

Jagdev Vs. Commissioner Gorakhpur Division and ors.

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Court : Allahabad

Decided On : Sep-11-2009

Reported in : 2010(1)AWC210

Judge : A.P. Sahi, J.

Appellant : Jagdev

Respondent : Commissioner Gorakhpur Division and ors.

Advocate for Pet/Ap. : Sri. R.C. Singh

Disposition : Petition allowed

Judgement :

A.P. Sahi, J.

1. Heard Sri R.C. Singh learned Counsel for the petitioner and Sri R.N. Bhakta for the respondent Nos. 5 and 6 and the learned standing counsel for the respondent Nos. 1 and 2.

2. A counter-affidavit has been filed on behalf of the contesting respondents as also on behalf of the Gaon Sabha. However, no counsel is present for the Gaon Sabha when the matter is taken up by this Court.

3. The challenge in the present petition is to the order passed by the Additional District Magistrate (Finance and Revenue) dated 6.12.2007 whereby the authority has refused to take action on the proceedings initiated by the petitioner under Section 122C of the U.P.Z.A. and L.R. Act. The application was moved under Clause (6) of Section 122C praying that the allotment be cancelled keeping in view the provisions of Rule 115-Q of the rules framed under the aforesaid Act. The same is quoted below:

115-Q. The person to whom the housing site is allotted shall be required to build a house and begin to reside in it or to use it for the purpose for which it was built within three years from the date of allotment : If he fails to do so or uses it at any time for a purpose other than that for which it was allotted his rights shall be extinguished and the site may be taken over by the Land Management Committee:

Provided that in the case of a person belonging to Scheduled Caste or Scheduled Tribe the aforesaid time limit for building of the house shall not apply.

4. The ground taken is that the allotment was made in favour of the contesting respondent in 1994. The fact that possession was not handed over to the contesting respondents is also admitted in the counter-affidavit where a copy of dakhnama had been filed which is dated 3.4.2003. A first information report was lodged that the petitioner failed to deliver the possession and in the first information report it is admitted that the possession was sought to be given on 3.4.2003. It was submitted by Sri R.C. Singh learned Counsel for the petitioner that in view of the aforesaid admitted position the contesting respondents could not be permitted to raise constructions after a lapse of nine years in view of the bar as contained in Rule 115-Q. It is not disputed that the contesting respondents are not scheduled caste and, therefore, the bar of the three years would operate against them.

5. Learned standing counsel contends that these proceedings were initiated by the petitioner after a lapse of nine years and the same could not have been done in view of the fact that it was heavily barred by time and laches as well and that the petitioner cannot claim any semblance of title over the land in question.

6. In rejoinder learned Counsel for the petitioner contends that the petitioner has claimed allotment and possession keeping in view Subsection (3) of Section 122C of the U.P.Z.A. and L.R. Act and, therefore, the contention advanced on behalf of the respondents deserves to be rejected. He further submits that the cause arose when the dakhnama was executed and as a matter of fact respondents taking aid of the administrative machinery started disturbing the petitioner. He further submits that the petitioner had filed a revision even though ill-advised inasmuch no revision would lie against the order under Section 122C(6). He, therefore, submits that the time which has been consumed in the aforesaid proceedings clearly explains the delay in approaching the Court.

7. It is evident that Rule 115-Q prescribes a clear time limit for raising constructions after allotment for the purpose of which it was allotted. In the instant case, the admitted position is that the land was allotted in 1994 and no efforts appear to have been made either for taking possession or for raising constructions within three years of the date of allotment. There is also no evidence to indicate that it was the petitioner who prevented the taking of such possession or that the respondents in any way were responsible for not allowing the respondents to raise constructions. As a matter of fact the Additional District Magistrate has not adverted at all to determine as to what were the factors existing that led to this situation of dakhnama being executed in the year 2003. Further the finding that the petitioner approached the authorities after a lapse of time is not supported by any cogent reason. If the petitioner was aware of the proceedings of 1994, his possession and alleged occupation had not been disturbed till 2003 when the dakhnama was issued and when subsequently the first information report was lodged. In view of the aforesaid the findings recorded by the Additional District Magistrate that the petitioner was guilty of lapses is unsubstantiated from the pleadings and the evidence on records. Accordingly, the order of the Additional District Magistrate is unsustainable.

8. The contention of the learned standing counsel that the petitioner had preferred a revision against the said order also cannot be entertained in view of the order having been passed under Section 122C which is final and not revisable.

9. For the conclusions drawn hereinabove the impugned order dated 6.12.2.007 and 13.12.2007 are quashed. The matter is remanded back to the respondent No. 2 to decide the matter in view of the observations made hereinabove after giving an opportunity of hearing to the concerned parties preferably within a period of three months from the date of production of a certified copy of this order.

The writ petition is allowed. No order as to costs.

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