

(1999) 09 AHC CK 0202

Allahabad High Court

Case No: C.M.W.P. No. 15163 of 1993

Narendra Kumar and
another

APPELLANT

Vs

Board of Revenue,
Uttar Pradesh and
others

RESPONDENT

Date of Decision: Sept. 13, 1999

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 100
- Constitution of India, 1950 - Article 226
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14(2A)
- Uttar Pradesh Nagar Mahapalika Act, 1959 - Section 126
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 10(3), 117, 117(1), 117(2), 117(6)
- Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 115D

Citation: (1999) 4 AWC 3250 : (1999) AWC 3250

Hon'ble Judges: Sudhir Narain, J

Bench: Single Bench

Advocate: Ajeet Kumar and Radhey Shyam, for the Appellant; S.C. and Prem Chandra, for the Respondent

Final Decision: Dismissed

Judgement

Sudhir Narain, J.

This writ petition is directed against the order of the Board of Revenue dated 31.1.1993 whereby the appeal was allowed and the judgment of the trial court was restored.

2. The dispute relates to plot No. 120/2 area 4 bigha 9 biswa situate in village Dunda Hera, Pargana Loni. district Ghaziabad. The Zamindari was abolished and u/s 4, the land in dispute vested in the State of Uttar Pradesh. The land was recorded as banjar in

revenue records. Om Prakash, father of the petitioner was found in possession over the land in suit. The Land Management Committee of the Gaon Sabha took proceedings for his ejectment under Rule 115D of U. P. Zamindari Abolition and Land Reforms Rules (in short the Rules). On 30.8.1965 Tehsildar/Assistant Collector 1st Class, district Ghaziabad, passed order for his eviction and for recovery of damages. This order was challenged by him before the Additional Commissioner, Meerut Division, Meerut. The Additional Commissioner by his judgment dated 17.12.1965 made reference to the Board of Revenue with the recommendation that the revision may be allowed on the ground that the question raised in the proceedings involves question of title. The Board of Revenue accepted the recommendation and set aside the order of the Assistant Collector by its order dated 11.6.1969.

3. The Nagar Palika, Ghaziabad, respondent No. 4, filed suit for ejectment against Om Prakash before the civil court on 18.6.1973 on the allegation that the land which vested in the State of U. P. was entrusted to it by the State Government by issuing a notification dated 11.8.1954 u/s 117A of U. P. Zamindari Abolition and Land Reforms Act (in short the Act) but the defendant had taken its illegal possession and was liable for ejectment. The civil court returned the plaint on the ground that it had no jurisdiction to entertain the suit. The Nagar Palika thereafter filed Suit No. 18 of 1973 on 16.2.1974 u/s 209 of the Act against Om Prakash. The suit was contested by defendant on the ground that he was in possession over the land in suit for more than 23 years and after the date of vesting he has acquired sirdari rights. He also challenged the right of the plaintiff to file the suit. The trial court decreed the suit on 27.2.1978 on the finding that the Nagar Palika, Ghaziabad, is owner of the land in dispute. The suit was maintainable u/s 209 of the Act and the defendant did not acquire any right over the land in dispute under the provisions of U. P. Z.A. and L.R. Act. The defendant preferred an appeal before the Additional Commissioner. The Additional Commissioner set aside the judgment of the trial court vide order dated 17.1.1980. The plaintiff filed second appeal before the Board of Revenue and the Board of Revenue has set aside the judgment of the Additional Commissioner vide its order dated 31.1.1993 and restored the judgment of the trial court. This judgment is under challenge in the present writ petition.

4. I have heard Sri Radhey Shyam, learned counsel for the petitioner and Sri Prern Chandra, learned counsel for the respondent.

5. The first point urged by learned counsel for the petitioner is that the State Government by notification issued u/s 117 of the Act declared that the land and other things mentioned in sub-section (1) of the Act vested in the Gaon Sabha and once such land vested in the Gaon Sabha, that can be divested from it only in accordance with sub-sections (2) and (6) of Section 117 of the Act which read as under ;

"117. Vesting of certain lands, etc. in Gaon Sabhas and other local authorities.-

.....

.....

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, the State Government may, (by general or special order to be published in the manner prescribed.) declare that as from date to be specified in this behalf, all or any of the things specified in clauses (i) to (vi) of sub-section (1) which after their vesting in the State under this Act had been vested in a Gaon Sabha or any other local authority, either under this Act or u/s 126 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959. shall vest in any other local authority (Including a Gaon Sabha) established for the whole or part of the village in which the said things are situate.

.....

.....

