

**(2003) 07 AHC CK 0197**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 29703 of 2003

Gyanendra Singh and Another

APPELLANT

Vs

Additional Commissioner, Agra  
Division and Others

RESPONDENT

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**Date of Decision:** July 18, 2003

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Municipalities Act, 1916 - Section 8
- Uttar Pradesh Town Improvement Act, 1919 - Section 42
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 131, 132, 19, 198(4), 62

**Citation:** (2003) 6 AWC 4763 : (2003) 95 RD 286

**Hon'ble Judges:** Ashok Bhushan, J

**Bench:** Single Bench

**Advocate:** S.A. Shah, for the Appellant; V.K. Singh, S.C. and C.S.C., for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Ashok Bhushan, J.

Heard Sri S. Alim Shah learned Counsel appearing for the Petitioners.

2. By this writ petition, the Petitioners have prayed for quashing the order dated 15th March, 2003 passed by Additional Commissioner, Agra Division, Agra and the order dated 23rd March, 1998 passed by Additional Collector, Etah.

3. The Additional Collector, Etah vide his order dated 23rd March, 1998 cancelled the lease granted to the Petitioners exercising jurisdiction u/s 198 (4) of U.P. Zamindari Abolition and Land Reforms Act. A revision was filed by the Petitioners, which has been rejected by the Additional Commissioner. The Petitioners were granted lease of plots No. 108, 113 and 115 after approval of the Sub-Divisional Officer dated 25th

March, 1992. The Petitioners claim that Petitioners became bhumidhar with non-transferable right of the aforesaid plots by virtue of the aforesaid lease. Respondent No. 5 filed an application u/s 198 (4) of the U.P. Zamindari Abolition and Land Reforms Act praying for cancellation of the lease granted to the Petitioners. The grounds taken in the application was that aforesaid plots are recorded as "Jangal Dhaka" which is land of public utility and grant of lease of the said land was illegal. The Petitioners filed objection to the said application and challenged the entitlement of Respondent No. 5 to file the application. The Additional Collector vide his order dated 23rd March, 1998 cancelled the lease. The Additional Collector held that plots No. 108, 113 and 115 are recorded as "Jangal Dhaka", the land being land of public utility leases were illegally granted and are cancelled. The revisional court also affirmed the said finding that land is recorded as "Jangal Dhaka" which is land of public utility and could not have been leased out.

4. The counsel for the Petitioners submitted that several leases of plots recorded as "Jangal Dhaka" have been granted by Land Management Committee, hence the lease of the Petitioners alone cannot be cancelled. The counsel for the Petitioners further submitted that order cancelling the lease was passed by Additional Collector who has no jurisdiction to cancel the lease since the jurisdiction is vested only in the Collector.

5. I have considered the submissions and perused the record.

6. Both the courts below have recorded finding that all the three plots were recorded as "Jangal Dhaka". The word "Jangal Dhaka" means Dhaka Forest, Dhaka is a kind of small tree having large leaves. The entry of the aforesaid plot clearly indicates that the said plots are a kind of forest recorded as Dhaka Forest. The use and utility of forest cannot be denied. Existence of forest are beneficial for human life and environment. There cannot be any denial that forest land is a land of public utility. Section 132 of U.P. Zamindari Abolition and Land Reforms Act mentions about the land in which bhumidhari rights shall not accrue. Section 132 of U.P. Zamindari Abolition and Land Reforms Act is extracted below :

132. Land in which (bhumidhari) rights shall not accrue.-Notwithstanding anything contained in Section 131, but without prejudice to the provisions of Section 19, (bhumidhari) rights shall not accrue in :

(a) pasture lands or lands covered by water and used for the purposes of growing singhara or other produce or land in the bed of a river and used for casual or occasional cultivation ;

(b) such tracts of shifting or unstable cultivation as the State Government may specify by notification in the Gazette ; and

(c) lands declared by the State Government by notification in the Official Gazette, to be intended or set apart for taungya plantation or grove lands of a (Gaon Sabha) or

a local authority or land acquired or held for a public purpose and in particular and without prejudice to the generality of this clause :

