

Mahendra and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Oct-20-2010

Judge : Amitava Lala; Sanjay Misra, JJ.

Appeal No. : Civil Misc. Writ Petition Nos. 45791, 11544, 35091 of 2010

Appellant : Mahendra and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Mr. V.B.Upadhyay; Mr. Ashwani Kumar Misra, Advs.

Advocate for Pet/Ap. : Mr. S.K.Mishra, Adv.

Judgement :

1. The petitioners are 26 in number and have assailed the resumption order dated 28.12.2006 passed by the Commissioner, Meerut Division, Meerut (Respondent No. 2 (Annexure No.9 to the writ petition) whereby the khasra numbers given in the list have been resumed by the State with a provision to pay compensation.
2. According to Sri S.K. Misra, learned counsel for the petitioners the Land Management Committee, Chhitra, district Gautam Buddh Nagar passed a resolution dated 31.07.1997 for leasing certain land for agricultural purpose to the petitioners and other persons on the ground that they were poor landless agricultural labourers and belonged to the Scheduled Caste communities. The resolution dated 31.07.1997 was approved by the Deputy Collector, Dadri on 20.08.1997 and the petitioners allege to have been handed over possession in the

month of September, 1997. They state that the (lease) pattas of land to the respective petitioners are of less than 3.125 acres.

3. It is stated that the proceedings for cancellation of patta of the petitioners were initiated on a complaint made by one Sri Pitamber Sharma, District President, Bhartiya Kishan Sangh, Gautam Buddh Nagar, which was registered as Case No.1 of 2002 before the Additional Collector, Gautam Buddh Nagar. It is stated that an ex-parte order dated 14.09.2005 (Annexure No.1 to the writ petition) was passed where against the petitioners and other leasees filed restoration application which was dismissed on 13.11.2006, hence the petitioners filed revision against both the aforesaid orders and the Commissioner, Meerut Division, Meerut by his order dated 31.08.2007 set aside the ex-parte order dated 14.09.2005 and remanded the matter back to the Additional Collector (Finance & Revenue) Gautam Buddh Nagar. The petitioners contend that the Respondent No.6 namely M/s. Shiv Nadar Foundation moved an Impleadment Application in the case claiming to be allottee of the land but the same was rejected on 27.07.2009. The Respondent No.6 appeared to have filed a revision which was also dismissed on 01.02.2010 by the Commissioner, Meerut Division, Meerut. The Respondent No.6 then filed Writ Petition No.11544 of 2010 which is pending before this Court and wherein an interim order of status-quo with regard to possession and nature of the land was passed on 09.03.2010.

4. The petitioners contend that in view of the interim order dated 09.03.2010 obtained by the Respondent No.6 he started forcibly raising construction over the land and the petitioners had to file Contempt Petition No.2355 of 2010 wherein notices were issued which compelled the Additional Collector (Finance & Revenue) Gautam Buddh Nagar to issue an order dated 03.06.2010 for stopping the construction work. The Respondent No.6 feeling aggrieved against that order filed a Writ Petition No.35091 of 2010 wherein an interim order dated 14.06.2010 (Annexure No.7 to the writ petition) was granted and the Respondent No.6 was permitted to continue the construction activities.

5. The petitioners allege to have assailed the interim order dated 14.06.2010 by filing Special Appeal No.604 of 2010 which was allowed on 28.06.2010 (Annexure

No.8 to the writ petition) and the interim order dated 14.06.2010 passed by the learned Single Judge granting stay was set aside.

6. According to the petitioners, during all these proceedings they had no knowledge that an order dated 28.12.2006 had been passed by the Commissioner resuming the land by the State Government. The petitioners have explained the laches in filing the writ petition in that manner to say that they came to know about the resumption order dated 28.12.2006 when counter affidavit was filed by the Respondent No.6 in Contempt Petition No.2355 of 2010.

7. The petitioners have raised several submissions to assail the impugned order dated 28.12.2006. The first submission is that the land was leased to the petitioners in the year 1997 and the lease was cancelled after eight years on 14.09.2005 and as such the order dated 14.09.2005 was passed beyond the period of limitation prescribed for cancellation of lease. The other ground is that the petitioners had developed a right over the land in question by virtue of provision of Section 122-B(4-F) of the U.P. Zamindari Abolition and Land Reforms Act. Another submission is that the proceeding under Section 117(6) of the U.P.Z.A & L.R. Act requires a declaration to be published in the manner prescribed and in the absence of such a declaration published in the manner prescribed the impugned order cannot be held an appropriate order of resumption under Section 117(6) of the U.P.Z.A. & L.R. Act. They have referred to the date of vesting as 01.05.2002 by virtue of provisions of the U.P.Z.A & L.R. Act and state that when they became bhoomidhars by operation of law no order of resumption under Section 117(6) of the U.P.Z.A & L.R. Act could have been passed and the only course for the State was to invoke the provision of the Land Acquisition Act to re-enter the land.

