

(2005) 07 AHC CK 0230

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 48886 of 2005

Bihari

APPELLANT

Vs

The State of U.P. and The Land
Management Committee

RESPONDENT

Date of Decision: July 14, 2005

Acts Referred:

- Uttar Pradesh Panchayat Raj Act, 1947 - Section 28C, 28C(1), 28C(2)
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 195, 198(1), 198(4), 198(6)

Citation: (2005) 4 AWC 3742 : (2005) 2 RD 375

Hon'ble Judges: S.N. Srivastava, J

Bench: Single Bench

Advocate: Amit, for the Appellant; Anuj Kumar and S.C., for the Respondent

Final Decision: Dismissed

Judgement

S.N. Srivastava, J.

Impugned herein are the judgment and orders dated 14.3.2005 and 23.7.2002 passed by Addl. Commissioner (Judl.) Moradabad and the Sub Divisional Officer Bijnor.

2. The dispute in the instant petition revolves round plot No. 397 admeasuring 0.253 situated in village Salarabad Pargana and Tahsil Dhampur District Bijnor.

3. The facts constituting grievance of the petitioner is that the land in question was allotted to him on 7.7.1983 by virtue of his being member of Scheduled caste by the Land Management Committee in observance of the provisions of Sections 195 and 198 (1) of the U.P.Z.A. & L.R. Act which received approval on 28.7.2003. It is alleged that ever-since then he has been tilling the land and has also deposited 10 times of land revenue and with the passage of time he has been declared Bhumidhar with non-transferable rights and in consequence, was also issued Jyot Bahi on 7.7.1995. It

is further alleged that the Land Management Committee of the village initiated action for cancellation of allotment made to him by means of application dated 21.6.1993 u/s 198(6) of the U.P.Z.A. & L.R. Act attended with further allegation that the aforesaid Committee again embarked upon proceeding by moving application u/s 198(4) before the Asstt. Collector to which the petitioner filed objection but the Asstt Collector rendered verdict rescinding the allotment made in favour of the petitioner. Dissatisfied by the decision of the Asstt. Collector, the petitioner went up in revision before the Divisional Commissioner Moradabad Division Moradabad which also met the fate of dismissal vide order dated 14.3.2005. It is in this backdrop that the present petition has been instituted in this court.

4. The learned counsel appearing for the petitioner began his arguments stating that the petitioner being a landless agricultural labour and also that he belonged to Scheduled Caste was eligible of land in question. He further argued that if petitioner was eligible for allotment, non-compliance with the requirement as embodied in Section 28-C(1) of the U.P. Panchayat Raj Act, 1947, which postulates permission in writing of Collector, will not impair the allotment of petitioner as it was not a mandate and was a mere formality incapable of vitiating the allotment In this perspective, the learned counsel argued that error of law bulks large in the orders cancelling allotment of petitioner by the authorities below. Per contra, learned counsel for the Gaon Sabha propped up the impugned orders contending that the allotment was rightly cancelled as it was made in non-compliance with the provisions of Section 28C(1) of the U.P. Panchayat Raj Act, 1947.

5. From a perusal of the materials on record, it clearly transpires that the petitioner was Up-pradhan at the time when the allotment was made in his favour and further that the allotment was made without observing in compliance the provisions of Section 28C(1) of the U.P. Panchayat Raj Act, 1947 (In short the "Act 1947").

6. Before coming to grips with the controversy involved in this petition, it would be useful to acquaint myself with the provisions of Section 28C(i) of the Act 1947, Section 28C of the Act, 1947 is abstracted below.

"28-C(1) No member or office-bearer of a Gaon Panchayat or Bhumi Prabandhak Samiti shall, otherwise than with the permission in writing of the Collector, knowingly acquire or attempt to acquire stipulate for or agree to receive or continue to have himself or through a partner or otherwise any share of interest in any licence, lease, exchange, contractor employment with by, or on behalf of the Samiti concerned:

* * * *

(2} No court or authority shall enforce at the instance of any person, a claim based upon a transaction in contravention of the provisions of Sub-section (1)."

The aforesaid section clearly postulates that the permission in writing of the Collector has to be obtained. The requirement of the Section has the complexion of a mandate as would be pellucid from the phraseology of the Section inasmuch as the necessary consequence of non-compliance with the provisions of Section 28C(1) of the Act, 1947 would be that Section 28C(2) would come into play which envisages that no court or authority shall enforce at the instance of any person, a claim based upon a transaction in contravention of the provisions of Sub-section (1).

7. It has not been repudiated that permission of the Collector in writing as required by Section 28C(1) was wanting. It also brooks no dispute that the petitioner, at the relevant time, was holding the office of Up Pradhan and was also a member of the Land Management Committee of Gram Panchayat. In this perspective, regard being had to the fact that the allotment was made in contravention of the provisions of Section 28C(1) of the Act and also that non-compliance with the above provisions would be fraught with the consequence that Section 28C(2) would come into play, I would not hesitate to hold that the allotment order being one contravening the provisions of Section 28C(1) of the Act, was rightly rescinded by the authorities below and the petitioner cannot stake claim to any right on the basis of such invalid allotment.

8. In this connection, it would be useful to bark back to the concept underlying Enactment. The Act 1947 is cushioned with enough safeguards to protect the property of the Gram panchayat from onslaught and grabbing by unethical means. The broad object of the Act is to effect improvement and promote common good and interest of the village community which purpose is sought to be accomplished by Land Management Committee while acting a sentinel on the qui vive qua the property of the Gram panchayat. The safeguards provided in the Act is loaded with significance inasmuch as otherwise, it would be impossible to protect the property of the Gram Panchayat and larger interest of the village community from onslaught of avarice of the people who matter in the village an exercise clout. In the present democratic set up, the sovereign power vests in the people and the affairs of the constitutional democracy are run by the elected representatives and therefore, while conferring power, safeguards have rightly been provided to work as a bulwarks against misuse of power while enacting the aforesaid provision, the internment of the legislature leaves no manner of doubt that no elected representatives who are custodian of the property of Gram Panchayat could abuse his position by virtue of being office bearer or member of Land Management Committee or of the Board of Gram Panchayat.

9. Reverting to the facts of the present case, it is established that the allotment of land was made to the petitioner without obtaining prior permission of the Collector in writing and the petitioner at the relevant time was holding simultaneously the office of Up Pradhan as well as the office of member of the Land Management Committee and it is thus implicit that the petitioner exercised clout to procure order

of allotment in contravention the provisions of Section 28C(1) of the Act 1947. The argument of the learned counsel for the petitioner that the requirement of Section 28C(1) was a mere formality and he being member of Scheduled Caste was eligible does not commend to me for acceptance.

10. As a result of foregoing discussion, the impugned orders do not merit interference and the petition is therefore liable to be dismissed being devoid of merit.

11. Petition lacks merit and is accordingly dismissed in limine.