

(1960) 02 AHC CK 0003

Allahabad High Court

Case No: Civ. Miscellaneous Writ No. 1984 of 1957

Rai Amar Nath
Agarwal

APPELLANT

Vs

Tahsildar Assistant
Collector and Others

RESPONDENT

Date of Decision: Feb. 11, 1960

Acts Referred:

- Constitution of India, 1950 - Article 14, 226
- Penal Code, 1860 (IPC) - Section 353

Citation: (1960) 30 AWR 564

Hon'ble Judges: V.D. Bhargava, J

Bench: Single Bench

Advocate: S.N. Kakkar, for the Appellant; Standing Counsel, for the Respondent

Judgement

V.D. Bhargava, J.

This is a writ petition under Article 226 of the Constitution filed by Rai Amar Nath Agarwal against the Tehsildar, Sadar, district Mirzapur, the Chairman, Land Management Committee, village Pathera Kalan, Tappa Cheurasi, pargana Kantit district Mirzapur and Gaon Sabha village Pathera Kalan, Tappa, Chaurasi pargana Kantit district Mirzapur.

2. The Petitioner claims to have been the Zamindar of the entire village Pathera Kalan before the abolition of Zamindari. Large tracts of land in the said village had been in cultivation of the Petitioner himself as his khudkasht since long before the abolition of the zamindari in this State. Most of the land in the said village consisted of forest. The forests were cleared up and the said land was brought under cultivation. The requisite authority for bringing the land under cultivation was obtained from the Forest Department also. In 1942 43 a plot of land in this village was given for the purpose of cultivation by the Petitioner to Ram Adhar Singh but

later on the Petitioner decided to cultivate the lands in the said village himself and he brought the land in his cultivation. The aforesaid Ram Adhar Singh became the President of the Gaon Samaj and since that land had been taken from him he was out to harass the Petitioner and take possession of this land by all possible means. He, therefore, according to the Petitioner, manipulated wrong entries in the revenue papers. It was said that the Petitioner's Zildar discovered in 1954 that Sita Ram Lekhpal of the area did not record the fact correctly in the revenue papers. The Patwari was warned to make correct entries otherwise a report would be lodged against him. On this asking of the zildar, the Lekhpal lodged a report against the Petitioner's Zildar u/s 353, IPC. It is further alleged that the Lekhpal in collusion with Ram Adhar Singh, President of the Gaon Samaj filed two reports to the Tehsildar concerned on behalf of the Land Management Committee. One report was filed on or about 22-3-1955 which related to plots Nos. 1899, 1900, 1901, 1902, 1903, 1904 and 1905 having a total area of 56 bighas and 15 biswas and having nearly 155 Mahua and other trees and 60 Mango trees.

3. The second report was lodged on or about 26-2-1956 but the numbers of the plots were not given. Later on, plots Nos. 1683 to 1698 and 1901, 1902, 1899 and 1900 were given. These two reports were sent for enquiry to the Naib Tehsildar concerned and he called for documentary as well as oral evidence on behalf of the Petitioner. He produced permits from the Forest Department to cultivate this land, canal slips and seven witnesses. On behalf of the Gaon Samaj, extract of Khatauni for 1362F only was filed. The Naib Tahsildar came to the conclusion that the Petitioner had been cultivating this land since before the abolition of the zamindari and was entitled to remain in possession. The report was submitted to the Tehsildar. He appears to have again called for evidence that the land had been in cultivation. He recorded the evidence including the evidence of Ram Adhar Singh, Chairman of the Land Management Committee. According to him the Petitioner had been cultivating the land at least for the last two or three years. Ultimately he came to the conclusion that since the Petitioner was the sole proprietor of the village and as such he tried to take unauthorised possession of land already vested in the Gaon Samaj and therefore, directed him to pay Rs. 302 as compensation and to be ejected and further directed him to pay Rs. 1360 to the Chairman of the Land Management Committee as con of the trees. The amount was to be paid by 16-8-1957 failing which necessary proceedings for execution of ejectment and realisation of the above dues were to be taken. Aggrieved by that decision the Petitioner has come to this Court and filed this writ petition.

4. On behalf of the State a counter affidavit has been filed by the Supervisor Kanungo, Mirzapur according to which it is not the whole land which is cultivated, but a part of it is cultivated and the land had vested in the Gaon Samaj.

5. It was challenged in the petition that the order that had been passed, had been passed without jurisdiction. This fact has been controverted in the counter affidavit.

Certain extracts have also been filed from the revenue papers showing the position of different plots in different years.

6. I am not concerned in this case as regards the merits and I do not wish to decide the question of title in a writ petition. Therefore so far as these documents are concerned, they are not very much material.