(6) The State Government may at any time, (by general or special order to be published in the manner prescribed), amend or cancel any (declaration, notification or order) made in respect of any of the things aforesaid, whether generally or in the case of any Gaon Sabha or other local authority and resume such thing, and whenever the State Government so resumes any such things, the Gaon Sabha or other local authority, as the case may be, shall be entitled to receive and be paid compensation on account only of the development, if any, effected by it in or over that things :

Provided that the State Government may after such resumption make a fresh declaration under sub-section (1) or sub-section (2) vesting the thing resumed in the same or any other local authority (including a Gaon Sabha), and the provisions of subsections (3), (4) and (5), as the case may be, shall mutatis mutandis, apply to such declaration."

6. It is contended that the State Government has to resume the things mentioned in sub-section (r) of Section 117 of the Act and after the resumption of such land further after giving compensation to the Gaon Sabha. it can resume the land and vest the same in another local authority.

7. The question is whether any separate notification was required for resumption of the land under subsection (6) of Section 117 of the Act. Clause (c) of Section 117A of the Act provides that where any of the things specified In clauses (i) to (vi) of subsection (1) of Section 117 is vested under that Section in any Gaon Sabha or other local authority within whose limits it does not lie, then the State Government may by general or special order to be published in the manner prescribed direct that in relation to the holding area within any such village or part thereof or in the case of clause (c) within the remainder of a village or part thereof to which thing referred to in that clause pertains, such Gaon Sabha or other local authority as may be specified in such order shall perform, discharge and exercise subject to such exception, condition and modification, if any, as may be specified in this behalf, the functions, duties and powers imposed or conferred by this Act or U. P. Panchayat Raj Act, 1947, on a Gaon Sabha or Land Management Committee.

Section 117A confers on the State Government the power to issue a notification conferring the power on any local authority other than the Gaon Sabha, This Section was first added by U. P. Act No. 16 of 1953 with retrospective effect from July 1. 1952. It confers the power on the State Government to entrust the function either on Gaon Sabha or its Land Management Committee or other local authority as may be specified in the notification to perform, discharge and exercise the functions, duties and powers imposed or conferred by the Act or U.P. Panchayat Raj Act, 1947. The notification Issued u/s 117A cannot be read In isolation to sub-sections (2) and (6) of Section 117 of the Act. Once the power is conferred upon any local authority which was earlier being exercised by a Gaon Sabha or the Land Management Committee is to be performed by a local authority as may be specified under the notification. Section 117A does not contemplate two separate notifications one under sub-section (2) and other under subsection (6) of Section 117 of the Act. It is not disputed that the State Government has the power to take out the powers of the Gaon Sabha for the management of its property and entrust it to any other local authority. If the State Government has issued a notification u/s 117A, it will be deemed that it has resumed such things which were vested in the Gaon Sabha and entrusted to a local authority to exercise the powers which have been conferred under the Act and the Rules on the Gaon Sabha.

8. It is contended that whenever anything which has been mentioned under sub-section (1) of Section 117 of the Act is resumed from the Gaon Sabha or local authority, the State Government is to pay compensation to the Gaon Sabha or local authority from whom such things have been resumed. The compensation is to be provided only when it is proved that the Gaon Sabha or the local authority had made any development on account of which it incurred the expenses. It was for the Gaon Sabha to establish this fact that it incurred the expenses in development and on resumption of the land It is entitled to compensation. The petitioner never pleaded that any development was made by the Gaon Sabha In respect of the things mentioned u/s 117 (1) of the Act. Secondly, the Gaon Sabha has never raised any objection to the notification issued u/s 117A of the Act.

9. The State Government had Issued notification u/s 117A of the Act on 11.8.1954. The notification reads as under :

"In exercise of the powers conferred by Section 117A of the U.P. Z.A. and L.R. Act, 1950 (U. P. Act No. 1 of 1951). the Governor of U. P. is pleased to declare that, as from the date of this notification--

(i) All land whether cultivable or otherwise, except land for the time being comprised in any holding or grove.

(ii) All forests within the village boundaries.

(iii) All trees (other than trees in a holding or on the boundary thereof or in a grove, or abadi).

(iv) Fishers.

(v) Hats, bazars and melas, except hats, bazars and melas held on land to which provisions of clauses (a) to (c) of sub-section (1) of Section 18 of the aforesaid Act apply,

(vi) Tanks, ponds, private ferries, water channels, path-ways and abadi sites,

As specified in clauses (i), (ii), (iii), (v), (vi) and (vii) of Section 117 of the aforesaid Act which had, in respect of the areas situate in the villages mentioned in column 4 of the schedule appended hereto, vested in the State under the said Act, shall vest in the local authorities established for such villages as indicated in column 5 of the schedule against such notwithstanding anything contained in the notifications issued u/s 117 of the said Act.

