(2004) 07 AHC CK 0186

Allahabad High Court

Case No: C.M.W.P. No. 793 of 1981

Jagannath and Others		APPELLANT
	Vs	
Additional Commissioner and Others		RESPONDENT

Date of Decision: July 26, 2004

Acts Referred:

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 145
- Uttar Pradesh Bhoodan Yagna Act, 1952 - Section 12, 14, 15A
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 198(2)

Citation: (2005) 1 AWC 772 : (2004) 97 RD 220

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: Sakatha Rai, for the Appellant; Piyush Shukla, V.K. Singh, N.A. Moonis, R.K. Srivastava and Y.M. Mishra and Murtaza Ali, S.C., for the Respondent

Final Decision: Dismissed

Judgement

Sunil Ambwani, J.

Cause shown is sufficient. The delay is condoned. The substitution application for substituting the heirs of respondent No. 3, is allowed. The necessary entry shall be made in the array of parties.

2. This writ petition has been filed against the order dated 6.10.1980 passed by Additional Commissioner, Allahabad Division, Allahabad in Revision No. 275 of 1980 (Alld.), between Jagannath etc. and Ali Athar etc. in proceedings u/s 198 (2) of U.P.Z.A. and L.R. Act, 1950 of village Kanihar, pargana Jhusi, district Allahabad whereby the revision application was dismissed, upholding the order dated 21.6.1980 passed by the Additional District Magistrate (Rural), Allahabad in Suit No.

653A of 1979-80 u/s 198 (2) of U.P.Z.A. and L.R. Act read with Section 15A of U. P. Bhoodan Yagna Act, 1952. It was held by the Additional District Magistrate in his order that the land in dispute allotted to the petitioners was, in fact, entered as ''pond'' in the khatauni of 1359 and 1320 fasli and that the land is of public utility. He found that the pond did not belong to Bhudan Samiti and was wrongly allotted by it and got the matter investigated through the Tahsildar who found that the land in dispute is entered in the revenue record as ''pond'' and is a public utility vested in Gaon Sabha.

3. Counsel for the petitioners contends that the land in dispute had vested in Bhoodan Yagna Samiti and that under the U. P. Act No. X of 1953, the Committee allotted the land to the petitioners. The land of plot No. 409 area 43 bighas 3 biswas was provided to U. P. Bhoodan Yagna Samiti. The Collector has no jurisdiction to initiate the proceedings u/s 198(2) of U.P.Z.A. and L.R. Act, 1950. An application u/s 15A of the U. P. Bhoodan Yagna Act can only by allowed if the Collector is satisfied that the grant was irregular or was obtained by the grantee by misrepresentation or fraud and that no such condition was existing in the present case.

4. It is not denied by the petitioners that the land is recorded as pond and as Gaon Sabha land in the revenue records. There is no assertion in the writ petition that the land was not being used as pond by the villagers. The Supreme Court in Hinch Lal Tiwari Vs. Kamala Devi and Others, , had approved the order cancelling the lease of a pond in a village and held as follows :

"13. It is important to note that material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature''s bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enable people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution. The Government, including revenue authorities, i.e., respondent Nos. 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of public at large. Such vigil is the best protection against the knavish attempts to seek allotment in non-abadi sites."

5. I find that the land in dispute is of public utility and it was recorded in the revenue records as ''pond'' and thus the land in dispute could not have been allotted by the Bhoodan Samiti. The record shows that proceedings u/s 145, Cr. P.C. were also initiated in which the Sub-Divisional Magistrate has declared that the petitioners'' possession was unauthorised.

6. The U. P. Bhoodan Yagna Act, 1952, was enacted to facilitate the donation of lands in connection with the Bhoodan Yagna initiated by Sri Vinoba Bhave and to override the legal rights created by the Revenue Acts existing at that time which did not provide any donation of land by Zamindars. The object of the Act was to receive the

land which form part of holding, from Zamindars and to distribute amongst the poor landless persons. Section 12 of the Bhoodan Yagna Act provides the category of lands which could not be donated, namely :

(a) lands which on the date of donation are recorded or by usage treated as common pasture lands, cremation or burial grounds, tank, pathway or threshing floor ; and

(b) land in which the interest of the owner is limited to the life time ; and

(c) such other land as the State Government may by notification in the Gazette specify.

7. The land in dispute recorded in the revenue record is of public utility land and used by the village people of the Gaon Sabha. This land, therefore, could not be donated as there is a clear prohibition for donation of such land u/s 12 of the U.P. Bhoodan Yagna Act.

8. Section 15A of U. P. Bhoodan Yagna Act, 1952, provides that the Collector may of his own motion and shall on the report of the Committee or on the application of any person aggrieved by grant of any land made u/s 14, whether before or after the commencement of the Uttar Pradesh Bhoodan Yagna (Amendment) Act, 1975, inquire into such grant, and if he is satisfied that the grant was irregular or was obtained by the grantee by misrepresentation or fraud, he may cancel the grant and in such a case, the land shall revert back to the Committee and the order passed by the Collector is to be treated as final and conclusive.

9. In the present case, the Collector has not only exercised the powers u/s 198 (2), U.P.Z.A. and L.R. Act, but also u/s 15A of U. P. Bhoodan Yagna Act, 1952. The report of the Tahsildar showed that the disputed land was recorded as pond and was recorded as Gaon Sabha property. Thus, the disputed land was outside the scope and purview of U. P. Bhoodan Yagna Act, 1952. The Collector, therefore, has rightly exercised the powers vested in him u/s 15A of the Act.

10. The writ petition is consequently dismissed with direction to the District Magistrate to evict all the persons by passing the appropriate orders and allow the villagers to use the pond.