

Devendra Singh Vs. IInd Addl. District Judge and ors.

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Court : Allahabad

Decided On : Aug-03-2009

Reported in : 2010(1)AWC212

Judge : S.U. Khan, J.

Appellant : Devendra Singh

Respondent : IInd Addl. District Judge and ors.

Disposition : Petition dismissed

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for the parties.

2. Proceedings for eviction were initiated against the petitioner under U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972 in the form of Case No. 189 of 1981. The case was registered under Section 4/7 of the Act. Prescribed authority decided the matter in favour of the petitioner on 16.10.1984. Against the said order State of U.P. filed appeal which was registered as Civil Misc. Appeal No. 126 of 1984, State of U.P. v. Devendra Singh. The appeal was allowed by IInd A.D.J., Jalaun at Oral on 26.5.1990. The said order has been challenged through this writ petition.

3. The number of plot of land in dispute is 1200/1036, and area of land in dispute is 2 hectares situate in village Sikri, Pargana Oral, district Jalaun.

4. The case of the State was that land in dispute was unauthorised occupation of the petitioner. The petitioner denied the said fact and further raised the jurisdictional issue and contended that land in dispute was not included in the definition of public premises as given under the Act. He further pleaded that he had purchased the land through registered sale deed dated 18.9.1975 from Ram Adhar and his name was also mutated in the revenue record. The trial court held that merely by issuing notification under Section 4 of Indian Forest Act, 1927 land does not become the Reserved Forest and does not vest in State Government unless notification under Section 20 of the Forest Act is issued. Appellate court held that in view of gazette notification dated 22.4.1967 it was clear that the Government had through the said notification modified its earlier notification No. 617/14 dated 11.10.1952 and the properties mentioned in the notification of 1967 which had initially been vested in Gaon Sabha had been resumed by the Government which also included plot No. 1200/1036 total area 25.5 acres and thereafter through notification dated 23.7.1970 issued under Section 4 of the Forest Act the plot in dispute alongwith other plots was intended to be declared as reserved forest. It is further mentioned that notification under Section 20 of the Forest Act was issued on 30.4.1988 declaring the plot in dispute and other land as forest land w.e.f. 16.4.1986.

5. The lower appellate court also found that Ram Adhar from whom petitioner purchased the property was shown as bhoomidhar in 1971 which was meaningless as through notification dated 22.4.1967 the land had been resumed by the State Government. Such resumption is permissible under Section 117(6) of U.P.Z.A. and L.R. Act. Chandrapal Singh witness of the petitioner stated that Ram Adhar got the property from Gaon Sabha on patta. When the land had been resumed by the State Government, Gaon Sabha had absolutely no right to grant any patta.

6. The argument of the petitioner that land in dispute could not be treated to be public premises under the U.P. Public Premises Act was also rightly turned down

by the lower appellate court. Under Section 2(b) of Act of 1972 premises is defined. It states that premises means any land including any Forest land. However, at the end it is provided that it does not include land which for the time being is held by a tenure holder under any law relating to land tenures. As patta granted by the Gaon Sabha in favour of Ram Adhar predecessor-in-interest of the petitioner was utterly void as at the time of grant of patta land did not belong to the Gaon Sabha, hence neither he got any right nor the petitioner. After the resumption of the land by the State Government, it was no more governed by the provisions of U.P.Z.A. and L.R Act. Petitioner or Ram Adhar by no stretch of imagination can be held to be tenure holder under U.P.Z.A. and L.R. Act.

7. Accordingly, I do not find least error in any of the findings recorded by the lower appellate court. Writ petition is therefore, dismissed.

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