(i) land set apart for military encamping grounds ;

(ii) lands included within railway or canal boundaries ;

(iii) lands situate within the limits of any cantonment ;

(iv) lands included in sullage farms or trenching grounds belonging as such to a local authority ;

(v) lands acquired by a town improvement trust in accordance with a scheme sanctioned u/s 42 of U.P. Town Improvement Act, 1919 (U.P. Act VII of 1919), or by a municipality for purpose mentioned in Clause (a) or Clause (c) of Section 8 of the U.P. Municipalities Act, 1916 (U.P. Act VII of 1916) ; and

(vi) lands set apart for public purposes under the U.P. Consolidation of Holdings Act, 1953 (U.P. Act No. 5 of 1954).

7. The Sub-clause (3) of Section 132 includes land held for a public purpose on which bhumidhari rights shall not accrue. The aforesaid three plots being recorded as "Dhaka Jangal" were covered by land as enumerated in Section 132 and lease of bhumidhari rights with non-transferable right cannot be granted on the said plots. No error has been committed by the courts below in cancelling the lease granted in favour of the Petitioners. The submission of Petitioners is that other persons have also been granted lease of "Dhaka Jangal", hence Petitioners have been discriminated in so far as the lease of other persons have not been cancelled and the Petitioners have only been singled out for cancellation. The counsel for the Petitioners has raised the submission based on discrimination. As noted above, lease of "Dhaka Jangal" is not permissible in accordance with Section 132 of U.P. Zamindari Abolition and Land Reforms Act and the fact that leases were granted to certain other persons cannot validate the lease of the Petitioners which was in violation of Section 132 of U.P. Zamindari Abolition and Land Reforms Act. The plea of discrimination is not available in a case where the benefit which was taken by other persons cannot be said to be in accordance with law. Apex Court in [Chandigarh Administration and another Vs. Jagjit Singh and another](#), held that mere fact that the Respondent has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the Petitioner on the plea of discrimination in case the order in favour of other persons is found to be contrary to law or not warranted in the facts of this case. Following was laid down in paragraph 8 :

8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the

mere fact that the Respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the Petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the Petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the Respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the Respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over and over again. The illegal/ unwarranted action must be correct, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the Respondent authority to repeat the illegality ; the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law....

8. Thus the submission of counsel for the Petitioners that other persons have been granted leases of plots recorded as "Jangal Dhaka" is not relevant nor can validate the lease of Petitioners. No error has been committed by the Respondents in cancelling the lease of the Petitioners.

9. The next submission of the Petitioners is to the effect that Additional Collector is not Collector within the meaning of U.P. Zamindari Abolition and Land Reforms Act and has no jurisdiction to cancel the lease. Assuming without admitting that power to cancel the lease only vests with Collector, this Court will not exercise its jurisdiction under Article 226 of the Constitution to interfere with an order of Additional Collector, the effect of which is to restore the illegal lease granted to the Petitioners. This Court while exercising jurisdiction under Article 226 of the Constitution will not exercise its jurisdiction in a manner the effect of which is to restore illegal order.

10. The Apex Court in [Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others](#), has observed that while exercising jurisdiction under Article 226, High Court will not exercise its jurisdiction, the effect of which is to restore an illegal order. The relevant paragraph of the aforesaid judgment is extracted below :

(17) The result of the discussion may be stated thus. The Primary Health Centre was not permanently located at Dharmajigudem. The representatives of the said village

did not comply with the necessary conditions for such location. The Panchayat Samithi finally cancelled its earlier resolutions which they were entitled to do and passed a resolution for locating the Primary Health Centre permanently at Lingapalem. Both the orders of the Government, namely the order dated March 7, 1962, and that dated April 18, 1963, were not legally passed ; the former, because it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power u/s 72 of the Act to review an order made u/s 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village. In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order, it would have given the health centre to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.

11. Both the submissions of counsel for the Petitioners being without any substance, the orders impugned in the writ petition need to interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

12. The writ petition lacks merit and is summarily dismissed.