

Ramesh Prasad (D) through L.Rs. Vs Tehsildar/Assistant Collector 1st Class Sambhal and Others

Court: Allahabad High Court

Date of Decision: Aug. 24, 2009

Acts Referred: Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 " Section 117A, 122B

Citation: (2010) 1 AWC 287

Hon'ble Judges: Tarun Agarwala, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Tarun Agarwala, J.

Heard Sri G.N. Verma, the learned senior counsel, assisted by Sri Ajai Kumar for the petitioner, Sri Vishnu Sahai for

the Nagar Palika and the learned standing counsel for the remaining respondents. No one appears for the Gaon Sabha.

2. The proceedings for ejectment u/s 122B of the U.P.Z.A. & L.R. Act was initiated against the petitioner for ejectment and for recovery of

damages from plot No. 294 having an area of 0.04 acres. It transpires that the Lekhpal submitted a report alleging that the plot is recorded as a

khaliyan in the revenue records and that the petitioner had encroached the said land by constructing 8 shops. The petitioner objected and

submitted that the land was never used as a khaliyan and the report of the Lekhpal to this extent was incorrect. The construction was made before

the abolition of the Zamindari system and that the Nagar Palika had itself taken one shop on rent and was using it as an Octroi Post and was

paying the rent since 1953. The petitioner, further stated that in the year 1967 permission was obtained from the Collector to reconstruct the shops

and that the possession of the petitioner could be verified from the entries made in the khatauni of 1390 fasli to 1395 fasli. It was also alleged that

the petitioners are paying house tax to the Nagar Palika and that there is a report of the Sanitary Inspector indicating the existence of a latrine on

the land in question. The petitioner further contended that permission was again sanctioned by the Nagar Palika to reconstruct the shop in 1983

and consequently, the proceedings initiated u/s 122B was ex facie illegal.

3. It has also come on the record that the Executive Officer of the Nagar Palika, by an order dated 20.3.1985, cancelled the permission granted to

the petitioner for the reconstruction of the shop on the ground that the land was situated in the Gaon Sabha and that no permission could be

sanctioned. Based on this order, the Lekhpal submitted its report and thereafter proceedings u/s 122B of the Act was initiated.

4. The Tehsildar, after considering the material evidence on record, found that even though the petitioner was in possession since long, yet the plot

was recorded as a khaliyan in the revenue records and which belongs to the Gaon Sabha and therefore, the petitioner had encroached upon the

land of the Gaon Sabha and was liable for ejectment. The Tehsildar accordingly passed an order for ejectment of the petitioner and also imposed

damages to the tune of Rs. 42,500.

5. The petitioner, being aggrieved, by the said order, filed a revision and during the pendency of the revision, the State Government issued a

notification extending the territorial limits of the Nagar Palika, on the basis of which, the plot of the petitioner came under the territorial limits of the

Nagar Palika. In the light of this fact, the petitioner submitted before the revisional authority that the Gaon Sabha was now divested of its power

and therefore, the proceedings u/s 122B of the Act was liable to be dropped. The revisional authority, after considering the matter, upheld the

order of the Tehsildar and further held that the Gaon Sabha could proceed in the matter u/s 122B of the U.P.Z.A. & L.R. Act. The petitioner,

being aggrieved, has filed the present writ petition.

6. Sri G.N. Verma, the learned senior counsel for the petitioner submitted that the petitioner was in possession of the plot in question prior to the

zamindari abolition and consequently, the land was deemed to be settled u/s 9 of the U.P.Z.A. & L.R. Act. The learned Counsel submitted that the

plot was never used as a khaliyan nor was recorded as such and that the petitioner was in possession for several decades and had constructed the

shops", one of which was let out to the Nagar Palika which was being used as an Octroi Post. The learned Counsel further submitted that the

Nagar Palika was paying the rent to the petitioner and that the petitioner was also paying the house tax to the Nagar Palika and consequently, the

plot never belonged to the Gaon Sabha and the petitioner was not liable for eviction.

7. On the other hand, Sri Vishnu Sahai, the learned Counsel for the Nagar Palika, submitted that the proceedings u/s 122B of the Act was rightly

initiated by the Gaon Sabha since the petitioner had encroached upon the land, and that the proceedings would continue and could not be dropped

even through the territorial limits of the Nagar Palika was extended in the meanwhile.

