

Notified Area Vs. Third Additional District Judge and ors.

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Court : Allahabad

Decided On : May-18-2004

Reported in : AIR2004All371; 2004(4)AWC3170

Judge : Arun Tandon, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 1 and 2; Uttar Pradesh Land Revenue Act, 1901 - Sections 233; Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1957 - Sections 84; Uttar Pradesh Tenancy Act, 1939 - Sections 8

Appeal No. : Civil Misc. Writ Petn. No. 4447 of 1989

Appellant : Notified Area

Respondent : Third Additional District Judge and ors.

Advocate for Def. : R.N. Singh, ;V.K. Singh and ;S.N. Singh, Advs. and ;Piyush Shukla, S.C.

Advocate for Pet/Ap. : K.B.L. Gaur, ;H.S. Nigam and ;S.S. Nigam, Advs.

Disposition : Petition allowed

Judgement :

ORDER

Arun Tandon, J.

1. Heard Mr. Shakti Swarup Nigam, learned counsel for the petitioner, Sri V.K. Singh, learned counsel for the respondent Nos. 2 to 7 and Sri Piyush Shukla, learned counsel for the respondent No. 1.

2. This writ petition is directed against the order dated 5th December, 1988 passed by the III Additional District Judge, Saharanpur in Civil Misc. Appeal No. 316 of 1988 (Masiullah and Ors. v. Notified Area Titron) filed against the order dated 8th January, 1988 passed by the III Addl. Civil Judge, Saharanpur in Original Suit No. 57 of 1985 (Masiullah and Ors. v. Town Area, Titron).

3. The Plaintiffs, namely, Sri Masiullah filed a suit, being Original Suit No. 57 of 1985 against the Notified Area, Titron, Pargana Gangoh, Tehsil Nakur, District Saharanpur, seeking injunction to restrain the petitioner and its employees from interfering in the plaintiffs' possession as well as the construction being raised by the Plaintiffs.

4. In the plaint it is mentioned that the name of the Town Area was wrongly recorded in the remarks column and as such the land does not vest in the Town Area. Written statement was filed in the aforesaid suit and also objections were filed to temporary injunction application stating that the said suit, as filed by the Plaintiffs, namely Masiullah, was not maintainable. Inasmuch as it necessarily involve the declaration of the title of the Plaintiffs over the land, which could be done by the Revenue Courts only.

5. The Additional Civil Judge, Saharanpur, by means of the order dated 8th January, 1988, dismissed the suit after recording a finding, held that the suit as filed by the Plaintiffs was not maintainable before the Civil Courts and the Plaintiffs should initiate suitable proceedings in Revenue Courts of law.

6. Feeling aggrieved by the aforesaid order of the trial Court dated 8th January, 1988, the Plaintiffs preferred an appeal before the District Judge, Saharanpur, which was numbered as Civil Misc. Appeal No. 316 of 1988. By means of the order dated 5th December, 1988 the III Additional District Judge, Saharanpur had

allowed the said appeal filed by the Plaintiffs and set aside the order of the trial Court, held that the Civil Court had jurisdiction to try the said suit filed by the Plaintiffs. Hence the present writ petition.

7. It is contended on behalf of the petitioner that the land in question is agriculture land situate in urban area. The suit, as filed by the Plaintiffs not only seeks correction in the Revenue Records, it also seeks declaration of the title of the Plaintiffs in respect of the agricultural land in question. It is submitted that no injunction can be granted in favour of the Plaintiffs unless and until they establish a better title in their favour vis-a-vis the defendants. In such circumstances, the order of the appellate Court is not sustainable in the eyes of law.

8. It is contended on behalf of the defendants that although the land is agricultural, but the same is situate in an urban area. In respect of the land in question, no notices under Section 84 of the U. P. Urban Area Zamindari Abolition Act of 1957 (Act No. 9 of 1957) (hereinafter referred to as the Act of 1957) have been issued, therefore, the provisions of Act of 1957 will not be applicable and consequently, the provisions contained in Section 84 of the said Act will not be attracted. In support of the contention, reliance has been placed upon the judgment of this Court reported in 1968 All LJ 1108 : (AIR 1969 Allahabad 526) (Ram Avalamb and Ors. v. Jatashankar and Ors.). Lastly, it is submitted that the name of Town Area was wrongly recorded in the remarks column of revenue records. Title cannot be claimed over the land in question by the defendants on the basis of said entry in remarks column. In the circumstances, it is not necessary for the Plaintiffs to seek declaration of title.

