

Kishnu and Others Vs. Sheesh Pal and Others

Kishnu and Others Vs. Sheesh Pal and Others

SooperKanoon Citation : sooperkanoon.com/951813

Court : Allahabad

Decided On : Jul-04-2011

Judge : S.U. Khan

Appeal No. : Civil Misc. Writ Petition Nos. 26470 of 1999 & 9154 & 17924 of 2008

Appellant : Kishnu and Others

Respondent : Sheesh Pal and Others

Judgement :

First writ petition

Gaon sabha passed a resolution on 26.06.1983 proposing to allot different parts of gaon sabha plot in favour of petitioners who are 10 in numbers (separate portion to each petitioner). S.D.O. approved the allotment on 30.07.1983. Application for cancellation of pattas was filed on 21.06.1989 by respondents 1 and 2 Sheesh Pal and Kanwar Pal. The matter was registered as case no.19 of 1988-89 on the file of Additional Collector (F and R) Ghaziabad under Section 198(4) of U.P.Z.A.L.R. Act. In the case an order was passed on 3.7.1990 directing that the case would be treated to be suo moto proceeding.

The land had been allotted by the Pradan in favour of his near relations i.e. father, son nephew grand son and real sister and brother in law. This fact was reported by the Tehsildar in his report dated 11.09.1989 according to which father of the Pradhan who was opposite party no.3 in the case was also already having 4

bigha, 6 biswa land. Opposite party no.4 was husband of first cousin of the Pradhan, opposite party no.4 was Dhaivata(son in law) of the Pradhan, opposite party no.7 was real sister, opposite party no.8 was minor son of the Pradhan, opposite party no.9 was nephew of the gram pradhan and opposite party no.10 was minor nephew of the gram pradhan, opposite party no.11 was wife of nephew of the pradhan. Except one allottee i.e. opposite party no.6 all other allottees were very close relations of the gram pradhan and opposite party no.4,5 and 7 were also not residents of the village in question. In respect of opposite party no.6 it was found that her husband Sri-Chaman Singh had earlier been allotted 3 bigha 1 biswa gaon sabha land.

Ultimately, allotment was cancelled through order dated 22.05.1993. Against the said order revision no.22 of 1992-93 was filed which was dismissed on 06.08.1993 by Additional Commissioner Meerut, Division Meerut. Against the said order second revision was filed before Board of Revenue Allahabad being revision no.203 of 1992-93 which was dismissed by Board of Revenue on 11.3.1999, hence, the first writ petition.

In this writ petition on 12.07.1999 effect and operation of the impugned orders was directed to remain stayed if it had not already been implemented. The only point argued by learned counsel for petitioners is that by virtue of Section 198(5) and (6) of U.P.Z.A.L.R. Act proceedings for cancellation of patta could not be initiated by issuing notice after 10.11.1987 as limitation is 5 years from the date of allotment/lease or upto 10.11.1987 whichever be latter. Board of revenue in five judge full bench reported in Virender Singh Vs. State of U.P. 1994 R.D. 540 held that if suo moto proceedings are taken for cancellation of patta limitation does not apply.

The question of limitation is drawing attention of this court in writ petition no.18238 of 1995.

In the instant case the pradhan who is custodian of gaon sabha property has himself usurped the property by distributing the same to his father son nephew etc. It is a classical case of the 'fence eating the crop' (a Hindi proverb). It was a fraud of highest order which was played by the pradhan and petitioners allottees. The

allotment was not only irregular and illegal but also void and result of fraud of the highest degree. Section 198(4) deals with irregularity of the allotment, hence, the limitation will be relevant only when there is some irregularity in the allotment. However, if the allotment is utterly void and fraudulent then even formal proceedings under Section 198(4) are not required. In case of stark usurpation of gaon sabha property collector is entitled to take corrective measures. Proceedings may be justified under Section 33/39 of U.P. Land Revenue Act also. Under somewhat similar circumstances (expiry of period of assami lease) it was so held in Hari Ram V. Collector, Dist. Saharanpur/Additional Collector, 2004(2) R.D. 360. The power to evict in case of void allotment which is tantamount to usurpation of gaon shaba property like the present one may also be traced to Section 122-B of U.P.Z.A. and L.R. Act. However opportunity of hearing was utmost essential which was fully provided.

Assuming that there is no specific provision under U.P.Z.A. and L.R. Act or U.P.L.R. Act to remedy the fraudulent wrong like the one in question then in view of the fact that pradahan and petitioners allottees fraudulently usurped gaon sabha property the High court can very well refuse to interfere in exercise of writ jurisdiction with the orders setting aside the said allotment. The reason is that even if impugned orders are erroneous in law on the ground of proceedings being barred by time however the effect of setting aside those orders on the technical ground of limitation would be to revive and approve the utterly illegal and void allotment.