8. In Mohd. Shafi v. Gram Sabha, Village Bisauli 1970 RD 450, a Division Bench of this Court after examining the provisions of Sections 4, 8 and

Section 34 of the U.P. Panchayat Raj Act and Sections 117 and 117A of the U.P.Z.A. & L.R. Act held:

Thus, even though a particular plot of land may go outside the territorial limits of a Gaon Sabha, yet the Gaon Sabha is entitled to continue to

perform, discharge or exercise the functions, duties and powers under the mentioned Act, in spite of such transfer on the footing that part of the

village lay within its circle. So, so long as the State Government does not make a declaration, transferring the rights in a particular plot as well as

the powers and functions in relation to that land to another local body, the pre-existing Gaon Sabha would continue to exercise its rights and

perform its functions, as previously. Mere transfer of the territory from a Gaon Sabha to a Town Area will not divest the Gaon Sabha of its rights in

such lands. Under Sub-section (6), the State Government can at any time amend or cancel any declaration or notification made in respect of any of

the thing mentioned in Sub-section (1), including lands, and resume such things, and, on such resumption, the Gaon Sabha is entitled to be paid

compensation on account of developments, if any, effected by it on the land. This will show that the resumption by the State Government is not

automatic. It can be brought about only by a notification in the Gazette.

9. In the light of the aforesaid judgment, this Court, upon a perusal of the impugned orders and upon a perusal of the material brought on the

record, finds that there is nothing to indicate that the Gaon Sabha was divested of its rights or that the rights of the Gaon Sabha was resumed by

any notification issued by the State Government. This Court finds that there is nothing to indicate that a notification under Sections 117(3) and

117(6) had been issued declaring that the plot in question has been transferred to another local body. Merely by extending the territorial limits

would not divest or resume the proprietary rights of the Gaon Sabha" unless there is a notification to that effect u/s 117 of the U.P.Z.A. & L.R.

Act. Consequently, the Court is of the opinion that the Gaon Sabha continued to exercise its right and perform its functions. The proceedings

initiated u/s 122B of the Act was maintainable.

10. From the evidence brought on the record, it is clear that the plot in question was never used as a khaliyan and there is clear evidence that the

Nagar Palika was paying rent since 1953 and that the shops were existing since then, and one of the shop which was being used as a Octroi Post.

Even though the contention of the petitioner is that he was in possession prior to the abolition of the zamindari and that the land was deemed to be

settled u/s 9 of the Act, this Court, however, does not find any evidence to that extent, but nonetheless, finds that the petitioner to be in possession

since 1953. The Court also finds that the permission was granted by the Collector in 1967 to reconstruct the shop in question. Further, the

Lekhpal in his report has submitted that the land was shown as an abadi and an Octroi Post was shown on the plot in question in the consolidation

map. Consequently, the finding of the revisional authority that the land was not shown as an abadi in the consolidation map is patently perverse.

The statement of the Lekhpal clearly indicates that the land was shown as an abadi in the consolidation map.

11. In the light of the aforesaid, the Court finds that the eviction of the petitioner from the land in question is not proper. A small portion of about

250 sq. yards, which is not reserved for an important public purposes like a pond or a rasta, in which some shops have been constructed since

1953, should not be demolished because the plot has now been identified by the authorities as a khaliyan. In such a situation, reasonable damages

would serve the public purpose. The Gaon Sabha holds the land for the benefit of the public. No useful purpose would be served if the Gaon

Sabha evicts the petitioner and thereafter allots it to another person. The Tehsildar imposed damages of Rs. 42,500. The Court finds that the

damages imposed by the Tehsildar has not been seriously challenged by the petitioner. In view of the aforesaid, interest of justice would suffice if

the land in question is regularised in favour of the petitioner on payment of damages imposed by the Tehsildar.

12. In view of the aforesaid, the impugned orders are quashed. The writ petition is allowed. It is directed that instead of evicting the petitioner from

the plot in question, the petitioner would pay a sum of Rs. 42,500 as damages to the Gaon Sabha within three months from today. If the amount is

paid within the stipulated period, the land would be regularised in favour of the petitioner, failing which, it would be open to the Gaon Sabha to

take immediate steps for eviction of the petitioner.