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**(2007) 09 AHC CK 0137**

**Allahabad High Court**

**Case No:** None

Khacheru

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

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**Date of Decision:** Sept. 11, 2007

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 29C

**Citation:** (2008) 1 AWC 566 : (2008) 104 RD 52

**Hon'ble Judges:** Krishna Murari, J

**Bench:** Single Bench

**Final Decision:** Allowed

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**Judgement**

Krishna Murari, J.

Heard Sri K. R. Sirohi, learned senior counsel assisted by Sri B. K. Pandey appearing for the petitioner and Sri M. K. Tripathi, appearing for the contesting respondent No. 5.

2. By means of this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ of certiorari to quash the order dated 22.3.1993 passed by Board of Revenue allowing the second appeal filed by respondent No. 5 arising out of the proceedings u/s 161 of U. P. Zamindari Abolition and Land Reforms Act (for short the "Act")

3. Facts giving rise to the dispute are as under;

4. Gaon Sabha proposed exchange of its plot No. 610 area 6 biswas 16 biswansis with plot No. 617 area 8 biswas 10 biswansis of the petitioner and accordingly passed a resolution dated 11.4.1991. Thereafter, petitioner moved an application u/s 161 of the Act before the Sub-Divisional Officer. An objection was filed by respondent No. 5 assailing the exchange on the ground that plot No. 610 of Gaon

Sabha had been reserved for manure pits during consolidation operation and the land being reserved for public purpose could not be given in exchange. Sub-Divisional Officer vide order dated 30.12.1991 declined to grant permission for exchange and dismissed the application. Petitioner went up in appeal. Additional Commissioner, Meerut Division Meerut vide order dated 30.7.1992 allowed the appeal against which respondent No. 5 went up in second appeal. Board of Revenue vide order dated 22.3.1993 allowed the same and set aside the order of Additional Commissioner and maintained the order of Sub-Divisional Officer. Aggrieved, petitioner has approached this Court.

5. Sub-Divisional Officer though found that Gaon Sabha has passed a resolution for exchange and the difference in land revenue of the two land sought to be exchanged was less than 10 per cent and the exchange was duly recommended by the Supervisor Kanoongo vide report dated 16.8.1991, yet refused to grant permission to the exchange on the ground that the land reserved for public purpose, could not have been given in exchange. Lower appellate court allowed the appeal on the ground that since "abadi" has developed around the land which was reserved for manure pits and there is not much difference in the land revenue of the two lands sought to be exchanged and the exchange is for the benefit of the tenure holders of the village at large. Board of Revenue held that since the land is not vested in the Gaon Sabha under the provisions of Section 117 of the Act but it was vested u/s 29C of the Consolidation Act as land reserved for public purpose and it can only be utilised for the purpose for which it has been earmarked in the consolidation operation as such the exchange is not permissible.

6. It has been urged by learned Counsel for the petitioner that there is nothing in Section 29C which may go to show that land reserved for purpose cannot be given in exchange rather section itself provides that where the purpose for which the land had been earmarked, is frustrated then it can be utilised for such other purpose as may be prescribed. It has further been urged that plot No. 610 which had been earmarked for manure pits in the final consolidation scheme, came to lie in the densely populated area of the village with the extension of "abadi". Since continuation of manure pits at the site would cause more inconvenience to the public and would be hazardous to public health, Gaon Sabha rightly passed a resolution to exchange its plot with another plot which be used as manure pits.

7. My attention has been drawn to the provisions of Section 161 (2) which provides that when exchange is made in accordance with Sub-section (1), they shall have the rights in the land so reserved in exchange as they have had in the land given in exchange.

8. In reply, it has been submitted that since land was reserved in final consolidation scheme for manure pits in accordance with provisions of Section 29C of the said Act, the land cannot be utilised for any other purpose as such it could not have been given in exchange. Reliance in support of the contention has been placed on the

decision of learned single Judge in the case of Lalji and Anr. v. Board of Revenue and Ors. 1971 RD 466.

9. I have considered the arguments advanced on behalf of learned Counsel for the parties and perused the record.

Section 161 of the Act providing for exchange reads as under;

161. Exchange. ♦(1) A bhumidhar may exchange with ♦

(a) any other bhumidhari land held by him, or

(b) any Gaon Sabha or local authority lands for the time being vested in it u/s 117:

Provided that no exchange shall be made except with the permission of an Assistant Collector who shall refuse permission if the difference between the rental value of land given in exchange and of land received in exchange calculated at hereditary rates is more than 10 per cent of the lower rental value.

(1A) Where the Assistant Collector permits exchange he shall also order the relevant annual registers to be corrected accordingly.

(2) On exchange made in accordance with Sub-section (1) they shall have the same rights in the land so received in exchange as they had in the land given in exchange.

10. Section 29C of Consolidation Act providing for vesting of land for public purpose reads as under:

29C. Vesting of land contributed for public purposes. ♦ (1) The land contributed for public purposes under this Act shall, with effect from the date on which the tenure-holders became entitled to enter into possession of the chaks allotted to them under the provisions of this Act as amended from time to time, vest and be always deemed to have vested in the Gaon Sabha in an area in which Section 117 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 applies and in the State Government in any other area, and shall be utilised for the purpose for which it was earmarked in the final consolidation scheme, or in case of failure of that purpose, for each other purpose as may be prescribed.

