

Laloo and ors. Vs. Commissioner, Allahabad Division and ors.

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Court : Allahabad

Decided On : Jul-29-2009

Reported in : 2009(4)AWC4021

Judge : Devi Prasad Singh, J.

Appellant : Laloo and ors.

Respondent : Commissioner, Allahabad Division and ors.

Disposition : Petition allowed

Judgement :

Devi Prasad Singh, J.

1. Heard learned Counsel for the parties as well as learned standing counsel and perused the record.

2. The petitioners are the lease holders of surplus land left out in ceiling proceedings. In pursuance to the resolution of the Gram Sabha dated 17.9.1997 (Annexure-1), land in question was allotted to the petitioners and other persons (in total. 18 in number). The allotment was duly approved by the Pargana Adhikari on 6.6.1998 and in consequence thereof, the possession of lease land was given to the petitioners. The respondents 5 to 10 had filed an application under Sub-section (4) of Section 198 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (in

short, 'Act') with the allegation that the lease has been granted to the relatives of the village Pradhan and his associates. It was stated by the complainant in their complaint (Annexure-2) that the lease land is being used for public purpose in the form of khalian covered by trees. A plea was also taken that the land has already been given for residential purpose and the Gram Sabha has allotted the land without following the procedure prescribed by Gram Sabha Manual. Six complainants who were members of Land Management Committee have stated that no notice was served upon them with regard to meeting. It was also alleged that a complaint was given to the District Magistrate on 10.6.1998, with the submission that the lease land could not have been allotted to the petitioners and other persons. While moving application, the respondents prayed that the lease may be cancelled and the land in question should be allotted to eligible persons.

3. After hearing the parties, the Collector, Kaushambi by the impugned order dated 30.7.2003 had cancelled the lease with the finding that the lease was not allotted by following due procedure of law and according to the affidavit filed by six members of the Land Management Committee, they were not aware with the resolution of the Gram Sabha with regard to allotment of lease. Learned Collector further held that the land in question has been allotted to friends and relatives of village Pradhan in violation of the provisions contained in Section 28C of Panchayat Raj Act. However, no evidence was led to establish that the petitioners-lease holders were members of one family.

4. A revision was preferred by the petitioners against the order passed by the Collector, Kaushambi on the ground that the lease holders are members of different family unit and revisionists No. 1 to 3 Lallu, Chhammi and Shanker belong to scheduled caste category and are landless labours. It was also stated before the revisional authority that even if the lease holders are related to Pradhan, it shall not render the lease illegal because of the fact that all are residing separately in the same village. It was also stated before the revisional authority that the Gram Sabha had passed the resolution in its open meeting for grant of lease. The revisional authority, by order dated 21.12.2004 (Annexure-5) has dismissed the revision on the ground that the lease has been granted to the members of family of village Pradhan without having prior permission from the

Collector and the procedure given in the Gram Sabha Manual under Rules 173 to 176 has not been followed. The members were not informed with regard to the meeting. The review filed by the petitioners too was dismissed by subsequent order dated 12.5.2006. Feeling aggrieved, present writ petition has been preferred.

5. While assailing the impugned order, learned Counsel for the petitioners vehemently argued that all the members of Gram Sabha were present in its meeting. The petitioners counsel has invited attention of this Court to the photostat copy of the resolution (Annexure-1) of the Gram Sabha to point out that it contains the names of all 18 allottees. It has also been stated that the procedure given in the Gram Sabha Manual was duly complied with while passing the resolution for the purpose of lease with regard to surplus land.

6. The learned Counsel for the petitioners invited attention of this Court to Section 28C of Panchayat Raj Act and submits that the member or office bearer of Gaon Panchayat or Bhumi Prabandhak Samiti may not be allotted a land except with prior permission of Collector. Section 28C does not create bar for allotment of land to the persons even if they have got some relationship with village Pradhan. The petitioners' counsel has relied upon a case in Smt. Vidyawati v. Gaon Sabha 1982 RD 215. It has been stated that no individual notice was served on 18 persons/members of Land Management Committee in accordance with the provisions contained in Section 198 of the Act, The District Magistrate had passed the impugned order merely after inviting objections without recording any evidence with regard to the allegations contained in the complaint submitted by the respondents.

