

(1996) 01 AHC CK 0121

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 2737 (MB) of 1994

Babu Ram Verma

APPELLANT

Vs

Sub-Divisional Officer and Others

RESPONDENT

Date of Decision: Jan. 19, 1996

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Panchayat Raj Act, 1947 - Section 28A, 28B
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 126, 126(2), 127B, 198(4), 333
- Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 110A, 115A

Citation: (1996) 3 UPLBEC 2028

Hon'ble Judges: K.C. Bhargava, J; D.K. Trivedi, J

Bench: Division Bench

Advocate: B.K. Chaudhary, for the Appellant; C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

D.K. Trivedi, J.

By means of this petition, the Petitioner prays for issue of a writ in the nature of certiorari for cancelling the allotment of the patta on the report dated 24.12.93, approved by the opposite party No. 1 as contained in Annexure No. 1 to this writ petition. He also prays for issue of a writ in the nature of mandamus by which he has prayed that the opposite party No. 3 namely; Raj Kumar Goswami be restrained from interfering in peaceful possession of the Gaon Sabha over the pond in dispute.

2. The present writ petition is filed by one Babu Ram, the Pradhan of Gaon Sabha, Shamshuddin Pur, Post Office Khemapur, Distt. Faizabad, praying relief for the Gaon Sabha. The Petitioner filed this writ petition without serving a copy on Sri R. N. Gupta, Advocate, the counsel for the Gaon Sabha but we called Sri R. N. Gupta Advocate and directed the Petitioner to handover a copy of this petition to him. Sri

R. N. Gupta, Advocate, the learned counsel for the Gaon Sabha raised preliminary issues and submitted that the present writ petition is not maintainable as the same has been filed by the Pradhan himself and secondly, the same has been filed through a private counsel. He placed before us the provisions of Para 131 of Gaon Sabha Manual which provide that a private counsel cannot be engaged on behalf of the Gaon Sabha unless there is a resolution of the Gaon Sabha and further the Gaon Sabha obtains a prior approval of the Collector.

3. So far as the first question is concerned that the present writ petition is filed by Babu Ram, the Pradhan on behalf of the Gaon Sabha, the contention of the Petitioner's counsel is that the Petitioner filed this petition on behalf of the Gaon Sabha and the petition be treated to be filed on behalf of the Gaon Sabha, therefore, the present petition is treated to be filed by the Gaon Sabha. Apart from this, it is submitted by the Petitioner's counsel that there is a resolution of the Gaon Sabha authorising the Pradhan to initiate proceedings for cancellation of the Patta and it is necessary to engage a private counsel. The Petitioner's counsel filed a copy of the resolution as Annexure No. 2. From the perusal of the Annexure No. 2, it appears that the Pradhan was authorised to initiate proceedings for cancellation of the Patta and if, he thinks proper then he may engage a private counsel. There is no resolution that the Pradhan is authorised to file a writ petition before this Court. Section 198(4) of U.P. Z. A & L. R. Act clearly authorises the Collector of the District to initiate proceedings on his own motion or on the application of any person aggrieved by an allotment of land and if the allotment is irregular, then he may cancel the allotment and the lease. Section 333 of U.P. Z. A. & L. R. Act empowers the Board to call for the record of any case or proceedings and pass orders. In these circumstances, the resolution authorised the Petitioner to initiate proceedings for cancellation of the Patta and not to file a writ petition directly.

4. In any case, even if this petition is treated to be filed by the Gaon Sabha, then the contention of Sri R. N. Gupta that the writ petition is not maintainable as the same has been filed through a private counsel, has sufficient force. It is submitted by the Petitioner's counsel that in the case of Gaon Sabha v. Dy. Director of Consolidation and Ors. 1986 RD 26, which is equivalent to 1986 AM 293, this Court held that a private counsel can be engaged by the Gaon Sabha and the provisions of Para 131 of the Gaon Sabha Manual are only directory and not mandatory. Provisions of Para 128 of Gaon Sabha Manual no doubt authorise the Land Management Committee to conduct the litigation by resolution. Para 131 of the Gaon Sabha Manual provides that the lawyers shall be appointed who shall represent the Bhumi Prabandhak Samiti and give legal advice when necessary but it further provides that the committee shall not engage any lawyer other than the panel lawyer appointed. However, in important cases special lawyers can be engaged with the specific permission of the Collector in writing. The Gaon Sabha is a public body and has been created under the Statute. The scheme for conducting the Gaon Sabha's litigation is also prescribed in the U.P. Z. A. & L. R. Act, Panchayat Raj Act as well as Gaon Sabha