8. According to the petitioners, several allottees have also filed Writ Petition No.17029 of 2008 against the acquisition of their land and cancellation of its allotment wherein according to them an interim order dated 01.04.2008 for maintaining status-quo is operating.

9. In a supplementary affidavit, petitioners have filed caste certificates, from which it appears that not all but few are belonging to Scheduled Castes community when

others are belonging to Other Backward Classes and minority community. They have also filed copy of the ZA Form 59 and copy of the Jot Chakbandi Akar Patra 13 to establish that they were given lease of the land mentioned in paragraph 4 of the writ petition to the extent as shown in the lease deeds. The petitioners have also annexed copies of certain documents to indicate that they were given possession of their respective lands in the year 1997 and they are still in possession.

10. Sri V.B.Upadhyay, learned Senior Counsel assisted by Sri A.K.Misra for the respondent no.6 M/s Shiv Nadar Foundation have contested this writ petition and referred to the short counter affidavit. It has been stated that this writ petition is barred by laches since it has been filed in the year 2010 against the resumption order dated 28.12.2006. He has submitted that the U.P. State Industrial Development Corporation (hereinafter referred to as 'UPSIDC') had allotted total of 286 acres of lands to the respondent no.6 for establishment of a Technical Institution in District Gautambudh Nagar. He places reliance on two lease-deeds executed in favour of respondent no.6 by the UPSIDC on 24.2.2009 and 17.7.2009 which according to him includes the 70.7 acres of land covered under the resumption proceedings. It has been stated that they have been in possession and have filed the possession memo as well as revenue records and state that after having obtained necessary approval of building plans and permission they have started construction of the Technical Institution on the land in question and have also built the boundary wall around the entire land allotted to them which includes the area of 70.7 acres, which had been resumed by the State Government and stood vested in the UPSIDC free from all encumbrances. The respondent no.6 has further come up with a plea that the allotment proceedings in favour of the petitioners were contrary to law since they were not in accordance with the provisions of the U.P.Z.A. & L.R. Act and Rules and that their names were not entered in the revenue record in pursuance of any order passed by the Revenue Authorities. It is further pleaded that the land in question was lying barren and was not in possession of any other person prior to its resumption. It is argued that the petitioners could not mature any rights to claim relief under Section 122-B (4-F) of the U.P.Z.A. & L.R. Act and hence there was no occasion to initiate any eviction proceedings under Section 122-B of the U.P.Z.A. & L.R. Act. Their case is

that the benefits of 122-B (4-F) of the U.P.Z.A. & L.R. Act could not be made applicable after the cut of date (01.05.2002) since it is the own case of the petitioners that they came into possession in 1997 by virtue of the lease-deed, hence they do not claim to be in unauthorised possession over the Gaon Sabha land. It has also been argued that they have no right to challenge the resumption since their names have not been recorded over the land in question and hence they are complete strangers to the land having no right, title or interest. The respondent no.6 has referred to the transfer of the land in its favour by the UPSIDC in the larger public interest for establishment of a Technical Institution and hence also no interference is required in the resumption proceedings at the instance of the petitioners.

11. From the aforesaid facts, it appears that at the time of resumption dated 28.12.2006, the patta of the petitioners had already been cancelled under Section 198 (4) of the Act on 14.9.2005. Their application for restoration (Case No. 1 of 2002) and recall of the order dated 14.9.2005 was rejected on 13.11.2006. The petitioners preferred a revision against such order, which was ultimately allowed by the Commissioner, Meerut Division Meerut on 31.8.2007 remanding the matter to the Additional Collector. It is not in dispute that the aforesaid proceedings for cancellation of patta have not concluded as yet, however, in the meantime on 28.12.2006 the land has been resumed under Section 117 (6) of the U.P.Z.A. & L.R. Act. These proceedings under Section 198 (4) of the U.P.Z.A. & L.R. Act, wherein the patta was cancelled are still pending before the Competent Court.