Schedule

10. Particulars of local authorities in which the things specified in clauses (i), (ii), (iii), (v), (vi) and (vii) of Section 117 of the U. P. Z. A. and L. R. Act, 1950, shall vest in respect of villages lying wholly or partly in urban areas :

Serial	Tehsil	Pargana	Village	Name of the local authority in which the things specified in clauses (i), (ii), (iii), (v), (vi), and (vii) of Section 117 of the U.P.Z.A. and L.R. Act, 1950. shall vest in respect of the village specified in
1	2	3	4	5
8	Ghaziabad	Loni	District Meerut Kalla Bhonja Jalwara	Ghaziabad Municipality

Chookna
Nasarpur
Mahamasarai
Kot
Sthani
Dhondahara.

11. This notification clearly confers the power on the Nagar Palika, Ghazlabad. to exercise power mentioned under the notification. Section 117A of the Act should be read with Section 117 of the Act as part of the said Section. Sub-section (6) of Section 117A, if read together, makes it clear that the Government instead of issuing two separate notifications can issue one notification whereby the powers which were being exercised by the Gaon Sabha are to be exercised by the local authority. Once such power is conferred on the local authority, it can exercise the power to preserve the property which has been entrusted to it under the Act and take appropriate action for eviction of any person who is in possession of the land entrusted to local authority for its management under the Act.

12. Secondly, as the right to manage the property is concerned, it is a matter between the Gaon Sabha or a Nagar Palika. The Gaon Sabha has never challenged the notification dated 11.8.1954. The petitioner filed suit for eviction of Om Prakash the predecessor-in-interest of the petitioner on the ground that he was a trespasser and such power can be exercised by the local authority to. whom it has been conferred u/s 117A of the Act.

13. Learned counsel for the petitioner next contended that in the notification dated 11.8.1954 only the name of the village Dunda Hera has been mentioned but the plots in dispute have not been mentioned and in absence of any document to show that this plot has also been vested in respondent No. 3, it has no right to institute any - suit against the petitioner. The notification dated 11.8.1954 refers to things mentioned u/s 117 of the Act and any land which vested in the State u/s 4 of the Act shall be deemed to have been included which is situated within the limits of the village Dunda Hera. The land in dispute was banjar land and it was not part of any holding of any tenure holder prior to the commencement of the Act. The petitioner was claiming the right on the basis of adverse possession.

14. Learned counsel for the petitioner has referred to a notification issued under sub-section (1) of Section 3 of the Municipalities Act where by the limits of the area of Nagar Palika. Ghaziabad. were indicated. This notification mentions certain plots but it does not refer to plot No. 120/2 of village Dunda Hera. The notification only indicates the extended limit of the Nagar Palika and any plot which has not been referred to in it does not show that those plots which are included in the limits have been excluded. Section 3

(1) (a) of the Municipalities Act confers power on the State Government to declare any local area to be in any Municipality and in clause (c) thereof, to define the limits of any municipality and to Include or exclude the limits of any municipality and to include or exclude any area in or from any municipality. In the notification, plot No. 120 has not been excluded.

15. The third submission of learned counsel for the petitioner is that no local authority is entitled to file any suit u/s 209 of the Act for eviction against any person. Section 209 of the Act reads as under :

"209. Ejectment of persons occupying land without title.--(1) A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and-

(a) where the land forms part of the holding of a bhumidhar, or asami without the consent of such bhumidhar, or asami ;

(b) where the land does not form part of the holding of bhumidhar, or asami without consent of the (Gaon Sabha), (shall be liable to ejectment on the suit in cases referred to in clause (a) above of the bhumidhar. or asami concerned, and in cases referred to in clause (b) above, of the (Gaon Sabha) and shall also be liable to pay damages).

(2) To every suit relating to a land referred to in clause (a) of subsection (1) the State Government shall be impleaded as a necessary party."

16. Section 209 provides that the suit for ejectment can be filed by a bhumidhar or asarni but in cases referred to in clause (b), the Gaon Sabha also file the suit.

17. The land is vested in the Gaon Sabha by a notification issued by the State Government u/s 117 of the Act and in absence of such notification, the Gaon Sabha was not entitled to exercise the power of management of the land entrusted by the Government under the aforesaid provision. The power can be conferred under Section 117 by the State Government either to the Gaon Sabha or any local authority. Subsection (2) of Section 117 of the Act provides that the things which have been vested in the Gaon Sabha can be vested by the Government in other local authority. It is by virtue of the vesting by the Government that the Gaon Sabha exercises the power under the Act. The powers which have been conferred on the Gaon Sabha, if vested in the local authority, the same can also be exercised by it. The reference of the word "Gaon Sabha" u/s 209 in this context must be read as the "local authority" to whom the power has been vested either u/s 117 (2) or Section 117A of the Act. The land is situated in the village and the powers of the Gaon Sabha have been conferred on the local authority. Such authority is to exercise the power u/s 209 of the Act. The suit filed by such local authority shall be maintainable for eviction of the person who is in possession of such land without consent of the local authority.

