

Allahabad Development Authority vs Board Of Revenue And Others on 27 March, 2025

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Bench: Ashutosh Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Reserved

Neutral Citation No. - 2025:AHC:43869

Court No. - 68

Case :- WRIT - B No. - 64760 of 2012

Petitioner :- Allahabad Development Authority

Respondent :- Board Of Revenue And Others

Counsel for Petitioner :- Arun Kumar,B.B. Paul

Counsel for Respondent :- A.A. Siddiqui,Brijesh Ojha,D.D. Chauhan,K.R.Sirohi,M.K. Rajvan
and

Case :- WRIT - B No. - 59975 of 2011

Petitioner :- Allahabad Development Authority Thru. Vice Chairman

Respondent :- Board Of Revenue Alld. And Others

Counsel for Petitioner :- A P Paul,Arun Kumar,B.B. Paul

Counsel for Respondent :- A A Siddiqui,D.D. Chauhan,Niraj Kumar Singh,Varad Nath,Vikas S
and

Case :- WRIT - B No. - 66442 of 2012

Petitioner :- Allahabad Development Authority

Respondent :- Board Of Revenue And Others

Counsel for Petitioner :- Arun Kumar,B.B. Paul

Counsel for Respondent :- Arun Kumar Gupta,Brijesh Ojha,D.D. Chauhan,Niraj Kumar Singh,S

Hon'ble Ashutosh Srivastava,J.

1. The aforesaid writ petitions raise identical questions of fact and law and are as such being decided together. The facts of Writ B No. 64760 of 2012 are being taken into consideration for deciding the issues involved. All the plots involved are stated to fall within the Municipal limits of Nagar Mahapalika, Allahabad and resumed by the State Government in exercise of powers under Section 117(6) of the U.P.Z.A. & L.R. Act.

2. Heard Shri Arun Kumar, learned counsel for the petitioner-Development Authority, Shri Rakesh Pandey, learned Senior Counsel assisted by Shri Shailesh Upadhyay for the contesting respondent nos. 7 to 13, Shri D.D. Chauhan, learned counsel for the respondent no. 5 as also Shri Brijesh Ojha, learned counsel for the Respondent No. 6 and perused the record.

3. The instant writ petition has been filed questioning the legality, propriety and correctness of the order dated 10.10.2012 passed by the Board of Revenue, U.P. at Allahabad whereby and whereunder the order of the Additional Commissioner, Allahabad Division, Allahabad has been set aside and order of the S.D.O. granting benefit under Section 122-B (4-F) of the U.P.Z.A. & L.R. Act has been upheld. A prayer not to enforce the order dated 10.10.2012 against the petitioner Development Authority has also been prayed for.

4. The dispute relates to revenue plot nos. 949 area 1 Bigha 7 Biswa and Plot No. 953 area 1 Bigha 6 Biswa situate in village Phaphamau, Pargana, Tehsil Soraon, Allahabad. It is the case of the petitioner that pursuant to notifications u/s 4 and 6 of the Land Acquisition Act dated 29.11.1990 and 12.06.1991 respectively huge chunk of land measuring 387-0-1 Bighas situate in village Phaphamau, Pargana and Tehsil Soraon, Allahabad was acquired by the State of U.P. for the petitioner Development Authority for its planned development/construction of residential colony. The possession of the acquired land was delivered to the petitioner on 19.09.1991. An award dated 18.11.2003 was issued by the S.L.A.O. Nagar Mahapalika, Allahabad to the tune of Rs.4,72,97,799.94. Besides the aforesaid acquisition certain surrounding plots belonging to the

Respondents No. 4 & 5 herein i.e. Plot No. 239, 841, 842, 925, 949 (plot in dispute), 953 (plot in dispute), 994 M were taken over by the State in exercise of power u/s 117(6) of the U.P.Z.A. & L.R. Act and possession thereof was also delivered to the petitioner Development Authority.

