ petition thus succeeds and is allowed to the above extent. However, with cost.

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