

(2009) 09 AHC CK 0197

Allahabad High Court

Case No: None

Meharban and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Sept. 17, 2009

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 198(4)

Citation: (2010) 1 AWC 956

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

A.P. Sahi, J.

This petition has been preferred in relation to the proceedings u/s 198(4) of the U.P.Z.A. and L.R. Act (hereinafter referred to as "the Act") whereby the lease granted in favour of the petitioners has been cancelled by the Sub-Divisional Magistrate, Sadar, district Muzaffar Nagar vide order dated 5.11.2003 and the revision filed against the same by the petitioners has been dismissed by the impugned order dated 27.5.2006. After dismissal of the revision, it appears that the Gaon Sabha proceeded to make a fresh allotment in favour of the contesting respondents 5 to 9 and it is at that stage that the present writ petition was filed questioning the correctness of the Section 198(4) of the Act.

2. I have heard Shri S.A. Shah, learned Counsel for the petitioners, learned standing counsel for the respondent Nos. 1, 2 and 3 and Shri Santosh Kumar Mishra, learned Counsel for the respondent Nos. 5 to 9. None has appeared on behalf of the Gaon Sabha.

3. Three issues were advanced by Shri S.A. Shah on 9.9.2009. which has been noticed in the order passed on that day. The first submission was that the Sub-Divisional Magistrate has no authority to proceed in the matter. Shri Shah has conceded to this

position that the Sub-Divisional Magistrate had the authority at that point of time and consequently the second question raised by him that the revision should have not been heard by the Collector automatically does not survive. The revision was presented before the Commissioner, who sent it back to the Collector in view of the amendment which has been brought about in the Act and accordingly the Collector proceeded to decide the revision.

4. The third point raised by Shri Shah was that the contesting respondent Nos. 5 to 9 had no right to move an application with regard to the cancellation of the lease granted in favour of the petitioners, copy whereof is Annexure-1 to the writ petition. For this, Shri Shah contends that the said respondent Nos. 5 to 9 do not fall within the definition of "aggrieved person" and therefore such an application was neither entertainable nor the Sub-Divisional Magistrate could have assumed the jurisdiction to proceed to cancel the lease of the petitioners u/s 198(4) of the Act. He contends that the initiation of the proceedings being invalid the entire action taken at the instance of the respondent Nos. 5 to 9 is void. To support his submissions Shri Shah has invited the attention of the Court to the decision of our Court in the case of [Pyare Lal and Others Vs. Deputy Director of Consolidation and Others](#), On the strength of the said decision Shri Shah has urged that the respondent Nos. 5 to 9 being not aggrieved persons the proceedings have to fall through.

5. Shri Mishra, on the other hand, contends that as a matter of fact the respondent Nos. 5 to 9 were eligible persons for grant of lease and were wrongly left out by the Gaon Sabha and as such they fall within the definition of aggrieved persons. He contends that, as a matter of fact, after the cancellation of the lease of the petitioners the respondent Nos. 5 to 9 have been allotted land by the Gaon Sabha finding the respondents to be eligible. He therefore contends that even otherwise the answering respondents are eligible persons and they have a right to contest at least in this writ petition. He further submits that on merits the petitioners are unable to dislodge the findings as such they should not be allowed to succeed on technical grounds.

6. Learned standing counsel has supported the impugned order and has urged that the property of the Gaon Sabha should not be sequestered in the manner it has been done in favour of the petitioners and that rightful claimants should receive the benefits of Gaon Sabha land. He contends that after taking an overall view of the matter, the impugned orders do not require any interference under Article 226 of the Constitution of India as substantial justice has been done between the parties.

7. I have heard learned Counsel for the parties and have also carefully perused the decision of Pyare Lal (supra). In the said judgment the issue raised was as to whether, the persons who are not claiming allotment, as well as the Gaon Sabha, had the right to file any application in order to get the leases cancelled on the ground of irregularities. Paragraphs 5 and 10 of the said decision are quoted hereinbelow for ready reference.

5. However, before proceeding to consider the question of granting reliefs claimed by the petitioners in the writ petition, to direct either the consolidation authorities or the revenue authorities to consider the case of the petitioners, it has to be considered whether the petitioners who are three in number, two private individuals and the Gaon Sabha have any right to maintain the proceedings for cancellation of the lease made in favour of respondents Nos. 5 and 6 and the writ petition filed by them is maintainable.

