

**(2009) 09 AHC CK 0206****Allahabad High Court****Case No:** None

Hori Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

**Date of Decision:** Sept. 10, 2009**Acts Referred:**

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 186, 333

**Citation:** (2010) 1 AWC 886 : (2009) 2 UPLBEC 1753**Hon'ble Judges:** A.P. Sahi, J**Bench:** Single Bench**Final Decision:** Dismissed

### **Judgement**

A.P. Sahi, J.

Heard learned Counsel for the petitioners and the learned standing counsel as well as learned Counsel for the caveators.

2. The proceedings arise out of a report filed by the Lekhpal u/s 186 of the U.P.Z.A. and L.R. Act , 1950 which reads as under:

186. Abandonment. -- (1) Where a [bhumidhar with nontransferable rights) (other than a minor, lunatic or idiot) or asami has not used his, holding for a purpose connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming for two consecutive agricultural year the Tahsildar may, on the application of the (Gaon Sabha) or the landholder or on facts coming to his notice otherwise, issue a notice to such (bhumidhar with non-transferable rights) or asami, as the case may be, to show cause why the holding be not treated as abandoned.

(2) The application shall contain such particulars as may be prescribed.

(3) If the Tahsildar finds that the application has been duly made he shall cause to be served on the (bhumidhar with nontransferable rights) or the asami or publish in

the manner prescribed a notice in the form to be prescribed requiring him to appear and show cause on a date to be fixed why the holding be not held as abandoned.

(4) If the (bhumidhar with non-transferable rights) or the asami does not appear in answer to the notice or appears but does not contest it, the Tahsildar shall declare the holding as abandoned and thereupon, except provided in (Section 172), the holding shall be deemed to be vacant land:

(Provided that no declaration under this sub-section shall be made in respect of a holding or any part thereof, if the same has been mortgaged by the (bhumidhar with non-transferable rights) under Sub-section (2) of Section 153 and the mortgage has not been fully redeemed, in which case the Tahsildar shall move the Collector for the realization of the loan in such manner as may be prescribed.)

(5) If the (bhumidhar with non-transferable rights) or asami appears to contest the notice, the Tehsildar shall drop the proceedings.)

3. The petitioners had been admittedly granted lease but the Lekhpal reported that after the said lease was granted in 1383 fasli, the petitioners left the village after four years and started living in Village Tumaria where also they obtained allotment of land. The report further recited that the procedure adopted for seeking allotment of land in another village disqualified the petitioners from retaining the allotted land and as a matter of fact they had abandoned their holdings at Saeedabad. The said report was entered and Tehsildar proceeded to pass an order on 27.2.2001. Accordingly, the name of the petitioners was directed to be expunged in exercise of powers u/s 186 of the Act.

4. A revision was filed against the said order u/s 333 of the U.P.Z.A. and L.R. Act which was also dismissed on 13.10.2003. The petitioners moved a recall application before the revisional authority on 26.1.2004 copy whereof is Annexure-5 to the petition, on the ground that they had neither appeared before the Tehsildar nor had they filed the revision and that the entire proceedings have been conducted by setting up imposters. The said application dated 26.1.2004 was dismissed in default on 7.2.2006. A restoration application was filed by the petitioners and an explanation was afforded that the petitioner Hori Lal was ill and therefore, he could not attend the court of revisional authority and, as such restoration application should be allowed and proceeding should be restored for hearing on merits of the matter.

5. Learned Additional Commissioner after examining the contentions raised on behalf of the petitioners came to the conclusion that the petitioners had repeatedly defaulted by not appearing before the Commissioner's court and not only this, they were earlier negligent in pursuing the revision inspite of having engaged a lawyer Sri Siya Ram Gupta. The learned Commissioner further on merits examined the allegations made by the petitioners about their having not signed or put their thumb impressions on the vakalatnama in support of the revision and came to the

conclusion that no affidavit had been filed to support the plea about the contention of the thumb impressions not having been made by Hori Lal. The learned Commissioner held that apart from Hon Lal the petitioner No. 1, his three brothers did not raise any complain in this regard and accordingly ruled that the revision had been filed by their lawyer Siya Ram Gupta. The application for restoration was accordingly rejected on 26.9.2006. The petitioners filed review application against the said rejection which has been dismissed against which the present writ petition has been filed.

6. Learned Counsel for the petitioners contends that the petitioners have been denied opportunity to defend their claim and that in fact they had not abandoned the land and as such in view of the violation of the principles of natural justice entire proceedings deserve to be set aside and a fresh opportunity should be given to the petitioners to contest their claim. It has been submitted that the medical certificate had been filed in support of the restoration which has been wrongly construed and findings recorded are against the weight of evidence on record.

7. Learned Counsel for the caveators contends that the petitioners had been given ample opportunity and as a matter of fact they had appeared before the Tehsildar who after examining the relevant material on record and having recorded the statement of the Lekhpal concerned as well as Gram Pradhan came to the conclusion that the petitioners had left the village and migrated to another village where they have been allotted land. It is submitted that the aforesaid findings were sought to be assailed in revision filed by the petitioners and having failed in revision they have now set up a new case that the same has been done by some imposters and not by the petitioners.

8. Learned standing counsel has also supported the stand taken on behalf of the proposed caveators.

9. Having heard learned Counsel for the parties and from a perusal of the impugned order dated 26.9.2006 it appears that the learned Commissioner has taken pains not only to consider the entire claim of the petitioners on the question of restoration but also on the merits of the submission pertaining to setting up an imposter.

10. Learned Additional Commissioner has held that inspite of the dates having been fixed on 3.6.2005, 26.7.2005, 26.8.2005, 20.9.2005, 27.10.2005, 25.11.2005, 26.12.2005 and 10.1.2006, the petitioners had repeatedly defaulted in attending this Court. The learned Commissioner found that successive adjournments were sought and proceedings were being clearly avoided by the petitioners.

11. The aforesaid findings in my opinion are based on record itself and the order passed has taken into consideration all relevant material to arrive at such a conclusion. The conclusions therefore cannot be said to be perverse or founded on any irrelevant material which may warrant interference under Article 226 of the Constitution.

12. The second issue pertaining to setting up an imposter has also been dealt with by the Commissioner and it has been found that the petitioners were duly represented through their counsel Siya Ram Gupta. No evidence appears to have been led by the petitioners to demolish the said finding or any evidence led to the contrary. Thus, not only on the restoration but on merits the learned Commissioner has based his findings on relevant material. In my opinion the said order does not suffer from any infirmity. The subsequent proceedings of review also do not in anyway warrant interference under Article 226 of the Constitution of India by this Court.

The writ petition lacks merits and is accordingly, dismissed.