Manual. Chapter 6 of the Gaon Sabha Manual clearly provides procedure for conducting Gaon Sabha litigation and also provides procedure for appointment of the lawyers. Thus, the Gaon Sabha Manual provides the constitution for conducting the litigation of the Gaon Sabha and its Bhumi Prabandhak Samiti. These directions and provisions have been made by the State Government from time to time as the State is authorised under the U.P. Z. A. & L. R. Act to issue such directions. Section 126 of U.P. Z. A. & L. R. Act authorises the State Government to issue orders and directions to the Land Management Committee which are necessary for the purpose of this Act and Section 126 (2) of the Act also puts an obligation on the Land Management Committee to carry out and comply such directions. Similarly, Rule 115A of the U.P. Z. A. and L. R. Rules, 1952 also authorises the State Government to issue directions to the Bhumi Prabandhak Samities (Land Management Committee) established u/s 28A of the U.P. Panchayat Raj Act, 1947 in respect of land management, and preservation of the land for the purpose of public utility as well as function of the Bhumi Prabandhak Samiti. Section 28B of the U.P. Panchayat Raj Act, 1947 provides the function of the Bhumi Prabandhak Samities and Sub-clause (g) of this clause clearly provides the procedure for conduct of the prosecution of the suit and proceedings by or against the Gaon Sabha relating to or arising out of the functions of the Samiti. It is also provided that the Bhumi Prabandhak Samities shall function subject to the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

5. As pointed out above, under the Act the State Government is authorised to issue directions from time to time in respect of the provisions of the Act and also with regard to litigation of the Gaon Sabha. Therefore, in our opinion, if the State Government has issued directions in respect of the conduct of the litigation of the Gaon Sabha then, the same are binding on the Gaon Sabha. From the provisions of the Act as mentioned above, it is clearly settled that the Gaon Sabha as well as the Land Management Committee shall be responsible for all litigation on behalf of the Gaon Sabha. It is also provided that they act through the counsel appointed u/s 127B of U.P. Z. A. & L. R. Act which clearly provides appointment of the Panel Lawyers by the State Government. Apart from this, there is a procedure prescribed for engaging the special lawyer in the Gaon Sabha Manual, therefore, a special lawyer can be engaged by the Gaon Sabha by adopting resolution and thereafter, with the prior approval of the Collector.

6. In view of these provisions, it cannot be said that it is further left on the discretion of the Pradhan of the Gaon Sabha and management committee to engage a private counsel in accordance with their choice. As pointed out above, the Gaon Sabha is a public body and, therefore, it is also in the public interest and it is the duty of the State also to see that the Gaon Sabha's fund be not wasted. Apart from this, Chapter 22, Rule 12 of High Court Rules also recognizes the Standing Counsel of the Gaon Sabha and in compliance with the said provisions, the State Government has appointed the Standing Counsel in the High Court. Rule 12 further provides that the

