

## Arun Kumar Dubey Vs State of Uttar Pradesh and Others

**Court:** Allahabad High Court

**Date of Decision:** Oct. 24, 2008

**Citation:** (2009) 1 AWC 462

**Hon'ble Judges:** Rajes Kumar, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Rajes Kumar, J.

By means of the present writ petition, petitioner is challenging the order of the Collector dated 10.12.2007 passed in revision No. 57/172, u/s 333/122-B (4-A) of U.P.Z.A. & L.R. Act (hereinafter referred to as ""Act""), by which he has remanded back the matter

to the Sub Divisional Magistrate, Jaunpur for passing fresh order after making the spot examination and examining the entire records in accordance

to the law.

2. Heard Sri Sankatha Rai, learned Counsel for the petitioner, learned Standing Counsel appears on behalf of respondent Nos. 1 to 3 and Sri Anuj

Kumar, learned Counsel appears on behalf of respondent No. 4.

3. Learned Counsel for the petitioner submitted that the remand of the case is wholly unjustified. He submitted that in pursuance of the notice in

Form 49-A, the petitioner has filed detailed reply and on the consideration of the reply, Sub Divisional Magistrate, Jaunpur has vacated the notice.

He further submitted that filing of the revision by District Government Counsel without the permission as required under the Gaon Sabha Manual

was not maintainable and, therefore, the order passed in revision is wholly unjustified.

4. He further submitted that the remand of the case is unjustified and reliance has been placed upon the decision of Learned Single Judge of this

Court in the case of Smt. Tara Devi and Anr. v. Awadh Narain and Ors. reported in 2003 (53) ALR 537.

Learned Standing Counsel submitted that dispute relates to the chak No. 194 area 0.020 hect., of village Rajapur Munshi Menhdi, Pargana and

Tehsil Mariyahun, district Jaunpur. Lekhpal in his statement has categorically stated that the said land is recorded in the records as Navin Parti and

is a Gaon Sabha land and it is in illegal occupation of the petitioner.

5. It was further stated that this land is being used as chak marg of the resident of araji No. 193 and 196. Therefore, the claim of the petitioner that

it was abadi land of the petitioner, which is coming prior to the consolidation operation and the Consolidation Officer has treated it as abadi and

sahan land belonging to the petitioner is wrong. He further submitted that against the entries of Goan Sabha in the revenue records, petitioner has

filed the suit for title in Civil Court, which is claimed to be pending. No evidence has been adduced to show that any title suit instituted for the land

in dispute has been decided in favour of the petitioner.

6. He submitted that without making any spot inspection and without giving any evidence being produced relating to the title over the land, Sub

Divisional Magistrate has accepted the claim of the petitioner and vacated the notice, 49-A and, therefore, the Collector has rightly set aside the

order of Sub Divisional Magistrate and remanded back the matter to the Sub Divisional Magistrate to pass fresh order after making spot inspection

and after examining the entire records. He further submitted that the Collector in his order has categorically stated that the revision has been filed

after taking proper permission. To the contrary no material has been produced in this regard.

7. Having heard learned Counsel for the parties, I do not find any error in the order of Collector, Jaunpur, which is based on the consideration of

the entire facts and circumstances of the case. Having regard to the statement of Lakhpal, the entries in the revenue records, Collector has come to

the conclusion that without making any spot inspection, Sub Divisional Magistrate has passed the order and, accordingly, remanded back the

matter to the Sub Divisional Magistrate to pass fresh order after making spot inspection and examining the entire records.

8. He further held that the revision has been filed after taking necessary permission and to the contrary no evidence has been adduced. The

decision cited by learned Counsel for the petitioner in the case of Smt. Tara Devi and Anr. v. Awadh Narain and Ors. (Supra) is not applicable

and is distinguishable on the facts of the case. On the facts of that case, this Court held that the remand was not justified.

9. On the facts and circumstances, I do not see any reason to interfere in the matter.

In the result, writ petition fails and is accordingly, dismissed.