
(2013) 04 AHC CK 0292

Allahabad High Court

Case No: C.M.W.P. No. 22302 of 2013

Kushtha Sewa Ashram

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision: April 23, 2013

Acts Referred:

- Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 29C, 29C(1), 8A(c)
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 117

Citation: (2013) 4 AWC 3309 : (2013) 119 RD 732

Hon'ble Judges: Sibghat Ullah Khan, J

Bench: Single Bench

Advocate: Tripathi B.C. Bhai, for the Appellant;

Final Decision: Dismissed

Judgement

Sibghat Ullah Khan, J.

Petitioner is plaintiff in O.S. No. 238 of 2006. The suit has been filed against State of U.P. through Collector, Basti. (2) Pashu Chikitsayalaya, Kalwari. District Basti and (3) District Chief Veterinary Officer Basti, (4) Deputy Director/Up-Nideshak, Pashupalan Vibhag, Basti. It has been stated in the plaint that under Sections 8A(c) and 29C of U.P.C.H. Act and Rule 24A land in dispute was reserved for Kushtha Sewa Ashram, i.e., petitioner. Sections 8A(C) and 29C(1) of U.P.C.H. Act are quoted below:

8A (2) (a) details of areas, as far as they can be determined at this stage, to be earmarked for extension of "abadi" including areas for "abadi" site for Harijans and landless persons in the unit, and for such other public purposes as may be prescribed.

29C (1) The land contributed for public purposes under this Act shall with effect from the date on which the tenure-holders became entitled to enter into possession of the chaks allotted to them under the provisions of this Act as amended from time to

time, vest and be always deemed to have vested in the Gaon Sabha (in an area in which Section 117 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 applies and in the State Government in any other area) and shall be utilised for the purpose for which it was earmarked in the final Consolidation Scheme, or in case of failure of that purpose, for such other purposes as may be prescribed.

(Emphasised supplied)

Rule 24A (2) VIII and XIII of U.P.C.H. Rules are quoted below:

VIII. Hospitals

XIII. any other objects of similar nature for which reservation of land may be considered necessary in the interest of the tenure-holders of the unit.

2. Accordingly, it is clear that land to be reserved for public purposes cannot be reserved for a private society even though it may be performing charitable functions. The land which is to be reserved for public purpose under U.P. Consolidation of Holdings Act must vest in Gaon Sabha (Section 29C). The public purpose must be such which is served by Gaon Sabha, Govt. or Governmental agency and not private person, society institution etc.

3. The trial court/Civil Judge (S.D.), Basti granted temporary injunction to the plaintiff petitioner on 30.5.2006 restraining the defendants State and its authorities from interfering in the possession of the applicant over plot No. 262 area 1 bigha 1 biswa 16 biswancies and further restraining them from making any construction thereupon. The allegation/contention of plaintiff petitioner was/is that a veterinary hospital is proposed to be constructed by State and its authorities over the land in dispute which is not permissible. Against the said order State and its authorities filed misc. civil appeal No. 80 of 2006 A.D.J. Court No. 1, Basti allowed the appeal through judgment and order dated 19.3.2013 set aside the order of the trial court granting temporary injunction and rejected the temporary injunction application. The said order has been challenged through this writ petition.

4. The lower appellate court has mentioned that in C.H. form 45 plot No, 262 is entered as Navin Parti.

5. In any case in consolidation land to be reserved for public purpose cannot be reserved for a private institution even though it may be performing charitable function. On repeated inquiry from the court as to how plaintiff came in possession over the property in dispute learned counsel for the petitioner could not give any reply. It is not the case of the petitioner that the land in dispute was allotted to it by Gaon Sabha. It appears that petitioner is either in unauthorised occupation or is trying to encroach upon the land in dispute. Government shall take all possible steps to construct the veterinary hospital over the land in dispute promptly.

6. Learned counsel for the petitioner has mainly argued that land reserved for one public purpose cannot be diverted for other public purpose. Firstly the Court is not at all satisfied that land was ever reserved or could be reserved In favour of the petitioner. In any case u/s 29C of U.P.C.H. Act change of public purpose is permissible.

7. Learned counsel for the petitioner has cited two authorities which are rather against the petitioner.

(1) Lalji v. Board of Revenue, 1971 RD 466

(2) Ram Raj Singh v. State of U.P., 2005(99) RD 167. In these authorities it has been held that Gaon Sabha cannot exchange public utility land with private person's bhumidhari land.

8. Writ petition is accordingly dismissed. Office is directed to supply a copy of this order free of cost to Sri M.H. Khan, learned standing counsel within a week.