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Kali Charan, Vs. Additional Collector,

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Court : Allahabad

Decided On : Nov-08-2005

Reported in : 2006(1)AWC813

Judge : V.C. Misra, J.

Acts : Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1972 - Sections 117, 122B, 122B(1), 122B(2), 122B(3), 122B(4), 122B(4A), 122B(4D), 132, 194, 195, 209 and 333

Appeal No. : Civil Misc. Writ Petition No. 14671 of 1984

Appellant : Kali Charan, ;nek Ram, ;shanker Lal and ;badri Prasad Sons of Devi Ram

Respondent : Additional Collector, ;tahsildar/Assistant Collector and Gaon Sabha Lutsan Through Its Pradhan

Advocate for Def. : V.K. Singh and ;Anuj Kumar, Advs. and ;S.C.

Advocate for Pet/Ap. : A.K. Sand, ;P.M. Gupta and ;M.C. Joshi, Advs.

Disposition : Petition allowed

Judgement :

V.C. Misra, J.

Heard learned counsel for the parties at length and perused the record.

1. This writ petition has been filed challenging the Judgments and Orders dated 19.9,1984 and 30.6.1984 passed by respondents No. 1 and 2 respectively by which the petitioners were declared to be in illegal possession and were to be dispossessed from the land in question and also to pay a sum of Rs. 24,675/- to the Gaon Sabha as damages.

2. The facts of the case in brief are that during consolidation proceedings in district Aligarh Tehsil Hathras the Gaon Sabha of village Lutsan as per the earlier decision of Land Management Committee (in short LMC) after due publication by beat of drum decided to allot plot No. 741/1 'vested in it and left as bachat land being uneven and uncultivated. No one came forward to take this plot except the petitioners. The said plot was allotted in their name and they invested money as alleged by the petitioners to the tune of Rs. 10,000/- and laboured hard to make it even and cultivable. The LMC while allotting the plot imposed a condition that after the expiry of 10 years of period of cultivation the petitioners shall start paying Rs. 100/- per year to the Gaon Sabha. A Patta was granted on 10.4.1962 by the LMC exercising its power under Section 195 of the U.P. Zamindari Abolition and Land Reforms Act (in short the Act).

3. In the year 1972, a new Pradhan was elected and he filed a Suit No. 514 Gram Sabha v. Kali Charan and Ors. before the Magistrate 1st class under Section 209 of the Act, which was- dismissed on 31.7.1975 on merits holding the possession and occupation of the petitioners as not illegal in nature but with the consent of the Gaon Sabha. The Gaon Sabha being aggrieved by the said order dated 31.7.1975 filed a First Appeal No. 165 of 1974-75 in the Court of Additional Commissioner, Agra which too was dismissed on merits vide order dated 19,2.1976 upholding that the land in question belonged to the petitioners who were in possession on the basis of the resolution dated 10.4.1962 of LMC and that their possession was not of a trespasser as contemplated by Section 209 of the Act. The Gaon Sabha did not prefer any appeal against the said order dated 19.2.1976 of the Additional Commissioner before the Board of Revenue and the Judgments and findings of both the aforesaid Courts became final. The petitioners on legal advice filed an

application for fixation of the land revenue before the Sub Divisional Officer, Hathras which fixed the land revenue at the rate of Rs. 56.90 paise per annum. In the mean time, another Pradhan was elected and he filed an application before the Sub Divisional Officer to initiate' proceedings under Section 122-B of the Act against the petitioners on the ground that they were in illegal possession of the land in question and the Gaon Sabha was suffering a loss. The said proceedings also culminated in favour of the petitioners and vide order dated 21.7.1984 the notice under Section 122-B of the Act was discharged, holding thereby the possession of the petitioners as not unauthorized.

4. During the pendency of the proceedings, said proceedings under Section 122-B of the Act the Lekhpal of the village on 21.3.1984 submitted a report to the Tehsildar under Section 122-B of the Act to the effect that the names of the petitioners was shown in column No. 4 of the revenue records and they were in illegal possession of the land in question. The Tehsildar issued a notice to the petitioners. The petitioners contested the said notice claiming themselves to be in authorized possession which had already been finally held by the revenue Court in the aforesaid regular Suit No. 514 and that the present proceedings under Section 122-B of the Act were wrong bad and mala fide in nature. The Tehsildar without giving an opportunity of hearing to the petitioners passed an order dated 30.6.1984 against the petitioners to the effect that they be dispossessed from the land in question and pay damages to the tune of Rs. 24,675/- to the Gaon Sabha.

5. Being aggrieved by the said order of the Tehsildar, the petitioners filed a revision before the Additional Collector who too disposed off the same on 19.9.1984 upholding the order of the Tehsildar. Being aggrieved by the order dated 30.6.1984 passed by the Tehsildar and the order dated 19.9.1984 passed by the Additional Collector, the petitioners preferred the present writ petition on the ground that the respondents No. 1 and 2 had no jurisdiction to initiate proceedings under Section 122-B of the Act which are summary in nature and could be initiated against those persons only when their possession on the land in question was of a recent origin and without any right or title. That the question of deciding the bona fide right and title was beyond the scope of Section 122-B of the Act. In the present case a clear case of right and title became involved as in the previous

proceedings of Suit No. 514 before the Court of law, it was held that the petitioners were not in illegal possession and the findings would act as re-judicata thereby debarring the respondents from from dispossessing the petitioners from the land in question by a subsequent summary proceedings under Section 122-B of the Act.