9. I have heard learned counsel for the parties and have gone through the records of the writ petition. The contention raised on behalf of the petitioner has force.

10. Admittedly, in the plaint it was mentioned that in the remarks column of the Khatauni, the name of the defendant has been recorded, although the said entry in the remarks column may not vest title of the land of defendant yet the Court cannot grant relief in favour of the Plaintiffs, unless the plaintiff is able to establish better title over the land in question and unless and until it is established by the Plaintiffs that on the basis of a better title the entry in the remarks column of

Khatauni, is to be scored out the prayer for correction in the remarks column cannot be granted. Even otherwise, for grant of injunction against a person, whose name is recorded in the remarks column of the Khatauni, it would be essential that the Plaintiff must establish better title than all the persons whose names are recorded in the remarks column of the Khatauni. Unless and until better title is established by the Plaintiffs over the land in question vis-a-vis persons whose names are alleged to be wrongly recorded in the remarks column, no injunction can be granted. Therefore, it would be necessary for the Court to adjudicate upon the title of the parties concerned. In such circumstances, the said suit can be decided only by the Revenue Courts in respect of agricultural land.

11. So far as the finding of the appellate Court with regards to the land in question having not been notified under Section 84 of the 1957 Act is concerned, the said finding is legally justified and in absence of any notification having been issued in respect of land in question, provisions of Section 84 of the Act of 1957 will not be attracted. However, if the provisions of the U. P. Urban Area Zamindari Abolition Act are not attracted to the land in question, it would not mean that the provisions of the Tenancy Act would cease to apply. The Division Bench of this Court in the judgment reported in 1988 All L J 934 (Guru Granthji v. Bachha Krishna Das) after referring to the provisions of Act No. 9 of 1957 and U. P. Tenancy Act, 1939 has held as follows :

'In fact the entire scheme of the Act shows that it applies to only that area which is demarcated as agricultural area. It has no application to a land which is non-agricultural area or to put it differently that which has not been declared as agricultural area. Therefore, urban area to which the provisions of Tenancy Act do not apply has to be confined to the area which has been demarcated as agricultural area.

For the reasons stated above the revenue Court may proceed with the case as provisions of U. P. Tenancy Act cease to apply to that area alone situated in Urban Area which has been demarcated as agricultural area and in respect of which a notification had been issued Under Section 8 of the Act. To put it differently or to be specific to the issue referred by the revenue Court the provisions of U. P.

Tenancy Act did not cease to apply to entire area situated in Urban area. In view of this the other questions which are part of the same issue do not survive. Record of the case may be remitted to Revenue Court immediately for proceeding with the suit.'

12. Since the Tenancy Act continues to apply to the land in question, in view of the law laid down, by the Division Bench judgment, referred to above, the suit as filed by the plaintiff which involves a question of title can be tried by the Revenue Courts only'.

13. So far as the Full Bench judgment of this Court reported in 1968 All L J 1108 : (AIR 1969 Allahabad 526) relied by the petitioner, is concerned, there is no dispute with regards to the legal position laid down therein. However, in the facts of the case, this Court having not come to the conclusion that for grant of injunction it would be necessary to determine the title of the Plaintiffs, the suit, as filed by the Plaintiffs before the civil Court, is legally not maintainable.

14. In the circumstances, the order passed by the appellate Court dated 5th December, 1988, holding that the suit as filed by the Plaintiffs was maintainable before the Civil Court is legally unsustainable. The order of the Appellate Court dated 5th December, 1988 is hereby set aside. It would be open to the Plaintiffs to initiate proceedings in accordance with law before the revenue Courts.

15. In view of the observations, referred to above, this petition is allowed. There shall be no order as to costs.