5. It is next contended by learned counsel for the petitioner that the Respondent No. 3 in Case No. 23 of 1990-91 (Munna Lal Vs. Gaon Sabha) u/s 122-B/229-B of the U.P.Z.A. & L.R. Act passed an order dated 26.02.1991 granting benefit of Section 122-B(4-F) of the U.P.Z.A. & L.R. Act to the private respondents in respect of Plot No. 841 area 0-14-0 and Plot No. 842 area 0-11-0. The exparte order dated 26.02.1991 was assailed in Revision No. 256 of 2006 before the Respondent No. 2, which allowed the same vide order dated 14.08.2008. The order dated 14.08.2008 was assailed in Revision before the Board of Revenue, which was allowed vide order dated 23.05.2011. The petitioner challenged the order dated 23.05.2011 before this Court by means of Writ Petition No. 59975 of 2011, which writ petition was dismissed for non prosecution on 13.12.2016 and its Restoration Application filed within time has been allowed.

6. It is further submitted that the Respondent No. 3 in Case No. 8 of 1990-91, Case No. 3 of 2004, Case No. 5 of 1990, orders were passed granting the benefit of Section 122-B(4-F) of the U.P.Z.A. & L.R. Act to the occupants however the respective orders were set aside in Revision by the Respondent No. 2. However the plots involved in the aforesaid case are not the subject matter of the instant writ petition.

7. It is next submitted that in Case No. 20 of 1990-91 (Girdhari Lal and Another Vs. Gaon Sabha) the Respondent No. 3 passed an order dated 26.02.1991 granting the benefit of Section 122-B(4-F) of the U.P.Z.A. & L.R. Act. The said case pertained to Plot Nos. 949 area 1-7-0 and 953 area 1-6-0 subject matter of the present writ petition. The order was passed on the strength of the Report dated 12.02.1991 of the Tehsildar concerned without hearing the petitioner. The petitioner preferred a time barred revision i.e. Revision No. 257 of 2006-07 (ADA Vs. Girdhari Lal and Others). Learned Additional Commissioner, Allahabad Division, Allahabad -Respondent No. 2, after contest condoned the delay in filing the revision and ultimately allowed the same vide order dated 30.11.2007. The order dated 30.11.2007 was assailed by the contesting Respondent No. 7 to 13 in Revision No. 166 of 2007 before the Board of Revenue. The Revision was allowed by the Board of Revenue vide order dated 10.10.2012, which has been impugned in the instant writ petition.

8. Shri Arun Kumar, learned counsel for the petitioner has vehemently argued that the impugned order passed by the Board of Revenue allowing the revision of the contesting Respondents No. 7 to 13 suffers from patent error of law and is liable to be set aside. He submits that the learned Additional Commissioner in his order dated 30.11.2007 had noticed that the land in dispute contained in plots no. 949 and 953 were recorded in the category of Banjar. The Lekhpal concerned in its report dated 22.01.1991 had found possession of Girdhari Lal, Banwari Lal, Lakhulal, sons of Sahadev since prior to 30.06.1985 and accordingly recommended the benefit of the Section 122-B (4-F). The report dated 22.01.1991 was approved by the Tehsildar whereafter the S.D.O. concerned granted the benefit under section 122-B(4-F) to the above persons vide order dated 26.02.1991. However, no notice was ever issued to the Gaon Sabha/State of U.P. and proceedings were undertaken exparte. Besides this, there was no evidence on record to establish the possession of the