Rules applicable with regard to the Government and Standing Counsel shall also apply to the Gaon Sabha and the counsel appointed by the Government for conducting the Gaon Sabha cases and in view of this provision, in our opinion, it cannot be said that the Gaon Sabha can engage a private counsel without following the proper procedure as prescribed under the law. The case of the Gaon Sabha v. Dy. Director of Consolidation 1986 RD 26, relied upon by the Petitioner's counsel is quite distinguishable on facts. So far as the case of the Gaon Sabha v. Dy. Director of Consolidation 1986 ALJ 193 is concerned, the same relates to the cause of general public and this Court while disposing of this point has clearly observed that the Petitioner is sponsoring the cause of general public and there is also a resolution of the Gaon Sabha authorising the Petitioner to do pairvi, therefore, in these circumstances the court took a view that the writ petition cannot be dismissed on the ground that the approval of the Collector is not filed by the Petitioner. There is no dispute that anybody can sponsor the cause of general public and for this purpose, any person can file a writ petition under Article 226 of Constitution of India. If any person is authorised to raise such a dispute then, the said person cannot be forced to engage Standing Counsel or any other counsel who is not of his choice. If a person has right to raise a dispute then, the person must be free to engage his counsel of his own choice. In these circumstances, if a person sponsors the cause of the general public then, the writ petition can be filed and entertained under Article 226 of Constitution of India, through a private counsel. In these circumstances, the case of the Gaon Sabha v. Dy. Director of Consolidation 1986 ALI 293, cannot be said to be against the provisions of law to this extent. However, in the case of the Gaon Sabha v. Dy. Director of Consolidation (supra), it has been observed that the provisions of Para 128 of U.P. Gaon Sabha Manual are only directory and not mandatory. As regards the question as to whether the provisions of Land Record Manual contained in Chapter VI, Paras 128 to 131 are directory or mandatory, is concerned, the same has been considered in the case of Sita Ram v. Dy. Director of Consolidation 1982 ALJ 76. The relevant observation of the Court is as under:

18. It is well-settled that no person can plead for another without being authorised by him in that behalf. It is a basic principle of law that a person cannot initiate a legal proceeding on behalf of or for the benefit of another without any authority from that other. The provisions already referred to above provide the procedure and the manner in which suits or proceedings can be filed and conducted on behalf of the Gaon Sabha and the same has got to be done in that particular manner.

...

21. The Gaon Sabha is a body corporate and the Land Management Committee is an executive body of the Gaon Sabha charged with the functions to supervise and protect the property vested in the Gaon Sabha and it has to function in the manner sanctioned under law. The provisions contained in Para 128 of the Gaon Sabha

Manual and Rule 110A of the U.P. Zamindari Abolition and Land Reforms Rules prescribed the manner in which the litigation is to be conducted by and on behalf of the Gaon Sabha. These provisions, which are mandatory, would govern the litigation to be conducted on behalf of the Gaon Sabha in all proceedings under the provisions of the U.P. Consolidation of Holdings Act.

7. The law propounded in the case of Sita Ram (supra) has also been followed in a case of Gaon Sabha Lachaman Patti v. Dy. Director, Consolidation 1982 ALJ 1113. Similarly, in a case of Gaon Sabha v. Jagannath Singh 1984 RD 193, this Court again held that as the memo of appeal was presented by an Advocate who is neither a panel lawyer nor appointed by any resolution of the Land Management Committee of the Gaon Sabha nor by Collector, therefore, the appeal was incompetent.

8. It is well-settled that where a procedure for the performance of a particular Act has been prescribed, the same has got to be done in that manner or not at all. The abovementioned view is propounded by the Privy Council in a case of AIR 1936 253 (Privy Council) and is followed by the Hon"ble Supreme Court in a case of [State of Gujarat Vs. Shantilal Mangaldas and Others](#), , as well as in a case of [Ramchandra Keshav Adke \(Dead\) by Lrs. and Others Vs. Govind Joti Chavare and Others](#), .

9. Apart from this, now it is a settled law that if, the State has a right to issue direction under some statute, then the directions issued by the State has the statutory force of law and the same can introduce in a form of official memorandum or executive instructions.

10. The above quoted view has been expressed by the Apex Court in a case of Indmsawhney v. Union of India 1992 Supp. (3) SCC 217. After decision of the Apex Court, these directions issued by the State Government contained in the form of Manual have statutory force of law.

11. In these circumstances, in view of what has been said above, the present writ petition fails and is therefore, dismissed summarily.