

## **Gulab Singh And Ors. vs Collector Of Farrukhabad And Ors. on 16 March, 1953**

**Equivalent citations: AIR1953ALL585, AIR 1953 ALLAHABAD 585**

### **JUDGMENT**

Gurtu, J.

1. There are two writ applications arising out of proceedings taken under Section 3, U. P. Land Utilization Act, 1948 (Act 5 of 1948). Writ No. 7959 of 1951 is by certain alleged tenants of the land in question. Writ No. 7951 of 1951 is by the erstwhile landlord of the village in which the land in question was situated.
2. It is to be conceded that in view of the U. P. Zamindari Abolition and Land Reforms Act and the vesting order thereunder the applicant, the ex-landlord has no locus standi to prosecute this application. Writ Application No. 7951 of 1951 will, therefore, have to be dismissed.
3. Since these two writ applications were connected they are being dealt with together in order that the facts in the affidavits in support either of one application or the other may be used in disposing of the Writ Application No. 7959 of 1951, if necessary.
4. The case of the applicants in Writ Application No. 7959 of 1951 is that the plots mentioned in para. 2 of the affidavit filed in support of the application were settled with the applicants and with certain other persons who are opposite parties, 3rd set, for cultivation purposes by the then landlord by means of various pattas executed in April 1950 and in April 1951, and that the applicants are the tenants of the lands included in their respective pattas. The applicants allege that the plots were mostly under cultivation in 1950 though the crops in the year were not good because the lands could not be properly ploughed and also because of excessive rains. The opposite party 2, the Krishna Co-operative Society Limited, under the provisions of the Land Utilization Act, applied to the Collector Farrukhabad, to let out the plots to them for farming purposes upon a representation that the lands were still uncultivated and had not been let out to any one. The applicants allege that without any notice having been given to the applicants or delivered to the landlord or having been affixed to the chaupal or some other public place in the village an allotment of the plots in favour of the Co-operative Society was made sometime in or about July, 1951. The applicants allege that the action of the Collector in so letting out the lands is against the principles of natural justice and has deprived the applicants of their rights and that no allotment could have been made by the Collector in favour of the Co-operative Society without notice having been served as required by Section 3, U. P. Land Utilization Act, 1948. The applicants allege that they have no other speedy remedy and therefore, seek a writ of certiorari or mandamus or other direction quashing the proceedings taken by the opposite parties, the Collector and the Co-operative Society.

5. The Co-operative Society by its secretary has filed a counter-affidavit. It is alleged therein that the applicants are all mukhtar-i-ams of the landlord and have been set up by the landlord to harass the co-operative society. It is denied that the applicants or the opposite parties, third set, are tenants of the land in dispute and it is alleged that they were not given the land on pattas either in 1950 or 1951. It is alleged that the revenue records do not mention the names of the applicants or the opposite parties, third set, as tenants of the land and that the alleged pattas were not verified by the Kanungo according to the Rule 3. It is further alleged that the landlord admitted in his letter, dated 9-8-1951 to the Collector that the land had not been brought under plough and it is alleged that the plots in suit were never brought under cultivation either by the applicants or the opposite parties, third set and that no crops were ever raised by them. It is alleged that since the plots in dispute had not been let out to anybody and not cultivated they were shown in the list maintained by the Collector as culturable waste land. It is alleged that when upon a previous notice under the U. P. Land Utilization Act the landlord represented, that the lands were already let the Collector had allowed time up to 30-5-1950, to the landlord to let out the land and had directed that all plots should be leased out and a list of persons in whose favour leases had been executed should be sent, but that no such names had been sent. It was further alleged that before the present allotment order was made a notice was issued to the landlord under Section 3, Land Utilization Act which was served on the landlord through his duly authorised agent and that the service of the notice was admitted by the landlord in his Manager's letter, dated 9-8-1951. It is alleged that the land was not at all settled with any tenants and was lying waste as shown by the chart maintained by the Collector.

6. A rejoinder affidavit was filed by the applicants. It was denied that applicant 3 was a Mukhtar-i-am. It was alleged that the revenue records did not make a mention of the names of the applicants or opposite parties third set as tenants of the land in dispute because the revenue officials, via., the Kanungo and the Patwaris, had been ordered by their superior officers not to make entries in the revenue papers about the pattas given to the applicants and they refused to attest the pattas or to make entries in spite of their request for the same to them. It was reiterated that crops had been raised on most of the plots in dispute in 1950 and in all of them in 1951 on behalf of the applicants and the opposite parties third set. It was alleged that the service of the notice on the landlord was never made personally nor on his Manager, but it had been served on his Mubhtar-i-am who did not bring it to the notice of the landlord and for this negligence he was removed from service. Attached to this rejoinder affidavit are copies of the pattas executed and also copies of the representation made to the Collector wherein it was prayed that the order of allotment in favour of the Co-operative Society should be withdrawn.

7. A supplementary affidavit was filed by the Co-operative Society. It alleges that the pattas alleged to have been executed in April 1950, did not exist or they would -have been produced before the Collector in compliance with his order, dated 3-5-1950, made when the earlier notice had been issued. It was alleged that the applicants could have made an application before the revenue Court for entry of their names under the provisions of the Land Revenue Act and their failure to get their names entered is indicative of the fact that there were really no pattas in existence.

8. To the supplementary affidavit is attached the letter of the Manager of the Estate to the Planning Officer, dated 9-8-1951.