7. Learned Counsel for the Petitioner has canvassed two points before me. The first point is that the order had been passed by a Tehsildar, while u/s 115C it is the Collector who is to decide and Collector has been defined in the UP ZA and LR Act as also including an Assistant Collector I Class. So far as this point is concerned, it has not been specifically taken in the grounds of petition and therefore, it is not possible to decide whether Sri Suraj Lal, who decided that case was a Tehsildar or an Assistant Collector. In the heading of the judgment it is mentioned "In the Court of Suraj Lal Tehsildar Sadar," while at the bottom where he has initialled, it is initialled as Assistant Collector 1st Class. We do not know the exact position and under the circumstances I do not think that any definite finding can be given in this case. If he was a Tehsildar who had given that order and was not a 1st class Assistant Collector, then in that event this order is liable to be set aside on that ground.

8. The second point that has been urged by learned Counsel for the Petitioner is that in cases where there is a controversy about the title, proceedings under Rule 115C would not be justified. It is only in cases where the title of the Land Management Committee to a plot in dispute is admitted, that the Land Management Committee can go and file an application by means of Rule 115C before the Collector and he would be authorised to make enquiry in the matter in a summary fashion. Thereafter if a person is aggrieved, he may file a regular suit in civil court. But in cases where the title is in dispute, the proceedings under Rule 115C, which are purely of a summary nature, can not be taken.

9. It was contended that where the nature of the proceedings under Rule 115C and Section 209 are of the same kind then the provisions of Rule 115C would be hit by Article 14 of the Constitution; in that event it would not be open to the Land Management Committee to proceed against one person by filing a suit u/s 209 where the Defendant has a regular right of several appeals, while it might proceed against another person under Rule 115C and summarily dispossess him without any right of appeal. It is true that in that event there would be a right to file a regular suit, but he would all the same be dispossessed in a summary manner. I think that if the objects of Rule 115C and Section 209 are to be exactly similar then there is no escape from holding that Rule 115C is hit by Article 14 of the Constitution.

10. Their Lordships of the Supreme Court had to consider similar provisions where one was of a summary nature and provided no appeal and the other a procedure where there was a right of appeal and revision. Since different persons, though falling under the same class and category, being evaders of income tax, would be

subject to different procedures--one a summary and drastic procedure; and the other the normal procedure, which was denied to those, who were separately treated under that procedure, the summary procedure was declared to have been hit by Article 14. It was so decided in [M. Ct. Muthiah and Others Vs. The Commissioner of Income Tax, Madras and Another,](#) . The Act which was being challenged was Act 30 of 1947.

11. Before 26-1-1950, when the present Constitution came into force, the validity of the order of the Court, though discriminatory could not have been challenged. When, however, the Constitution came into force on 26.1.1950 the citizens obtained the fundamental rights guaranteed under Pt. III of the Constitution including a right of equality of laws and equal treatment of laws enacted under Article 14. Their Lordships had held that all those cases which had been referred to investigation and came after 26-1-1950 could not be referred because Act 30 of 1947 was obviously discriminatory and therefore, violated the fundamental rights guaranteed Under/Article 14 of the Constitution. The same principle will apply in the present case. There could be different classes of persons who might have encroached upon the land of the Land Management Committee. As against one the Land Management Committee might choose to proceed in the summary fashion, while as against the other u/s 209. No manner of classification has been put by which the Land Management Committee had to classify as against whom they are to proceed under Rule 115C and against whom u/s 209. Therefore, though falling in the same category, all persons who had encroached upon the land of the Land Management Committee, they could be stopped by different procedures one by a summary and drastic procedure and the other by the normal procedure. But a learned single Judge in [Babulal Vs. G.S. Hashmi and Others,](#) has held that Rule 115-C does not violate Article 14 of the Constitution on the ground that the provisions are to apply in different cases and he has held that Section 209 gives power to the Gaon Samaj or the Collector to file a suit for ejectment and for recovery of possession against the trespasser, while action cannot be taken under Rule 115C in cases where the title of the Gaon Samaj itself is disputed. Nor does Rule 115C apply to a case where in fact the person had been put in possession of any land belonging to the Gaon Samaj under a document which purports to be a patta on behalf of the Land Management Committee.

12. I am in respectful agreement with my brother Mehrotra, J. Cases under Rule. 115C can only be taken by the Assistant Collector if the title to the land concerned is not in dispute. But if the title itself is in dispute, the only course open to the Land Management Committee is to proceed by way of a suit for ejectment. A citizen cannot be deprived of his valuable right of holding land in summary proceedings by Rule 115C. In the circumstances I think that the Tehsildar or the Assistant Collector, whosoever he may have been in the circumstances of the case, had no jurisdiction to proceed Under Rule 115D, His order is ultra vires and therefore, I quash the order of Sri Surj Lal dated 19-7-1957.

13. The Petitioner is entitled to his costs.