Petitioners are not only liable to be evicted forthwith but they are also liable to pay damages for use and occupation as they are stark usurpers. Accordingly, it is directed that the petitioners of the first writ petition should positively be evicted within one month from today and for the entire period for which they remained in possession i.e. 28 years each of the petitioner shall be liable to pay Rs.2000/- per bigha per year damages which shall be recovered like arrears of land revenue and deposited in consolidated gaon fund constituted under Section 125-A of U.P.Z.A. and L.R. Act. The recovery shall positively be made within three months. Absolutely no leniency on the part of the Collector who is required to perform the twin duties will be appreciated by this Court. The First writ petition is accordingly

dismissed with the above directions.

Second and third writ petitions.

Through the second and third writ petitions orders cancelling allotment made in favour of the petitioners in both the writ petitions by the land Management Committee through resolution dated 21.02.2000 have been challenged. The said resolution was approved by Tehsildar on 24.03.2003. The allotment was made in favour of 86 persons. In the second writ petition 42 allottees are petitioners and in the third writ petition 23 allottees are the petitioners. The allotment was challenged by respondents 3 to 10 in both the writ petitions Mangu and others. The cancellation application was registered as case no.3 of 2006-07 under Section 198(4) of U.P.Z.A. and L.R. Act Mangu Ram(deceased) Vs. Land Management Committee on the file of Additional Collector (City) Ghaziabad. The allotments were cancelled by the Additional Collector through order dated 15.5.2007. Against the said order 4 revisions were filed being revision no.80,81,86 and 120 all of 2006-07. Additional Commissioner Meerut Division Meerut dismissed all the revisions through judgment and order dated 21.1.2008 hence second and third writ petitions.

Before proceeding to decide these writ petitions on merit it is necessary to note that in the first writ petition notice was issued through detailed order dated 25.2.2008 mainly on the ground that the question as to whether Additional Collector can entertain and decide application under Section 198(4) of U.P.Z.A. and L.R. Act was engaging attention of full bench in Brahm Singh Vs. Board of Revenue. The full bench has now been decided and the judgment is reported in AIR 2008 All 144 holding that Additional Collector can decide such applications. The other point noted in the order dated 25.2.2008 is that as far as land of Village Samaypur Katiyar is concerned that was subject matter of writ petition no.26470 of 1999(first writ petition decided through the above part of this judgment) hence no interim order was passed in respect of the said land.Through resolution dated 21.2.2003 land of 2 villages was allotted i.e. Samaypur Katiyar and Akalpur Nigravthi. Both the villages are under the same land Management Committee. The allotment has been cancelled on the ground that procedure of Duggi, Munadi,

Agenda etc. as prescribed under Rules 173 and 175 of U.P.Z.A. and L.R. Rules was not followed and in respect of land of Village Samaypur stay order was already operating in writ petition no.26470 of 1997. It was also held that some of the allottees were not residents of the village where allotted land was situate and some allottees were not deserving persons and that on the proposal signatures of members of the land Management Committee were forged and actually no meeting was held. Naib Tehsildar also submitted the report asserting therein that 15-20 persons were not deserving candidates. Some members of land Management Committee also filed affidavit asserting that pattas were illegal. Munadi was shown to have taken place on 13.2.2003 and agenda was shown to have been circulated on 14.2.2003.

The Additional Collector found that from the perusal of the document of Munadi it was evident that there was overwriting on the date of allotment and the date was written below the signatures of lekhpal and that in the Munadipatra plot number of the land and area was not mentioned which was in violation of Rule 173. Copy of affidavit of Umesh Kumar who was shown to have done the Munadi dated 21.5.2004 was filed in which he stated that no Munadi was done by him and he denied his signatures on the Munadi Patra. It is also mentioned that in Aakar Patra 57 Ka all the allottees had be shown to be land less, however, from the perusal of copies of Khataunis filed on record on behalf of complainant it was clear that several allottees were having land before allotment. It was also found that some of the allottees were not residents of the village. It was also found that preference as provided under Section 198 of the Act was not followed. It has also been found that several persons whose names were there in Aakar Patra 57 Ka (list of deserving candidates) were not allotted land and their names were not there in Aakar Patra 57 Kha (list and actual allottees) but, it was not shown that on what basis they were denied allotment of the land.

I do not find any such error in the impugned orders which may warrant interference in exercise of writ jurisdiction. It is proved on record that formalities were not completed and allotment was not in accordance with the relevant rules and preference was not followed. Several undeserving persons were allotted land. As far as land of village Samaypur is concerned there was already a stay order in the

first writ petition hence that could not be allotted.

Accordingly, second and third writ petition are dismissed.

It is directed that fresh allotment of the entire land which is subject matter of the three writ petitions shall be made after due advertisement in daily Hindi newspaper Dainik Jagaran or Amar Ujala published from the place nearest from the villages in question. Petitioners of first writ petition shall not be allotted land however petitioners of second and third writ petition if found eligible may be allotted land. Those petitioners of second and third writ petition who were allotted land of the village Akalpur shall not be dispossessed until fresh allotment, If in the fresh allotment the land which is in their possession is not allotted to them then they shall be evicted within a week of the fresh allotment and the fresh allottee should be put in possession.

Proceedings for fresh allotment in accordance with the authority reported in Raja Ram vs. Sonkali reported in 2009 (107) RD 796 shall be made positively within three months.

Office is directed to supply a copy of this order free of cost to learned Chief Standing counsel by tomorrow.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com