alleged landless labourers prior to 30.06.1985. There was no evidence to show as to whether any proceedings were initiated u/s 122-B against the aforesaid persons so as to extend them the benefit under Section 122-B (4-F). It is an admitted fact that land of village Phaphamau had been acquired for ADA for its Shantipuram Residential Scheme and the plots in dispute fall within the land acquired. The revision was accordingly allowed. The Board of Revenue under the impugned order has not looked into the findings of facts recorded by the learned Commissioner and has reversed the same. The Board of Revenue has not considered the subsequent report of the Tehsildar/S.D.O dated 03.11.2007, which clearly showed that the contesting respondents were not in possession over the disputed plots. It is also vehemently submitted that the Board of Revenue completely overlooked that the provisions of Section 117 (6) of the U.P.Z.A. & L.R. Act and Section 6 of the Land Acquisition Act and its legal import to the effect that land vests absolutely in the government free from all encumbrance and no rights could accrue to the contesting respondents. The Respondents No. 7 to 13 were not landless agricultural labourers and had never been in possession of the property in question as on 30.06.1985/26.02.1991 whereas under law their alleged possession was required/stipulated to be since before 30.06.1985 and as such they were not entitled to the benefit of Section 122-B (4-F) of the U.P.Z.A. & L.R. Act. It is also submitted that in the absence of any pending proceedings under Section 122-B and / or declaratory suit under Section 229-B of U.P.Z.A. & L.R. Act, benefit under Section 122-B (4-F) of the U.P.Z.A. & L.R. Act could not be given. It is accordingly prayed that the impugned order is liable to be set aside and the writ petition allowed as prayed.

9. Per contra, Shri Rakesh Pandey, learned Senior Counsel assisted by Shri Shailesh Upadhyay, learned counsel for the contesting Respondents No. 7 to 13 submits that the impugned order dated 10.10.2012 passed by the Board of Revenue has been passed after considering all aspects of the matter and does not suffer from any infirmity warranting any interference by this Court under its extraordinary jurisdiction under Article 226 of the Constitution of India. It is the case of the contesting respondents that they are Scheduled Castes persons and being agricultural labourers have been in actual physical possession over the plots since prior to 1985 and have perfected their rights under Section 122-B of the U.P.Z.A. & L.R. Act having been granted the benefit of sub-section (4-F) of Section 122-B. The disputed plots do not form part of large chunk of land measuring 387-0-1 Bighas of village Phaphamau, Pargana and Tehsil Soraon, District Allahabad that has been acquired by State of U.P. for A.D.A. The notifications under Section 4 and 6 of the Land Acquisition Act, 1894 have deliberately not been filed. Some of the land of the village Phaphamau is stated to have been resumed in exercise of Powers under Section 117(6) of the U.P.Z.A. & L.R. Act but such power could not have been exercised in respect of the plots in dispute inasmuch as the plots in dispute were already declared Bhumidhari plots of the contesting respondents on 26.02.1991 and resumption is admittedly of the year 2005. The land does not lay in the middle of acquired land. It is accordingly prayed that the writ petition be dismissed.

10. I have heard the learned counsel for the parties and have perused the materials on records.

11. From the submissions of Shri Arun Kumar, learned counsel for the petitioner the main thrust of the argument is that the land was acquired under the Provisions of the Land Acquisition Act or was resumed in exercise of Power under Section 117(6) of U.P.Z.A. & L.R. Act and as a consequence

thereof the land in dispute stood vested in the State free from all encumbrance and no benefit could have been extended to the contesting Respondents No. 7 to 13 under Section 122-B (4-F) of the U.P.Z.A. & L.R. Act. On the other hand, the contesting respondents have specifically submitted that the plots in dispute were not the subject matter of acquisition under Section 4 and 6 of the Land Acquisition Act and the said plots could also not have been resumed as benefit under Section 122-B (4-F) of the U.P.Z.A. & L.R. Act had already been extended to the contesting respondents conferring them with the status of Bhumidhars with non-transferable rights on 26.02.1991 much prior to the date of resumption i.e. 15.02.2005.

12. The Court proceeds to test the respective submissions.

13. So far as the submissions on the part of the learned counsel for the petitioner that the plots stood acquired under Notifications dated 29.11.1990 and 12.06.1991 is concerned, the Court finds that the aforesaid Notifications have not been brought on record by the petitioner. In the counter affidavit filed by the contesting respondents, it has been categorically averred that the disputed plots have not been acquired nor any compensation has been paid in respect thereof. In the short counter affidavit, a Gazette Notification dated 13.07.1991 has been filed in which the plots do not find mention. In the rejoinder affidavit filed by the petitioner, the factum that the plots in dispute were not part of the acquisition is not disputed. This Court, under such circumstances is not impressed by the submissions of learned counsel for the petitioner that the plots were part of the acquisition proceedings and holds that the plots in dispute i.e. Plot No. 949 and 953 situate in village Phaphamau, Pargana and Tehsil Soraon, District Allahabad had not been acquired.