10. In the present case, the petitioners Nos. 1 and 2 are challenging the allotment made by Gaon Sabha in favour of respondent Nos. 5 and 6. However, they can only be covered under the definition of aggrieved person if they are able to demonstrate that the decision of Gaon Sabha to allot land in favour of respondent Nos. 5 and 6 wrongfully deprived them of their right of allotment of the said land or they had any title in the said land. Section 198 of the Act prescribes the order of preference to be observed while making allotment of land. Unless, petitioners Nos. 1 and 2 demonstrate that they were applicants for allotment and higher in order of preference than respondent Nos. 5 and 6 and had better claim for allotment than respondents Nos. 5 and 6 and have been wrongfully and illegally deprived of their such rights, they cannot be said to be aggrieved persons. There is not even a whisper in the pleadings that the petitioners were also applicants for allotment of the land and were higher in preference than respondents Nos. 5 and 6. In the absence of any such pleadings petitioner Nos. 1 and 2 cannot be said to be aggrieved persons so as to maintain the proceedings for cancellation of the allotment made in favour of respondent Nos. 5 and 6 and as such the writ petition filed by them is not maintainable.

8. Having considered the meaning of the word "aggrieved person", as is occurring u/s 198(4) of the Act the Court came to the conclusion that unless and until a person is able to demonstrate that he was entitled for allotment he cannot be said to be an aggrieved person. The Gaon Sabha even otherwise in view of the provisions of the Gaon Sabha Manual could not have filed the writ petition in view of the findings recorded therein.

9. A perusal of the facts as brought on record in the present case indicates that Annexure-1 to the writ petition is the application moved by the respondent Nos. 5 to 9 on 30.11.2002 alleging that the lease granted in favour of the petitioners is in violation of the provisions of the Act and Rules and that they are ineligible persons. Apart from this, it was also alleged that the petitioners before this Court belong to almost one family and were substantially well off, and therefore wrongly construed to be eligible persons for the purpose of allotment. On these allegations the application was entertained and the Sub-Divisional Magistrate proceeded to pass the order on 5.11.2003 cancelling the lease in favour of the petitioners.

10. The petitioners thereafter preferred a revision before the Collector and ground No. 4 of the said revision clearly recites that so far as the contesting respondents are

concerned, they do not fall within the definition of "aggrieved person" and therefore they had no right to move the complaint. The aforesaid ground was taken notice of by the revisional authority as is evident from the impugned order itself, and while recording a finding on the said issue, the revisional authority concluded that since the issue involved is of the property of the Gaon Sabha then in that event in order to protect the interest and property of the Gaon Sabha, any person would be an aggrieved person so as to maintain the complaint.

11. In view of the law laid down in the case of Pyare Lal (supra) the aforesaid conclusion drawn by the revisional authority cannot be sustained in law. The petitioners even otherwise in their application had not alleged that they were eligible persons and therefore the lease should be cancelled and they should be allotted land. It appears that later on after the cancellation had concluded, the Gaon Sabha passed a fresh resolution in favour of the respondent Nos. 5 to 9 and on that strength it is alleged that the learned Counsel for the respondents now urge that they fall within the definition of the aggrieved persons.

12. It is settled law that post facto allegations cannot be made the basis to support the finding which had proceeded on an assumption that any person of the Gaon Sabha can be an aggrieved person. The finding of the revisional court does not rest on the submission that has been advanced before this Court. On the contrary the revisional court has arrived at its own finding and there is no evidence either before the Sub-Divisional Magistrate or before the revisional authority to indicate that the respondents Nos. 5 to 9 were worthy of allotment and therefore could have been treated as aggrieved person. In such a situation the impugned orders are unsustainable and are hereby quashed.

13. It is, however apt to remember, that the contention raised on behalf of the respondent that it is Gaon Sabha property and should be protected and should not be allowed to be usurped by unscrupulous persons, has to be taken care of. For this, the Sub-Divisional Magistrate even otherwise has suo motu powers u/s 198(4) of the Act to proceed to examine any such complaint relating to illegal and irregular allotment. In view of this the order passed by this Court in this writ petition shall not be an impediment to the powers of the Sub-Divisional Magistrate to proceed to take action suo motu, in case he is of the opinion that the allotment made in favour of the petitioner is otherwise illegal and not in accordance with the provisions of the Act. Accordingly the order dated 27.5.2006, passed by the District Magistrate, Muzaffar Nagar and the order dated 5.11.2003, passed by the Sub-Divisional Magistrate, Sadar, District Muzaffar Nagar are set aside subject to the observations made hereinabove.

14. The writ petition stands allowed.