

(2016) 10 AHC CK 0009
ALLAHABAD HIGH COURT
Case No: Writ C. No. 36455 of 2016

Khursheed Sherwani

APPELLANT

Vs

Addl. Commissioner (Judicial),
Aligarh

RESPONDENT

Date of Decision: Oct. 3, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Land Revenue Act, 1901 - Section 33, Section 39

Citation: (2016) 133 RD 825

Hon'ble Judges: Anjani Kumar Mishra, J.

Bench: Single Bench

Advocate: C.S.C. Manu Singh, Advocate, for the Respondent; Vishnu Singh and Anil Kumar Rai, Advocates, for the Petitioner

Final Decision: Dismissed

Judgement

Anjani Kumar Mishra, J.- Heard Shri V.K. Singh for the petitioners, Shri Manu Singh for the Land Management Committee, respondent No. 4 and learned Standing Counsel for the State-respondents.

2. The writ petition arises out of proceedings under Section 33/39 of the U.P. Land Revenue Act and seeks a writ of certiorari for quashing the order dated 22.07.2011 passed by the respondent No. 2 and the order dated 10.09.2015 passed by the Additional Commissioner (Judicial-Ist), Aligarh Division, Aligarh.

3. The dispute in the writ petition relates to Plot No. 83 Sa area 1.248 hectares and plot no. 67 area 1.151 hectares of village Newoli.

4. The proceedings were initiated on the report of the Tehsildar that the plots in question are recorded as Naveen Parti in CH Form 45. A resolution was passed by the Gaon Sabha on 21.01.1981. In this resolution at Sr. No. 64, an allotment was

proposed in favour of the petitioner of Plot Nos. 67, 83 Sa, 85 Sa, 313 and 4. However, the resolution in so far as the proposed allotment in favour of the petitioner, the same was not approved. It was further reported that the entry in favour of the petitioner was fraudulent. No school or its play ground exists over the plots in question. The land is being cultivated on lease at the instance of the Sugar Factory, Neoli and is known as the Factory Farm.

5. Upon notice being issued to the petitioners, a reply was filed that the revenue entries are correct; the name of the petitioner had been recorded over the land in question vide order dated 25.05.1985 passed by the Sub Divisional Magistrate. It was also stated that a question of title was involved, which could not be determined in summary proceedings under Section 33/39 of the U.P. Land Revenue Act.

6. The respondent No. 2 vide order dated 22.07.2011 found the entry in favour of the petitioner to be fraudulent and without any basis. It was therefore, ordered to be expunged and the plots in question directed to be recorded as Naveen Parti, also on the ground that the petitioner had failed to adduce any evidence to show as to how it acquired the land in question.

7. Aggrieved by the order, the petitioner preferred a revision. It appears that before the revisional Court, it was urged that a resolution had been passed by the Gaon Sabha on 05.04.1985 for allotting the plots in question to the petitioner. This resolution was approved by the Sub Divisional Officer on 25.05.1985 and on its basis the name of the petitioner was recorded over the land in question.

8. This revision, filed by the petitioner, was dismissed vide order dated 10.09.2015 on the reasoning that despite opportunity, petitioner was unable to produce any evidence of an allotment in its favour. Neither the agenda, ZA Form 57Kha or Munadi etc. were filed.

9. Before this Court, learned counsel for the petitioner submitted that the orders impugned had been passed beyond the scope of Section 33/39 of the U.P. Land Revenue Act, which provisions are only for correction of papers. The impugned orders are therefore, without jurisdiction. It is also submitted that a lease could be cancelled only under Section 198 (4) of the U.P. Zamindari Abolition and Land Reforms Act. There was no proper adjudication by a competent court on the question of validity of the lease. It is also urged that the record of the allotment proceedings could have been summoned to examine its validity. The Courts below have therefore committed manifest illegality warranting interference by the writ Court.