7. On the other hand, learned Counsel for the respondents submits that no lease could have been granted to the relatives of the village Pradhan as the father of one of the allottees had got fifteen bighas of land alongwith tractors etc. It has also been stated that the provisions contained in Gram Sabha Manual have not been followed while giving the lease. According to the respondents' counsel, six members were not present in the meeting of the Gaon Sabha when the resolution was alleged to have been passed on 17.9.1997.

8. I have considered the arguments advanced by the parties' counsel and perused the record.

9. It shall be appropriate to reproduce Section 28C of U.P. Panchayat Raj Act, 1947 which is as under:

28C. Members and officers not to acquire interest in contracts, etc., with Bhumi Prabandhak Samiti.-(1) No member or office bearer of Gaon Panchayat or Bhumi Prabandhak Samiti shall, otherwise than with the permission in writing of the Collector, knowingly acquire or attempt to acquire or stipulate for or agree to receive or continue to have himself or through a partner or otherwise any share or interest in any licence, lease, sale, exchange, contract or employment with, by or on behalf of the Samiti concerned:

Provided that a person shall not be deemed to acquire or attempt to acquire or continue to have stipulate for or agree to receive any share or interest in any contract or employment by reason only of his:

(a) having acquired any interest before he became a member or office-bearer;

(b) having a share in a joint stock company which makes the contract; and

(c) having a share or interest in the occasional sale through the Samiti concerned of an article in which he regularly trades up to a value not exceeding Rs. 50 in any one year.

(2) No Court or other authority shall enforce at the instance of any person a claim based upon a transaction in contravention of the provisions of Sub-section (1).

10. A plain reading of Section 28C of U.P. Panchayat Raj Act shows that no member or office bearer of Gaon Panchayat or Bhumi Prabandhak Samiti may acquire interest in Gram Sabha or through contract etc. unless permission in writing of the Collector is obtained. Section 28C does not create bar to acquire interest by relatives. Accordingly, the finding recorded by the authorities seems to be not sustainable keeping in view the letter and spirit of Section 28C of the U.P. Panchayat Raj Act, 1947.

11. However, I would like to observe that Section 28C requires amendment. The giving of lease or acquisition of interest over the Gaon Sabha property by its members or its close relatives should be specifically barred. The peoples' representatives holding office as member of Gram Sabha or its office bearer are public representative and they adorn the office to provide a selfless service to the village at large. They are not expected to abuse their office for their near relatives or family members. In any case, appropriate safeguard should be provided by appropriate amendment in the U.P. Panchayat Raj Act, 1947 so that Gram Sabha or its members may not abuse their office in the interest of their relatives or close associates.

12. However, it is not for this Court to put words in the Section itself by interpreting the provisions otherwise. It is settled law that ordinarily, *causis omisus* should not be supplied by Court unless there is some ambiguity in the statutory provisions. In case the language is clear, then it is not for the Court to give different meaning to the statutory provisions by supplying *causis omisus* vide *Union of India v. Rajiv Kumar* : 2003 (6) SCC 516 : 2003 (4) AWC 3020 (SC)(para 18). The same principle has been reiterated in the cases in *Vemareddy Kumaraswamy Reddy and Anr. v. State of A.P.* : 2006 (2) SCC 670; *Delhi Financial Corporation and Ors. v. Rajeev Anand and Ors.* : (2004) 11 SCC 625; *Nalinakhya Bysacik v. Shyam Sunder Halder* : AIR 1953 SC 148 and *Dental Council of India v. Hari Prakash* : 2001 (8) SCC 61. It shall be appropriate for the State Government to provide appropriate safeguard by amending the Act.