12. A perusal of the certificate issued in ZA Form No. 58 filed along with supplementary affidavit indicates that the petitioners were granted rights of non transferable Bhumidhars. Therefore, they cannot plead to claim that they were absolute owners of the land in question and therefore, the proceedings under Section 117 (6) of the U.P.Z.A. & L.R. Act were clearly maintainable for the purpose of resumption by the State hence the remand of cancellation of patta proceedings by the Commissioner, Meerut Division Meerut would not have any legal validity, since such proceedings would become infructuous as soon as the State resumed the land on 28.12.2006 under Section 117 (6) of the U.P.Z.A. & L.R. Act. Admission to land under Section 195 of the Act does not confer any title

or absolute ownership. The first submission of learned counsel for the petitioners, therefore, cannot be accepted.

13. The vesting of land under Section 117 (1) of the U.P.Z.A. & L.R. Act in the State has been considered by the Supreme Court in the case of *Mahraj Singh v. State of U.P. and others* reported in 1977 (1) SCC 155 and it was held in paragraphs 16 and 18 as quoted thereunder:-

"16. It is reasonable to harmonize the statutory provisions to reach a solution which will be least incongruous with legal rights we are cognisant of in current jurisprudence. Novelty is not a favoured child of the law. So it is right to fix the estate created by Section 117 into familiar moulds, if any. Such an approach lends to the position that the vesting in the State was absolute but the vesting in the sabha was limited to possession and management subject to divestiture by Government. Is such a construction of 'vesting' in two different senses in the same section, sound? Yes. It is, because 'vesting' is a word of slippery import and has many meanings. The context controls the text and the purpose and scheme project the particular semantic shade or nuance of meaning. That is why even definition clauses allow themselves to be modified by contextual compulsions. So the sense of the situation suggest that in Section 117 (1) of the Act 'vested in the State' carries a plenary connotation, while 'shall vest in the Gaon Sabha' imports a qualified disposition confined to the right to full possession and enjoyment so long as it lasts. Lexicographic support is forthcoming, for this meaning. Black's Law Dictionary gives as the sense of 'to vest' as 'to give an immediate fixed right of present or future enjoyment, to clothe with possession, to deliver full possession of land or of an estate, to give seisin'. Webster's Third International Dictionary gives the meaning as 'to give to a person a legally fixed immediate right of present or future enjoyment'.

18. There is thus authority for the position that the expression 'vest' is of fluid or flexible content and can, if the context so dictates, bear the limited sense of 'being in possession and enjoyment'. Indeed, to postulate vesting of absolute title in the Gaon Sabha by virtue of the declaration under Section 117 (1) of the act is to stultify Section 117 (6). Not that the legislature cannot create a right to divest what

has been completely vested but that an explanation of the term 'vesting' which will rationalise and integrate the initial vesting and the subsequent resumption is preferable more plausible and better fulfils the purpose of the Act. We hold that State has title to sustain the action in ejectment."

14. From the above decision, the petitioners cannot successfully assail the resumption order on the ground that they were granted pattas by the Land Management Committee and have been in possession of State land since then. Clearly the vesting of land in the State under Section 4 of the U.P.Z.A. & L.R. Act is free from all encumbrances and its consequences are set forth in Section 6 of the Act. On the other hand vesting of land in the Gaon Sabha by a declaration made under Section 117 (1) of the Act is confined to rights to full possession and enjoyment. It is not an absolute title conferred to the Gaon Sabha where the Land Management Committee could only administer the estates vested in the Gaon Sabha. Consequently, the petitioners who claim to be lessees of the Gaon Sabha land could not in law even maintain their claim of having acquired rights of a bhoomidhar. The submission to the contrary made on behalf of the petitioners is misconceived and is, therefore, rejected.

15. The other ground canvassed on behalf of the petitioners is with regard maturing their rights and entitlement of claim under Section 122-B (4-F) of the U.P.Z.A. & L.R. Act for the purpose of grant of relief to not disturb the possession of the petitioners. Insofar as the above submission is concerned, the same has also been conclusively answered by the Supreme Court in the case of Manorey @ Manohar v. Board of Revenue (U.P.) & others reported in JT 2003 (3) SC 538. The provision admits of an occupant of land who satisfies the conditions under Sub-Section (4-F) of Section 122-B of the U.P.Z.A. & L.R. Act. The said provision reads as under :-

"[4-F) Notwithstanding anything in the foregoing sub-section, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in Section 132) having occupied it from before [May 1, 2002], and the land so occupied together with land, if any, held by him from before the said date

as bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and [he shall be admitted as bhumidhar with non-transferable rights of that land under Section 195 and it shall not be necessary for him to institute a suit for declaration of his rights as bhumidhar with non-transferable rights in that land]."