14. Coming to the other aspect that the plots were Gaon Sabha Land and were accordingly resumed in exercise of Powers under Section 117(6) of the U.P.Z.A. & L.R. Act, the Court finds that the plots were recorded as Banjar in the revenue records. The contesting respondents were stated to be in possession thereof since prior to 30th June 1985. The report of the Lekhpal dated 12.02.1991 noted the above fact and the said report was also approved by the Tehsildar dated 26.02.1991. The S.D.O. vide order dated 26.02.1991 conferred the status of the Bhumidhar with non-transferable rights to the contesting respondents. The land contained in the plots 949 and 953 no longer remained Gaon Sabha Land and could not have been resumed in exercise of Powers under Section 117(6) of the U.P.Z.A. & L.R. Act.

15. The Court is also not impressed with the submission of learned counsel for the petitioner that for being extended the benefit of sub-section 4-F of the Section 122-B, proceedings under Section 122-B is required to be pending. The legal position that emerges can be appreciated on the analysis of the provisions of sub-section 4-F of Section 122-B as it then existed which is reproduced below:-

"(4-F). Notwithstanding anything in the foregoing sub-Sections, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in Section 132) having occupied it from before June 30, 1985 and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no

action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and it shall be deemed that he has been admitted as bhumidhar with non-transferable rights of that land under Section 195."

16. From the bare reading of the aforesaid provision it is apparent that the intention of the legislature in incorporating the aforesaid provision was to automatically confer the rights to such occupants who has the possession as on 30th June, 1985, the status of Bhumidhar with non-transferable rights. The provision clearly contemplates that one who was in possession of the land on the relevant date, the land would stand settled with the said person conferring upon him the status of Bhumidhar with non-transferable rights. The right would be deemed to have accrued in the year 1985 itself and filing an application or registering a case claiming the benefit of the said provision subsequently would be of no ill consequence.

17. The provisions of Section 122-B (4-F) of the U.P.Z.A. & L.R. Act came to be interpreted by the Apex Court in the case of Monorey Vs. Board of Revenue reported in 2003 (5) SCC 521 wherein Para No. 9 of the judgment observed as under:-

" 9. Thus, sub-section (4-F) of Section 122-B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-section. Notwithstanding the clear language in which the deeming provision is couched and the ameliorative purpose of the legislation, the learned Single Judge of the High Court had taken the view in Ramdin Vs. Board of Revenue (followed by the same learned Judge in the instant case) that the bhumidhari rights of the occupant contemplated by sub-section (4-F) can only blossom out when there is a specific allotment order by the Land Management Committee under Section 198. According to the High Court, the deeming provision contained in sub-section (4-F) cannot be overstretched to supersede the other provisions in the Act dealing specifically with the creation of the right of bhumidhar. In other words, the view of the High Court was that a person covered by the beneficial provision contained in sub-section (4-F) will have to still go through the process of allotment under Section 198 even though he is not liable for eviction. As a corollary to this view, it was held that the occupant was not entitled to seek correction of revenue records, even if his case falls under sub-section (4-F) of Section 122-B. We hold that the view of the High Court is clearly unsustainable. It amounts to ignoring the effect of a deeming provision enacted with a definite social purpose. When once the deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as bhumidhar with non-transferable rights under Section 195, full effect must be given to it. Section 195 lays down that the Land Management Committee, with the previous approval of the Assistant Collector in charge of the sub-division, shall have the right to admit any person as bhumidhar with non-transferable rights to any vacant land (other than the land falling under Section 132) vested in the Gaon Sabha. Section 198 prescribes "the order of preference in admitting persons to land under Sections 195 and 197". The last part of sub-section (4-F) of Section 122-B