6. After having heard the learned counsel for the parties at length and perusal of the record; I find that the petitioners had been validly granted a Patta by the said LMC on 10.4.1962 exercising its powers under Section 195 of the Act, which does not come under the mischief of Section 209 of the Act. The relevant portion of Section 195 of the Act which as it stood on the date of the grant of Patta, reads as under :-

195. The Gaon Sabha shall have the right to admit any person as sirdar to any land (other than land falling in any of the classes mentioned in Section 132) where-

(a) the land is vacant land,

(b) the land is vested in the Gaon Sabha under Section 117 or

(c) the land has come into the possession of Gaon Sabha under Section 194 or under any other provision of this Act.

The relevant portion of Section 209 of the Act is quoted below:-

A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and -' (b) where the land does not form part of the holding of a bhumidar, sirdar or asami without consent of the Gaon Sabha, shall be liable to ejectment on the suit of the Gaon Sabha, or the Collector and shall also be liable to pay damages.

In the said suit No. 514 issue No. 3 was framed as, 'whether the defendants are in possession without the consent of the Gaon Sabha and against the provisions of law?' This issue was decided in negative on the basis of evidence placed on record by the parties with a finding that the Pradhan did not produce the proceedings book of the relevant year inspite of it being in his possession. As the

suit was dismissed holding that the defendants-petitioners were not liable to ejectment, and findings being confirmed in Appeal No. 165 of 1974, which were not challenged subsequently before the higher Court it became final and binding between the parties. Even in the subsequent proceedings initiated under Section 122-B of the Act by the Pradhan before the Sub Divisional Officer the notice was Discharged and the proceedings were dropped by him as it could not be initiated against the petitioners.

7. The proceedings initiated subsequently before the Tehsildar again under Section 122-B of the Act in which the impugned order dated 30.6.1984 was passed by the Tehsildar against the petitioners was* in the teeth of the aforesaid Judgments passed in the Suit No. 514 and confirmed in Appeal No. 165 of 1974 and the question of the validity of the possession of the petitioners could not be re-agitated and looked into and decided by the revenue authorities as the principle of res judicata applied. The revisional Court also erred in upholding the order of Tehsildar The whole process of reasoning given by the revisional Court also stands vitiated in law: More so, the provisions of Section 122-B of the Act are not applicable in the present case as at the time when the Patta was granted by the LMC on 10.4.1962 irvjavour of the petitioners. Section 122 B of the Act had not seen the light of the day. It came into effect only from 3.6.1981 by U.P. Act No. 20 of 1972. The relevant portion of Section 122-B of the /Act is quoted below :-

122-B. Powers of the Land Management Committee and the Collector.-

(1) Where any property vested under the provisions of this Act in a Gaon Sabha or a local authority is damaged or misappropriated or where any Gaon Sasbha or local authority entitled to take or retain possession of any land under the provisions of this Act and such land is occupied otherwise than in accordance with the provisions of this Act, the Land Management Committee or Local Authority, as the case may be, shall inform the Assistant Collector concerned in the manner prescribed.

(2) Where from the information received under Sub-section (1) or otherwise, the Assistant Collector is satisfied that any property referred to in Sub-section (1) has been damaged or misappropriated or any person is in occupation of any land,

referred to in that sub-section, in contravention of the provisions of this Act, he shall issue notice to the person concerned to show cause why compensation for damage, misappropriation or wrongful occupation as mentioned in such notice be not recovered from him or, as the case may be, why he should not be evicted from such land.

(3)...

(4) If the Assistant Collector is of opinion that the person showing cause is not guilty of causing the damage or misappropriation ' or wrongful occupation referred to in the notice under Sub-section (2) he shall discharge the notice.

(4-A) Any person aggrieved by the order of the Assistant Collector under Sub-section (3) or Sub-section (4) may, within thirty days from the date of such order prefer, a revision before the Collector on the grounds mentioned in Clause (a) to (e) of Section 333.

(4-E) No such suit as is referred to in Sub-section (4-D) shall lie against an order of the Assistant Collector if a revision is preferred to the Collector under subsection (4-A).

It is also found that the subsequent proceedings in which the impugned orders were passed had been initiated by the Pradhan himself individually and not by the LMC as no such resolution was duly passed by the LMC as is required by it to inform the Assistant Collector concerned in the manner prescribed, which is only by way of passing a resolution, the fact that no resolution was passed by LMC is apparent from the statement of the Lekhpal contained in the Judgment of the Assistant Collector dated 31.7.1975 annexure-4 to the application/affidavit of the petitioners dated 10.10.2002, which reads as follows :-

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8. The assumption of power to initiate proceedings by the Tehsildar again under Section 122-B of the Act in which the impugned orders dated 19.9.1984 and 30.6.1984 were passed by the respondents No. 1 and 2 respectively are wholly without jurisdiction and manifestly erroneous, wrong, bad and illegal and liable to

be quashed, in view of the same, the imposition of damages to the extent of Rs. 24,6757- imposed arbitrarily by the respondent No. 2 without any basis is also unjust and the petitioners are not liable to pay the same.

In view of the aforesaid facts, circumstances, and observations made hereinabove, the impugned orders dated 19.9.1984 and 30.6.1984 passed by respondents No. 1 and 2 respectively are hereby quashed. The writ petition is allowed with costs throughout.

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