

(2005) 08 AHC CK 0178

Allahabad High Court

Case No: Civil Misc. Writ Petition No"s. 50186, 50189, 50192, 50195, 50198 and 50208 of
2005

Meharwan

APPELLANT

Vs

The Collector, The Tehsildar,
Tehsildar Sikandara and The
Gaon Sabha

RESPONDENT

Date of Decision: Aug. 11, 2005

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 122B, 122B(1), 122B(2), 9

Citation: (2006) 1 AWC 509 : (2005) 99 RD 427 : (2005) 2 RD 427

Hon'ble Judges: S.N. Srivastava, J

Bench: Single Bench

Advocate: K.K. Tripathi, for the Appellant; V.K. Singh and S.C., for the Respondent

Final Decision: Allowed

Judgement

S.N. Srivastava, J.

Orders impugned herein having been passed on similar lines and proceedings in all the petitions having genesis in Section 122 B of the U.P.Z.A. & L.R. Act, all the six petitions were knit together to be heard and decided by a composite orders. In all these cases, notices were issued to the respective petitioners in form 49 Ka of the U.P.Z.A. & L.R. Act the quintessence of which is that the petitioners were in unauthorized possession over Gaon Sabha property and they had wrongly constructed residential houses on a part of the same and further that they were liable to be evicted as well as to pay damages to the extent indicated in the orders. Objections were filed by each of the petitioners. By order-dated 28.6.2004, the Tahsildar passed an order for eviction of the petitioners from the land in question together with direction to pay damages. Revision preferred against the said order ended up in dismissal vide order of the District Magistrate Kanpur Dehat.

2. The learned counsel for the petitioners canvassed that each of the petitioners preferred objection claiming to be in actual possession prior to the date of vesting. It was argued that their residential houses have had their existence prior to the enforcement of the U.P.Z.A. & L.R. Act, It was further stated that Tahsildar who was vested with the power to pass the order did not apply his mind while passing the Impugned orders dated 28.6.2004 inasmuch as complete non-application of mind is discernible from the order passed by Tahsildar. It was further argued that the authorities below had not recorded any evidence on any of the relevant points and orders impugned in the present are liable to be quashed.

3. Per contra, learned Standing counsel tried to prop up the otherwise unsustainable order dated 28.6.2004 passed by Tahsildar but could not sustain the same by his polemical arguments when his attention was drawn to certain gray areas in the order manifesting non-application of mind to objections of the petitioners and documentary evidence on record by the authorities below.

4. Having bestowed my anxious considerations on the facts and circumstances in entirety, I veer round to the view that the writ petitions commend themselves to" be allowed only on the simple ground that the Tahsildar while passing the order in exercise of powers u/s 122 B of the U.P.Z.A. & L.R. Act has not passed orders on any relevant point to be decided.

5. Section 122B(1) and (2) being germane to the controversy involved in this petition are referred to. From a punctilious reading of this section, it is explicit that the authorities below are required to address themselves to certain questions of facts namely, (1) whether the property is vested under the provisions of this Act in Gaon Sabha or the collector, (2) whether the property is damaged or misappropriated, (3) whether the Gaon Sabha or local authority is entitled to have or retain possession of any land under the provisions of this Act and (4) whether the land has been occupied otherwise than in accordance with law under the provisions of the Act.

6. In the perspective of requirements indicated above, the Asstt. Collector has been enjoined to satisfy himself on all these points by recording his objective satisfaction. He is also required to apply his mind and record finding on all these questions on the basis of evidence on record. In the present case, the claims of the petitioners were that they were in actual possession of the land in dispute and their constructions have been in existence prior to the date of vesting and that the property never vested in Gaon Sabha. It has also been claimed that the property never vested in the Gaon Sabha and instead, It vested in petitioners u/s 9 of the U.P.Z.A. & L.R. Act and that there is no misappropriation or damage by the petitioner and the Impugned orders which the Asstt. Collector has passed cannot be countenanced in law as they were passed sans consideration of materials on record and without application of mind. If a person to whom notice is issued, files objection claiming right as proposed under any of the provisions of the U.P.Z.A. & L.R. Act, it is incumbent upon the authorities to decide the questions by a detailed judgment in

accordance with law on the basis of materials on record.

7. From a perusal of Annexure 4 to the writ petition, it transpires that the Asstt. Collector has passed following order in Suit No. 18 Gaon Sabha v. Meharban in writ petition No. 50186 of 2005 and other petitions tagged with this writ petition.

"28.6.2004.

Patrawali Pesh Haui. Pukar Karai Gai. Isthaliye Nirikshan Mai Awaidh Kabza Paya Gaya. Ateh Adesh Hua Ki Vivadit Bhumi Se Meharban Putra Rahman Ko Bedakhali Kiya Jata Hai Tatha Mublig Rs. 43400/- rupey Kshati Purti Nirdharit Ki Jati Hai. Ni. Byey 7.50 Hoga. Patrawali Vad Anupalan Dakhil Daftar Ho."

Similar orders were passed by Asstt. Collector in other cases from which have arisen the other petitions under scrutiny of this Court.

8. Coming to the present case, proceeding u/s 122 B of the U.P.Z.A. & L.R. Act does have judicial complexion and legislatures have conferred powers on Asstt. Collector cushioned with all safeguards by mandating issuance of notice, receiving of objection and adducing evidence of the parties. Though the proceedings u/s 122 B of the U.P.Z.A. & L.R. Act are not proceedings at par with a suit, still such proceedings do not detract from the merit of being a judicial proceeding and therefore the Asstt. Collector is required under law to record its finding on all the relevant questions and the findings must be recorded with reasons after taking into reckoning the pleadings, evidence and other materials on record.

9. It is explicitly noticeable that the impugned orders are conspicuous by lacking in any finding and to cap it all, complete non-application of mind to the evidence on record is also discernible. It can also be gleaned from a bare perusal that there is virtual absence of finding on any relevant point bearing on the controversy. In the circumstances, the impugned orders cannot be sustained in law.

10. It has often been repeated in a dozen cases that adjudication of dispute by authorities under the U.P.Z.A. & L.R. Act has to simulate the standard and norms applicable to a judicial proceeding and the order passed by authorities even on administrative side must be speaking order, The orders impugned herein are laconic order and do not reveal what prevailed with them in passing the impugned orders. It must be borne in mind by the authorities that they are deciding the right and title of the parties concerned judicially and such judicial function conferred upon them by the statute is a sovereign function which has to be discharged equitably and fairly.

11. As a result of foregoing discussion, the petitions succeed and are allowed and in consequence, orders impugned herein are quashed and the Asstt. Collector is directed to decide the cases on merits by recording finding on relevant questions attended with reasons for his conclusion and in doing so, he would afford opportunity of hearing and reckon with the pleadings, evidence and other materials

on record.