15. In the present case, admittedly the aforementioned conditions/criteria are clearly not satisfied and the petitioners cannot claim any benefit of the provision, since they do not satisfy the conditions. On the one hand the petitioners claim lease rights by virtue of patta granted to them by the Land Management Committee and on the other hand they claim rights for the reason of occupation of the land prior to the cut of date (01.05.2002). On one hand they claim to be landless labourers and on the other hand they are claiming themselves to be patta holder/s. The nature of possession of the petitioners was never claimed to be unauthorised or adverse. Their rights of possession, if any, flow only from the lease which was in any case only for the purpose of cultivation given to landless agricultural labourers of the Scheduled Caste and Other Backward category. As such the provisions of Section 122-B (4-F) of the Act cannot be applicable in the present case. It will have no affect on the right of the State to resume the land under Section 117 (6) of the Act. Consequently, the petitioners cannot claim or be granted the relief as claimed by them.

16. It has been submitted by learned Senior Counsel for the respondent no.6 that the petitioners have not come with clean hands. He refers to the earlier writ petition filed by them and points out that the very description of the land in that petition and as given in the present writ petition are not the same and hence this writ petition requires to be dismissed with costs. We have gone through the record of both the writ petitions and find that the submission made appears to be correct and there is no explanation given by the petitioners for such variance in the description of the land leased out to them except that now they have filed certificates of some of the petitioners showing the details of the land leased to them. Be that as it may but since we have found that the State has unqualified and absolute title over the land in question by virtue of vesting under

Section 4 and 6 of the Act it can sustain its action of ejectment upon resumption under Section 117 (6) of the Act and the incorrect description of land given by the petitioners in the two writ petitions will be of no consequence and can be overlooked for the reason that they cannot succeed in any claim brought forward by them over the land.

17. There is yet another submission of the petitioners which requires consideration. The provisions of Section 117 (6) of the Act provides that the State Government may at any time by general or special order to be published in the manner prescribed, amend or cancel any declaration, notification or order for the purpose to resume the land and it can make a fresh declaration even after such order of resumption. Section 117 (6) of the Act is quoted hereunder:-

"117. Vesting of certain lands, etc. in Gaon Sabhas and other local authorities.-...

(6) The State Government may at any time, [by general or special order to be published in the manner prescribed], amend or cancel any [declaration, notification or order] made in respect of any of the things aforesaid, whether generally or in the case of any Gaon Sabha or other local authority, and resume such things, and whenever the State Government so resumes by such things, and whenever the Gaon Sabha and other local authority, as the case may be, shall be entitled to receive and be paid compensation on account only of the development, if any effected by it in or over that things:

18. Provided that the State Government may after such resumption make a fresh declaration under sub-section (1) or sub-section (2) vesting the thing resumed in the same or any other local authority (including a Gaon Sabha), and the provisions of sub-sections (3), (4) and (5), as the case may be, shall, mutatis mutandis, apply to such declaration."

19. In the present case by the impugned order, it has been provided that the land mentioned therein shall stand resumed and the notification has been sent for publication in official gazette. Therefore, when it was permissible for the State to resume the land under Section 117 (6) of the U.P.Z.A. & L.R. Act and thereafter publish it in the manner prescribed and the same having been provided for in the

impugned order, it cannot be held that the resumption was bad for non publication in the manner prescribed prior to entering the land.

20. In totality, no affirmative order can be passed in favour of the petitioners. Hence, the writ petition, being Writ Petition No. 45791 of 2010, is dismissed, however, without imposing any cost.

21. In view of the above, the writ petitions filed by the respondent no.6, being Writ Petition Nos. 11544 of 2010 and 35091 of 2010 [(Shiv Nadar Foundation v. State of U.P. and others) (in both the matters)] are dismissed as not pressed, also without imposing any cost. Interim order, if any, passed in such writ petitions stands vacated.

22. Except the three matters referred above, other matters relating to acquisition, if any, are delinked and released by this Bench to appear before the appropriate Bench.

(Justice Amitava Lala)

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