10. In view of the submissions made, this Court vide order dated 08.08.2016 directed learned Standing Counsel to obtain instructions and to produce the record of the alleged allotment in favour of the petitioner.

11. On 24.08.2016, the original file of allotment proceedings in pursuance of the resolution of the Gaon Sabha dated 21.01.1981 was produced. Subsequently on 14.09.2016, the original Khatauni from 1392 Fasli till the start of consolidation operations in the year 1995 was also directed to be produced.

12. The original documents required by the Court were produced and the same was perused and learned counsel for the parties heard thereafter.

13. The original file of the allotment made in pursuance of the resolution of the Gaon Sabha dated 21.01.1981 reveals that a resolution was in fact passed for allotting Plot Nos. 67, 83 Sa, 85 Sa, 313 and 4 to the petitioner. However this resolution was not approved by the Sub Divisional Officer.

14. Although, learned counsel for the petitioner tried to argue that the resolution had been approved as a whole but subsequently some interpolation was made in the order and thereby the resolution, in so far as it pertained to the petitioner, was disapproved. It was also submitted that the part of the order whereby the proposal in favour of the petitioner had been disapproved was in a different ink.

15. However, when the matter was being heard finally, a pointed query was made to learned counsel for the petitioner as to the date of the alleged allotment in his favour. Learned counsel for the petitioner stated that the resolution for allotment of the land in question had been passed by the Gaon Sabha on 05.04.1985 and the same had been duly approved by the Sub Divisional Officer on 25.05.1985.

16. In view of this categorical stand taken by learned counsel for the petitioner, the question of any interpolation or overwriting in the order of the Sub Divisional Officer disapproving the resolution of the Gaon Sabha dated 21.01.1981 in favour of the petitioner loses significance and is rendered wholly irrelevant.

17. The stand of learned Standing Counsel, in so far the alleged resolution dated 05.04.1985 and its alleged approval on 25.05.1985 is concerned, is absolutely categorical. He has submitted that no file of any such allotment proceedings is available in the record room.

18. Under the circumstances, it was incumbent upon the petitioner to lead evidence to, at least prima facie, made out a case of allotment in his favour. However, not only has the petitioner failed to adduce any evidence in this regard before the Courts below, even before this court no evidence has been filed. The entire case of the petitioner is based on an Amaldaramad made in the Khatauni of 1391 to 1396 Fasli.

19. In the absence of even an iota of evidence of an allotment in favour of the petitioner, coupled with the findings returned by the two courts below that the entry in favour of the petitioner was fraudulent, the impugned orders appear to be fully justified.

20. The finding of the Courts below is, in my considered opinion, liable to be affirmed, also because, no provision exists in the Zamindari Abolition and Land Reforms Act, wherein an allotment can be made in favour of the private Educational Institution.

21. Since the revenue entry in favour of the petitioner has been found to be fraudulent and without any basis, the contention of learned counsel for the petitioner that the impugned orders, are beyond the scope of proceedings under Section 33/39 of the U.P. Land Revenue Act, cannot be accepted. The proceedings for correction of papers can expunge an entry which is found to be fraudulent and without any basis and such an order does not amount to deciding a dispute of title.

22. Besides, the contention that a lease could be cancelled only in proceedings under Section 198 (4) of the U.P. Zamindari Abolition and Land Reforms Act is also of no avail because there is no evidence that any allotment was ever made in favour of the petitioner.

23. Yet another fact, which requires mention is that the report of the Tehsildar whereupon the proceedings had been initiated, categorically mentioned that the land in question was known as the Factory Farm of a Sugar Factory and was being leased out by the Sugar Factory for cultivation and that no school or its play ground existed on the spot. This statement made in the report of the Tehsildar, which also finds a mention in the order passed by the respondent No. 2, has not been specifically challenged or controverted in the writ petition.

24. In view of the above discussion and since the submissions made, learned counsel for the petitioner have been found to be without substance, this writ petition fails and is dismissed.