(2004) 01 AHC CK 0058

Allahabad High Court

Case No: C.M.W.P. No. 8769 of 1984

Dhani Ram		APPELLANT
	Vs	
Addl. District Collector and Others		RESPONDENT

Date of Decision: Jan. 5, 2004

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 122B

Citation: (2004) 3 AWC 2212 : (2004) 96 RD 535 : (2004) 1 RD 535

Hon'ble Judges: Rakesh Tiwari, J

Bench: Single Bench

Advocate: Prakash Chandra, for the Appellant; K.B. Garg, S.C., for the Respondent

Judgement

Rakesh Tiwari, J.
Heard counsel for the parties and perused the record.

2. This writ petition has been filed challenging the proceedings u/s 122B of the U.P. Zamindari Abolition and Land Reforms Act initiated against the petitioner in respect of plot No. 1193 measuring 1 bigha.

3. The petitioner was in possession over the land in dispute on the basis of a lease granted to him on 21.6.1967 by the Gaon Sabha. He has been continuously paying the land revenue for the same to the Gaon Sabha and has paid the rent up to date and the last payment has been made on 17.5,1984. Photostat copy of the lease deed dated 21.6.1967 as well as Photostat copy of the receipt of the payment dated 17.5.1984 have been annexed as Annexures-1 and 2 to the writ petition. The petitioner has neither given any evidence nor filed any "Patta" on the basis of which he claimed rightful owner of the disputed land. The trial court directed eviction of petitioner Dhani Ram from the land of the Gaon Sabha, i.e., Gata No. 1193 area 2 acres and also imposed damages amounting to Rs. 1,040 for the year 1389 and 1390 Fasli.

4. Aggrieved, the petitioner filed a revision u/s 333 of the U.P. Z. A. and L. R. Act against the order dated 27.10.1983 passed by Tahsildar/Assistant Collector First Class, Mathura.

5. Before the revisional court the objection of the petitioner was that the impugned order of the lower court was bad in law and against facts and evidence on record and that the revisionist had a lease of the land in dispute and was in possession over the land in dispute on the basis of lease. He prayed that the impugned order dated 27.10.1983 be quashed in view of the aforesaid facts.

6. It is not disputed that the Circle Lekhpal has submitted encroachment report on 6.3.1983 with site plan, extract of Khatauni from 1385 to 90 Fasli, as well as extract of Khasra 1390 Fasli alleging that petitioner has encroached the land in dispute on the basis of which notice u/s 49Ka was issued for eviction and damages.

7. It is apparent from the record that the petitioner had not given any oral and documentary evidence before the lower court. Before the revisional court also, the petitioner had alleged that the Gaon Sabha had sanctioned an Asami lease of the land and it is by virtue of that lease that he was in possession over the land in suit. He also cross-examined the Lekhpal in the Court but did not adduce any evidence and also did not file original lease etc. to establish his right and title. The revisional court did not accept the plea of the Abadi raised by the petitioner and held that the lower court has committed no illegality in passing the order dated 27.10.1983. However, the revisional court found that the name of the petitioner was recorded in Ziman 4 of the Khatauni and therefore, imposed damages amounting to Rs. 12,480. It modified the order of the lower court to the extent that the revisionist be ejected, his name from the Ziman 4 of the Khatauni be struck off and damages of Rs. 12,480 be recovered from him.

8. Aggrieved by the impugned orders dated 27.10.1983 and 20.3.1984 passed by respondent Nos. 1 and 2, this writ petition has been filed.

9. I have gone through the impugned orders of the courts below and do not find any illegality or infirmity in the orders of the courts below. The petitioner had not adduced any oral evidence and also had not filed original lease before the Courts below. The matter relates to the dispossession of the petitioner and he has filed photocopy of the lease deed before this Court. In peculiar facts and circumstance, the case is remanded to the court below to verify the lease photocopy of which is Annexure-1 to the writ petition from the original lease and pass appropriate order accordingly within a period of two months from today. The impugned order shall remain suspended till then.

10. The petition is disposed of with the above observations. No order as to cost.