(2) The provisions of Section 117 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U. P. Act No. 1 of 1951) shall mutatis mutandis apply to such land vested in the Gaon Sabha as if the land had vested in the Gaon Sabha by virtue of a declaration made by the State Government under Sub-section (1) of that Section and as if the declarations were made subject to the conditions respecting utilisation specific in Sub-section (1) of this section.

11. From a reading of the provisions of Section 161 of the Act it is clear that any land vested in Gaon Sabha or local authority u/s 117 of the said Act can be subject-matter of exchange with the land of any bhumidhar.

12. However, a reading of Section 29C of U.P.C.H. Act prima facie goes to show that land contributed for public purpose during consolidation shall be deemed to be vested in Gaon Sabha u/s 117 of the Act but the same would be subject to the condition with regard to utilisation only for the purpose for which it has been earmarked in the final consolidation scheme that is to say that though land stands vested in Gaon Sabha in accordance with the provisions of Section 117 of the Act but a restriction appears to have been placed on the powers of the Gaon Sabha with respect to such land and the same can only be utilised for the purpose for which it has been earmarked in the final consolidation scheme. However on a closer and deeper analysis of the aforesaid provision, a completely contradictory picture emerges out. Section 29C (1) of U. P. Consolidation of Holdings Act though provides that the land contributed for the public purpose and earmarked for the same in the final consolidation scheme shall be utilised only for the said purpose but it also provides that in case of failure of that purpose that land can be utilised by Gaon Sabha for such other purposes as may be prescribed.

13. Word "prescribed" occurring in section would normally mean prescribed either under the Act or under the Rules. However, there is nothing either in the Act or in the Rules prescribing the otherwise user of the land earmarked for the public purpose in the event of failure of the original purpose. The purpose of placing such restriction is that Gaon Sabha may not utilise the land for any other purposes other than the public purpose or purposes for which it has been earmarked. Thus, what is relevant is the "purpose" for which the land has been contributed by the tenure holder of the village and earmarked in the final consolidation scheme and the same should not be allowed to be frustrated by the action of Gaon Sabha by diverting the user of said land for any purpose other than the one for which it was contributed and earmarked. Viewed from this angle it is the "purpose" which is relevant and important and not the place or the site.

14. Legislature being conscious of the fact while enacting the provisions of the exchange u/s 161 also enacted Section 161 (2) which clearly provides that on exchange made in accordance with Sub-section (1), the parties shall have the same rights in the land so received in exchange as they had in the land given in exchange.

15. In the case in hand, resolution of Gaon Sabha indicates that land received in exchange from the petitioner shall be used as manure pits. Apart from the resolution even under the provisions of Section 161 (2) of the Act, the land received in exchange from the petitioner could not have been used by the Gaon Sabha for any other purpose except for manure pits.

16. From a perusal of the resolution passed by Gaon Sabha, it also becomes clear that there has been a complete failure of purpose, i.e., keeping manure pits inasmuch as on account of extensive extension of village "abadi", the said land was surrounded by "abadi" and thus was not fit to be utilised as manure pits as it would be hazardous to the public health and the land so reserved was also being

encroached upon illegally.

17. Learned single Judge in the case of Lalji and Anr. v. Board of Revenue and Ors. (supra) relied upon by the learned Counsel for the respondent has not considered the matter from this aspect. It failed to consider the words "in the case of failure of that purpose for such other purpose as may be prescribed" as well as the provisions of Section 161 (2) of the Act. The said judgment straightway considered the provisions of Section 29C (2) of U. P. Consolidation of Holdings Act as well as Section 161 of the Act and failed to take into account the words "in the case of failure of that purpose" used in Section 29C (2) of U. P. Consolidation of Holdings Act as well as in Section 161 (2) of the Act and as such it cannot be said to be a good law. The same view has been taken by another learned single Judge in the case of Jagannath v. U. P. Board of Revenue and Ors. 1994 RD 554.

18. Giving strict interpretation to provisions of Section 29C (2) of the Consolidation of Holdings Act and holding that the land once earmarked in the final consolidation scheme for a public purpose cannot be used for any other purpose even though the purpose may have been frustrated or failed, like in the case in hand, would be futile, because in that event public purpose for which the land was earmarked would not be served having failed, and the land contributed by the tenure holder for that purpose would go to waste. In such a situation, if the exchange is permitted that would further the cause for which the land was contributed by the tenure holder and was earmarked in the final consolidation scheme and would be for the benefit of every body. Thus, it would be expedient and in the interest of justice to hold that such land reserved for public purpose u/s 29C can be given by the Gaon Sabha in exchange u/s 161 of the Act subject to the condition that the land so received in exchange shall be utilised for the same public purpose for which the land given in exchange was being used.

19. In view of the aforesaid discussions, impugned order passed by the Board of Revenue dated 22.3.1993 refusing the exchange cannot be sustained and is hereby quashed and that of Additional Commissioner dated 30.7.1992 stands affirmed.

20. The writ petition stands allowed. However, in the facts and circumstances, there shall be no order as to costs.