

(1999) 10 AHC CK 0044

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 2365 (M/s) of 1997

Govind Singh

APPELLANT

Vs

A.D.M.Sultanpur and Others

RESPONDENT

Date of Decision: Oct. 27, 1999

Acts Referred:

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

Hon'ble Judges: P.C.Verma, J

Final Decision: Disposed Of

Judgement

P. C. Verma, J.

This writ petition has been filed by the petitioner challenging the judgment and order dated 27697 passed by the Additional Collector, Sultanpur in revision No. 2/241096 under Section 122B(4A) of UPZA and L.R. Act. This revision was filed against the judgment and order dated 27594 passed by the Assistant Collector Kadipur in case No. 489 under Section 122B of UPZA and L.R. Act.

2. A notice under Form 49A was given to the petitioner requiring him to vacate the land of Gata No. 1020/1 Rakba 0.200 situate in village Oarva which was alleged to be the property of Gaon Sabha. Objection was filed in response to the aforesaid notice by the petitioner stating therein that a suit for declaration of title filed by the petitioner is pending before the 3rd Addl. Munsiff, Sultanpur, therefore, the petition be dropped till the decision in the title suit. Assistant Collector found the petitioner to be in unauthorised possession of the land belonging to the Gaon Sabha as the title was not decided in the civil suit, therefore, he passed the order for correction of khatauni deleting the name of the petitioner and recording the name of Gaon Sabha. Against this order the petitioner filed revision No. 2/241096.

3. Before the decision in the said revision the civil suit was decided by the learned Munsiff and the Gaon Sabha was restrained from interfering the peaceful possession of the petitioner. This judgment was filed before the Additional Collector.

From the perusal of the judgment passed by the Additional Collector it appears that the Additional Collector did not take into account the judgment passed by the learned Munsiff and upheld the judgment of the Assistant Collector. Since the Additional Collector did not take into account the judgment passed by the IIIrd Addl. Munsiff in respect of the same plot restraining the Gaon Sabha to interfere with the possession of the petitioner, therefore, the judgment of the learned Addl. Collector suffers from apparent error on the face of record.

4. Learned counsel for the petitioner further submitted that in a proceeding under Section 122B order for correction of revenue record cannot be passed. Only an order for eviction of unauthorised occupant over the Gaon Sahha land can be passed and a penalty can be imposed for use and occupation of the land of the Gaon Sabha by an unauthorised occupant. The order like impugned orders cannot be passed in a proceeding under Section 122B of the U.P.Z.A. and L.R. Act. I find force in the contention of the learned counsel for the petitioner.

5. For the aforesaid reasons the judgment and orders passed by the Additional Collector as well as Assistant Collector, contained in Annexure Nos. 1 and 2 suffer from patent error of law and are hereby set aside. It is open for the opposite parties to proceed afresh accordance with law.

6. Petition is disposed of finally.