13. The lease has been granted in pursuance of the provisions contained in Sub-section (1) of Section 198 of the Act. The submission of the petitioners' counsel is that the lease was granted in pursuance to power conferred by the Act by following the due procedure of law. The photostat copy of the resolution passed by the Gram Sabha annexed as Annexure-1 to the writ petition shows the names of 18 allottees. It is stated that notice was sent to all members to secure their presence in the meeting held on 17.9.1997. Whether the resolution of the Gram Sabha was passed in presence of all the members or not seems to be disputed question of fact. While cancelling the lease, no evidence was recorded by the Collector to verify the genuineness of the resolution and the contents of affidavit. Satisfaction

provided under Sub-section (4) of Section 198 of the Act means that the satisfaction must be based on some material or evidence on record. The Collector had believed the affidavit filed by six members of the Gram Sabha and recorded a finding. No notice was served upon them to substantiate allegations. Reliance on the affidavit should not have been placed unless it would have been proved by recording of evidence with due opportunity to the parties. Cancellation of lease merely on the basis of the affidavit filed by some persons seems to be incorrect approach on the part of the authorities. All the 18 allottees should have been given due opportunity to rebut the allegations contained in the affidavit as well as complaint. It was also incumbent on the Collector to ask the complainant to prove the allegation contained in the complaint by adducing evidence. How the allotment to 18 persons done in pursuance to the resolution of the Gram Sabha is not lawful has not been dealt with by the Collector or revisional authority. It should be kept in mind that fraud or forgery should be proved like other evidence. In case the Gram Sabha or its Pradhan had acted fraudulently, then that should have been proved like other evidence. Nothing has been brought on record which may indicate that some evidence was recorded to establish that the resolution of the Gram Sabha a copy of which has been filed as Annexure-1 to the writ petition is false and fictitious and cannot be relied upon. Sub-section (5) of Section 198 categorically provides that the notice to show cause should be served on the person in whose favour allotment of lease was made. In the present case, since the complaint was sent to the District Magistrate himself, then the burden to prove allegation was on the respondents by leading evidence. The respondents have not led any evidence to establish the allegations contained in the complaint. Accordingly, in absence of any evidence led by the respondents, the resolution of the Gram Sabha cannot be thrown out as a piece of waste paper.

14. Needless to say that once a lease executed and the persons are given possession, then they have got vested right to retain such lease land. In case it is alleged that the lease was granted fraudulently without following the procedure given in the Gram Sabha Manual, then burden shall lie on the person who alleges the fraudulent act. It shall be necessary for such person to lead evidence to prove the charges.

15. Ordinarily, no Court or authority may record a finding merely on the basis of affidavit or merely because one party says that certain illegality or fraud has been committed. The finding with regard to illegality or fraud must be based on material on record and should be proved like other evidence vide *Sevenska Handelsbanken v. India Charge Chrome* : AIR 1994 SC 626; *A.L.N. Narayanan Chettiyar v. Official Assignee* : AIR 1941 PC 93 and *Chaturgun and Ors. v. State of U.P. and Ors.* 2005 (98) RD 244 : 2005 12) AWC 1256.

16. There appears to be no discussion in the judgment of authorities below that how and in what manner the provisions contained in the Gram Sabha Manual have not been complied with. No finding has been recorded by the Collector as well as the Commissioner that what is the evidence on record which may establish that the provisions contained in Rules 173 to 176 of the Gram Sabha Manual have not been followed. Needless to say that it was incumbent on the Collector as well as the revisional authority who are quasi-judicial authorities while passing the order, they should have discussed the evidence on record and finding of fact or law must be based on material on record. They should have discussed the grounds available on record while holding that the lease was granted de hors the rules. In absence of any discussion of the material evidence on record, the impugned order seems to be devoid of merit. The authorities have failed to exercise jurisdiction vested in them.

17. In view of above, the writ petition is allowed. A writ in the nature of certiorari is issued quashing the impugned orders dated 12.5.2006, 21.12.2004 and 30.7.2003 (Annexures-6, 5 and 3 respectively) with consequential benefits. However, liberty is given to the respondents to proceed afresh keeping in view the observations made hereinabove.

18. The writ petition is allowed accordingly. Costs easy.

19. Let a copy of the judgment be sent by the registry to the Principal Secretary, Revenue and Principal Secretary, Law to take appropriate steps for amendment in the U.P. Panchayat Raj Act keeping in view the observations made in the present judgment to safeguard the interest of the members of the property of Gram Sabha.

