
(2014) 02 AHC CK 0114

Allahabad High Court (Lucknow Bench)

Case No: Special Appeal Defective No. 84 of 2014

State of U.P. and
Others

APPELLANT

Vs

Shiv Kumar and Others

RESPONDENT

Date of Decision: Feb. 18, 2014

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 229B, 229D

Citation: (2014) 3 ADJ 125 : (2014) 5 AWC 5024 : (2014) 122 RD 750

Hon'ble Judges: Dhananjaya Yashwant Chandrachud, C.J; Devendra Kumar Arora, J

Bench: Division Bench

Advocate: Pankaj Gupta, Advocate for the Respondent

Final Decision: Dismissed

Judgement

1. This special appeal has been filed by the State, the Additional Commissioner (Administration), Devi Patan Mandal, Gonda and the Sub-Divisional Officer/Assistant Collector, Tehsil Sadar, District Gonda, aggrieved by the following observations contained in the order of the learned Single Judge dated 21 November 2013:

However, before parting it is necessary to note a disturbing feature of the case. In para-12 of the writ petition, it has been mentioned that interim order was cancelled/refused to be extended by the trial Court on the recommendation/endorsement of an ex-member of parliament. In that regard, reference has been made to Annexure-10 to the writ petition. It was highly improper for the Ex-Member of Parliament, Sri Kirti Vardhan Singh to make endorsement of favourable recommendation on the application of the petitioner. Greater fault was committed by the Deputy Collector to take that application on record of the case, which was pending before him. It was clearly an attempt to influence judicial proceedings on the part of the Ex-Member of Parliament. The Deputy Collector, who passed the order abused his position and power by passing a judicial order on the recommendation of an Ex-Member of Parliament. Court is of the

considered opinion that Executive Officers like S.D.Os. are not qualified to hear judicial matters under U.P.Z.A. & L.R. Act. It is directed that in future Sri J.P. Singh, who was S.D.O./Deputy D.M. Sadar, Gonda on 23.8.2013 shall not hear any matter under U.P.Z.A. & L.R. Act and an adverse entry must be awarded to him to the effect that he passed the order in the case in question on extraneous consideration.

The rest of the order which concerns the dispute between the private respondents has not been challenged in the special appeal.

2. The brief facts of the case are that the dispute between respondents 1 to 3 and respondents 5 to 8 relates to agricultural land bearing Gata No. 802, ad-measuring 0.69 hectare and Gata No. 132/2, ad-measuring 0.43 hectare situated in village Vishunpur Mafi, Pargana and Tehsil Sadar, District Gonda. Initially, there was a dispute in respect of the mutation between the private respondents. The Additional Commissioner (Administration), Devi Patan Mandal, Gonda passed an order on 25 January 2008 in favour of respondents 5 to 8. Respondents 1 to 3 filed a revision before the Board of Revenue, which was dismissed on 13 October 2011. Thereafter a writ petition was filed by respondents 1 to 3 (Writ Petition No. 144 (M/S) of 2012) in which an interim order was passed on 12 February 2012. In the meantime, respondents 1 to 3 filed a Suit based on title u/s 229B of the U.P.Z.A. & L.R. Act, 1950 on 15 March 2012. In view thereof, the writ petition was dismissed as infructuous on 3 July 2012. Respondents 1 to 3 filed an application for temporary injunction u/s 229D of the U.P.Z.A. & L.R. Act in the suit. The Sub-Divisional Officer/Deputy Collector, Tehsil Sadar, District Gonda passed an order of status quo on 11 May 2012. The order of status quo was not extended and the application for temporary injunction was rejected on 23 August 2013. A revision against the aforesaid order was dismissed as not maintainable, following which a writ petition was filed before the learned Single Judge in which the impugned order has been passed.

3. The learned Single Judge has held that the Deputy Collector rejected the application for temporary injunction on 23 August 2013 on the ground that the writ petition was pending before this Court, though as a matter of fact, the writ petition had already been dismissed as infructuous. Since respondents 5 to 8 had taken possession in the meantime from respondents 1 to 3, the learned Single Judge directed that the possession shall not be disturbed subject to their depositing the amount as directed before the Deputy Collector annually.

4. After having dealt with the writ petition on merits, the learned Single Judge issued the directions which have been quoted above in regard to the conduct of the Deputy Collector, namely J.P. Singh.

5. It is not in dispute that during the pendency of the writ proceedings, the record was summoned by the learned Single Judge before making the aforesaid observations quoted earlier. We have also perused the record which has been produced before the Court by the learned Standing Counsel appearing on behalf of the appellants.

6. The record indicates that an undated and unsigned application on behalf of respondents 5 to 8 was filed before the Deputy Collector during the pendency of the proceedings for the recovery of possession from respondents 1 to 3. On that application, an endorsement was made by Sri Kirti Vardhan Singh, a former Member of Parliament making a recommendation of favourable action. The Deputy Collector took that application on record. During the pendency of the proceedings before the learned Single Judge, an opportunity was granted to the Deputy Collector to explain his conduct and all that he stated was that he had not kept the letter/recommendation of Sri Kirti Vardhan Singh on record either deliberately or intentionally, but it came on his file alongwith the enquiry report submitted by the Naib Tehsildar. The Deputy Collector tendered an unconditional apology and in paragraph 8 of his affidavit, he stated as follows:

The deponent assures to this Hon"ble Court that in future he will be much careful and vigilant regarding these political activities and he will never pass any order on the basis of recommendation made by the political parties or leader and he will decide the cases on the basis of record and material available on the file.

7. The contention of the appellants is that the Deputy Collector vacated the order of injunction on 23 August 2013 noting that both the sets of the private respondents had stated that the proceedings were pending before the High Court. The fact remains that the proceedings before this Court had already been disposed of as infructuous. The earlier order of status quo was vacated, as a result of which respondents 1 to 3 were dispossessed. To accept an application which was both undated and unsigned on behalf of respondents 5 to 8 for obtaining possession of the land and particularly, when there was a recommendation of a former Member of Parliament endorsed thereon recommending favourable action was to say the least a gross irregularity on the part of the Deputy Collector. In these circumstances, the learned Single Judge was justified in taking a serious view of the conduct of the Deputy Collector and in issuing the aforesaid directions. The apology which the Deputy Collector has tendered and his assurance that he would be careful and vigilant "regarding these political activities" and that he would never pass any order on the basis of recommendations made by the political parties or their leaders and that he will decide cases on the basis of record and material available on the file only goes to emphasize the grievance of respondents 1 to 3 of having been unfairly dealt with in the proceedings. In the circumstances, we find no merit in the special appeal. The special appeal is, accordingly, dismissed. There shall be no order as to costs.