18. The Court has to interpret the words in an enactment in the context of its provisions. Denning, L.J. in *Seaford Court Estates Ltd. v. Asher*, (1949) 2 All ER 155 at 164 observed :

"When a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament..... and then he must supplement the written words so as to give "force and life" to the intention of Legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this crack in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

19. The above observation was quoted with approval in the [State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others](#), wherein the Court interpreting "teaching experience" held that it must relate to teaching "institution" whether Indian or foreign. The observation of Lord Denning, J., was further accepted while considering the definition of industry in [Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others](#), . The Apex Court in [State of Karnataka and Another Vs. Hansa Corporation](#), , noted that object behind the legislation must be looked in and the purpose of enactment is to be examined. It was observed :

"However, where one has to look at a Section not very well-drafted but the object behind the legislation and the purpose of enacting the same is clearly discernible, the Court cannot fold its hand and blame the draftsman and chart an easy course of striking down the statute. In such a situation, the Court should be guided by a creative approach to ascertain what was intended to be done by the Legislature in enacting the legislation and so construe it as to give force and life to the intention of the Legislature."

20. In [Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar](#), . the Court held that clause (iii) of Section 10 (3) (a) must be read with clause (i) of the said sub-section as to incorporate the words "if the landlord requires" (which did not exist in clause (iii) thereof).

21. In [N.K. Jain and others Vs. C.K. Shah and others](#), . the emphasis was laid that the Court while interpreting the provision of statute should have purposive approach. The Court interpreting Section 14 (2A) of Provident Fund and Miscellaneous Provisions Act held that the word "penalty" used therein does not apply to a case when the exemption granted is cancelled for failure to contribute to the fund. The word Gaon Sabha in the context of Section 209 (b) of the Act must relate to any authority to whom the management has been entrusted either u/s 117 or 117A of U. P. Zamindari Abolition and Land Reforms Act.

22. There is another aspect of the matter. The Gaon Sabha was entrusted with the management of the estate which had vested in the State u/s 4 of U. P. Zamindari

Abolition and Land Reforms Act. The powers of the Gaon Sabha having been taken away and entrusted to any other local authority u/s 117A of U. P. Zamindari Abolition and Land Reforms Act. such local authority shall have the same rights and powers which were conferred u/s 209 of U. P. Act No. 1 of 1951 on the Gaon Sabha as its successor.

23. The last submission of learned counsel for the petitioner is that the Board of Revenue had no jurisdiction to reverse, the findings of fact recorded by the Additional Commissioner in second appeal filed u/s 100 of the CPC where its jurisdiction was limited in respect of the finding recorded by the lower appellate court. The version of Om Prakash, the defendant in the suit, was that he was in possession of the land in dispute for more than 23 years and after date of vesting, he acquired bhumidhari rights. He has placed reliance upon the revenue entries in Khasras of 1359, 1361, 1362, 1363, and 1364F, showing his possession. The trial court found that Om Prakash, defendant, was himself Lekhpal, and the entries were not in accordance with the Land Records Manual and were forged. It disbelieved the version of the defendant that he was in adverse possession for more than 23 years and acquired any rights over the land in dispute by remaining in possession. The Additional Commissioner, in appeal, reversed the judgment of the trial court without setting aside the finding of the trial court that the entries, on which the defendant relied upon, were forged. The Additional Commissioner could not have set aside the finding of the trial court without adverting to the question whether the entries in the revenue records were made in accordance with the Land Records Manual and whether they were forged. The Board of Revenue, in these circumstances, was justified in accepting the finding as recorded by the trial court. It has not itself assessed any evidence. It is strange that the Additional Commissioner, without considering that the defendant himself was Lekhpal and got the entries made in the revenue records which were found by the trial court to have been forged, had set aside the judgment of the trial court.

24. Secondly, the petitioner was claiming that he acquired the bhumidhari rights on the land of the Gaon Sabha by remaining in adverse possession. In *Chhattar Singh v. Sahayak Sanchalak Chakbandi*, U. P. Lucknow and others, 1979 RD 226, it has been held that as against the Gaon Sabha, no rights can be acquired by adverse possession on the ground of limitation.

25. The petitioner being a trespasser is otherwise not entitled to equitable relief from this Court under Article 226 of the Constitution of India.

26. In view of the above discussion, there is no merit in this writ petition and it is accordingly dismissed with costs.