confers by a statutory fiction the status of bhumidhar with non-transferable rights on the eligible occupant of the land as if he has been admitted as such under Section 195. In substance and in effect, the deeming provision declares that the statutorily recognized bhumidhar should be as good as a person admitted to bhumidhari rights under Section 195 read with other provisions. In a way, sub-section (4-F) supplements Section 195 by specifically granting the same benefit to a person coming within the protective umbrella of that sub-section. The need to approach the Gaon Sabha under Section 195 read with Section 198 is obviated by the deeming provision contained in sub-section (4-F). We find no warrant to constrict the scope of the deeming provision."

18. In view of the above discussion, the Court is of the view that the land in dispute could not have been resumed as the land had already lost its character as a Gaon Sabha land and was deemed to be the Bhumidhari of the contesting respondents by operation of law under Section 122-B (4-F) of the U.P.Z.A. & L.R. The contention of learned counsel for the petitioner is liable to be rejected. The Court also does not find any substance on the plea on behalf of the petitioner that the land in dispute had been included in the territorial limit of Nagar Nigam, Allahabad and since the contesting respondents were claiming the benefit of Section 122-B (4-F) of the U.P.Z.A. & L.R. Act, it was incumbent upon them to prove that the land was Gaon Sabha Land inasmuch as it has always been the case of the petitioner that some land was acquired in 1990-91 and some land was resumed in the year 2005. Admittedly, the plots in dispute were not acquired. The plots are stated to have been resumed. Resumption can be only of Gaon Sabha land. If the land already vested in the Nagar Nigam, Allahabad there was no necessity of any resumption. It has already been held by the Apex Court in *Monorey @ Manohar* (Supra) that sub-section (4-F) of Section 122-B U.P.Z.A. & L.R. Act not only provides a shield to protect the possession but it also confers a positive right of Bhumidhar, an occupant of land, satisfying the criteria laid down in that sub-section. The provision confers status as Bhumidhar with non-transferable rights on the eligible occupants of land as if he has been admitted as such under Section 195 of the Act. Thus, the contesting respondents having been conferred the status of Bhumidhars with non-transferable rights which subsequently got converted into absolute rights under Sections 131-B of the U.P.Z.A. & L.R. Act can not be deprived of the conferred status. The plots could not have been resumed.

19. From the perusal of the impugned order of the Board of Revenue, the Court observes that the Board of Revenue has dealt with each and every finding recorded by the Additional Commissioner in its order dated 30.11.2007. The Board of Revenue has taken note of the report of the Tehsildar dated 12.02.1991, order of S.D.O. dated 26.02.1991 as also Khasra extract of the plots pertaining to 1398 Fasli (which corresponds to the year 1991) and noted that wheat crops had been sown thereon. The Board of Revenue has found that the learned Additional Commissioner under its order dated 30.11.2007 had not dealt with the aspect of plots not being acquired and falling within limits of Nagar Nigam. The Board of Revenue has found that the contesting respondents no. 7 to 13 were landless agricultural labourers and that the land in dispute does not fall under 132 of the U.P.Z.A. & L.R. Act. The Board of Revenue has also noted that the Additional Commissioner based his order on the report dated 03.11.2007 which was submitted after 16 years of the order of the S.D.O. (i.e. 26.02.1991) conferring the Bhumidhari with non-transferable rights to the contesting respondents.

The Board of Revenue has also taken note of the fact that acquisition is stated to have been made on 14.06.1991 whereas the order of the S.D.O. is dated 26.02.1991 much prior to the date of acquisition. The date of resumption i.e. 15.02.2005 is also subsequent.

20. The Court finds that the exercise of jurisdiction by the Board of Revenue is in accordance with law and no infirmity can be attributed to the same warranting any interference by this Court under Article 226 of the Constitution of India.

21. Accordingly, all the aforesaid writ petitions have no merit and is dismissed.

22. Parties to bear their own costs.

Order Date :- 27.3.2025 VS