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Vishwanath Vs State of U.P. and Others

Civil Misc. Writ Petition No. 37733 of 1992

Court: Allahabad High Court

Date of Decision: Sept. 24, 1992

Acts Referred:
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 â€" Section 122B, 122B(1), 122B(4), 122B(4F)

Citation: (1993) 1 AWC 554 : (1993) RD 112

Hon'ble Judges: B.L. Yadav, J

Bench: Single Bench

Advocate: Rajesh Sonkar and B.B. Paui, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.L. Yadav, J.
Whether Petitioner would be entitled to the benefit of Sub-section (4) of Section 122B of the UP ZA LR Act 1950 (for

short the Act) is the short questions for consideration in this petition.

2. In proceedings u/s 122B of the Act 9 notice 49 Ka (Annexure II to the petition) was served on vishwanath the Petitioner for ejectment and

damages, as he has occupied the land vested in the Gaon Sabha otherwise than in accordance with the provisions of the Act.

3. In reply to that notice 49 Ka the Petitioner filed objection stating that he being a lessee since 24-10-82 to 25-10-1992 is neither liable for

ejectment nor payment of damages. He is a Bhumidhar in view of the provisions of Section 122B(4F) of the Act being a member of the Scheduled

Caste has occupied the land from before 1985. The lease pertaining to land in dispute was granted in the name of Petitioner for a period of 10

years i.e. with effect from 24-12-82 to 25-10-92 (Annexure I to the petition). That period has not expired.

4. After considering the evidence on record, learned Tehsildar discharged the notice on 28-2-92 against which Gaon Sabha preferred a revision

which has been allowed by the impugned order dated 8-9-92 and the Petitioner has been directed to be ejected after 25-10-92, the date of expiry

of the period of lease and to pay damages.

5. Learned Counsel for the Petitioner urged that the Petitioner is entitled to protection u/s 122B(4F) of the Act, hence he is not liable to ejectment

and the impugned order was manifestly erroneous.

6. For taking the benefit of Section 122B(4F) of the Act, it must be the case of the Petitioner that he occupied the land from before June 1985, but

Petitioner has been granted lease (Annexure I). Since 24-10-82 to 25-10-1992. The lease will expire on 25-10-92. Sub-section (4F) of Section

122B has to be read along with Section 122B as the cardinal rule of interpretation is that not only every part of the statute has to be read together,

but every part of the same section has also to be read together. Normally, the courts lean against any construction which tends to reduce the

statute to a fulity.

7. The Maxim ""UT RES MAGIS VALEAT QUAM PEREAT"" con-notes that the courts must interpret a statute so as to make it workable and

more effective consistent with the meaning and purpose which the legislatures intended for it.- Tinsukhia Electric Supply Co. Ltd. Vs. State of

Assam and others, .

8. The legislature was conscious in enacting Sub-section 4F of Section 122B with a non obstante clause having overriding effect. Section 122B

was brought on statute book with the object that the unauthorised occupant in respect of land having vested in Gaon Sabha or some local authority

may be ejected in summary procedure. Sub-Section 4F to Section 122B is in the form of Proviso to the Section 122B(1) of the Act. In case a

tenure holder being an agriculturer or landless labourer belonging to Scheduled Caste or Scheduled Tribe, has brought the land under his

possession otherwise than in accordance with the provisions of the Act, would not be liable to ejectment.

9. The Petitioner in my opinion would not be entitled to the protection under Sub-section 4F for more than one reason. The first is that the

occupation by the person concerned either u/s 122B or under Sub-section 4F must be otherwise than in accordance with Act. In the instant case,

Petitioner as alleged by him has got a lease for fishery for a period since 24-10-82 to 25-10-1992, hence he was not entitled to that benefit. The

next is that in view of the findings recorded, the terms of the lease were violated. The other is that nature of the land was such that no Bhumidhari

rights would accrue in a land let out for fishery rights.

10. Till 25-10-1992, the Petitioner is entitled to remain in possession as a lessee and consequently both the parties are bound by the terms of the

lease.

11. In view of the premises aforesaid the Petitioner is not entitled to any relief. The petition is liable to be and is hereby dismissed summarily.