9. It runs as follows :

"With reference to your notice No. 739, dated 4-6-1951 for settlement of the plots Nos. 54/1, 609/1 of village Uncha within fifteen days I beg to inform you that the notice was received here in the office on 8-6-1951 by the sectional clerk and mukhtar-i-am of the office who unfortunately detained the paper with him for a long time without putting the same before the proper authority. It was extremely careless on the part of the clerk concerned who due to his lack of vigilance and foolishness could not understand the significance and importance of such a notice. For this act of his carelessness the clerk has been punished and the ziladar too has been suspended. In support of my above assertion I enclose the copy of the orders for your perusal.

"Last year another notice of the similar nature was received and the reply thereto was submitted on 2-5-1950 saying therein that major portion of the area has been settled. In view of the last year's reply of the notice there could hardly arise the question of settlement of the area already settled by us.

"You fully appreciate that due to sparse rains this season the settled land could not be brought under plough by this time as well. In the circumstances mentioned above I earnestly appeal to you to reconsider the cases you have settled for quashing them and giving estate settlement holders chance to cultivate their land and oblige.

In this connection I beg to request you to please pass stay orders against Hotilal and others till you finally decide the cases. Enclosures :

1. Copy of Manager's order, dated 8-8-1951 passed against the Ahalmad, Th. Shahzadey Singh.

2. Copy of Manager's order dated 8-8-1951 passed against the Zilladar, P. Tirbeni Prasad, Zilla-dar Uncha."

10. Attached to this supplementary affidavit is also an uncertified copy of the report which was made to the Collector by the District Planning Officer on 6-9-1951. It runs as follows: "Collector.

Subject : Letting of land in village Uncha and Tera Rabboo to Shri Krishna Co-operative Farming Society under your orders, dated 28-7-1951 (Flag 'A') and of 16-7-1951 Flag 'B'.

"The Manager, Tirwa Raj has represented against this allotment order on the ground that the land has already been let out by them to the cultivators. I submit my comments parawise as follows :

"Notice under Section 3, Land Utilization Act was duly served on the Muktar-i-am of the estate in person on 8-6-1951 but no objection was filed by the State till 17-7-1951 when final orders were passed by you though the prescribed period for the purpose had since been elapsed. If it was the fault or the carelessness of the subordinate staff of the State for not putting up the notice before the Manager it was their look out. This office has nothing to do with it.

"The possession of the land in question was delivered to Sri Hotilal Upadhyaya and others on 20-7-1951 through the Kanungo concerned by beat of drum in village Uncha where a permanent ziladar of the estate is posted. No facts for letting out the land, in dispute to other tenants was ever brought to the notice of the supervisor Kanungo who went on the spot for delivering the possession by the ziladar or any other representative of the estate till 9-8-1951. Had there been any tenant, he should have come forward at least at the date of the order on the spot. Besides it is not even proved from the patwari records that the lands in question have ever been held by any tenant or any registered patta was ever made in anyone's favour by the estate before the final orders passed by you in the matter.

"Some persons have filed certain objection by alleging that the land situated in village Uncha, which is in dispute had already been leased to them in April 1950 and as such it should have come under plough during last rainy season and an entry to this effect should have long been done in the patwari records.

"This plot was inspected by Shri M. K. Mukerji, Assistant Registrar, Co-operative Societies, Farrukhabad and Sri S. L. Asthana, District Agricultural Officer on 3-8-1951. The report at Flag 'D' clearly shows that they found the land in question uncultivated.

"The state has also mentioned in their objection that a similar notice was received by them and they put in objection in its reply that the major portion of the land has already been settled and will be brought under cultivation during the rains of 1950, but it has not yet been done.

"In the circumstances, there is no force in the objections filed by the Manager, Tirwa Raj, and others and may therefore be filed.

Sd/ B. K. Tandon, District Planning Officer, Faraukhabad, 6-9-1951."

11. A copy of the District Magistrate's order, dated 7-9-1951, passed on the representation of Tirwa Estate's Manager is also attached and it runs as follows :

"The land does not seem to have been cultivated which has been admitted by the Estate authorities vide Flag (C). Under the circumstances their representation has no force and is rejected."

12. Learned counsel for the applicants has argued that it has been established that the applicants and the opposite parties third set were lessees of the lands which have been allotted to the Co-operative Society. He relies upon the fact that pattas are in existence and submits that the absence of verification of these pattas by the Kanungo and the failure to get an entry into the revenue records made has been explained by him. He urges that when the first notice was issued the Collector was duly informed by the letter, dated 2-5-1950 written by the Mukhtar-i-am of the Raj that the major portion of the area covered by plots Nos. 97/1/47.74 and 609A/60.84 had been settled and would come under the plough in the coming rainy season and that it had been intimated that the rest of the area which was inferior to it would also be settled in the very near future. Learned counsel says that in view of the undertaking given the rest of the area was also settled and that the failure to send the list of persons in whose favour the leases had been executed did not matter. The co-operative Society, on the other hand, has relied upon the facts set out in the District Planning Officer's report.

13. For the purpose of these proceedings it is only necessary to examine this matter from one angle and it is this : Whether the applicants have prima facie established that they could have made a reasonable representation to the Collector if they had received notice of the fact that the lands in question which were being sought to be allotted by the Collector were the lands which could not be allotted because they were already leased and had been put under cultivation. In our view such a representation had considerable chance of being accepted by the Collector if it had been made considering the facts which have been averred in the affidavit of the applicants. It is argued that Section 3 did not entitle the applicants to any notice. This appears to be correct. However, though the tenants could not have directly represented their case if the landlord had received a notice under Section 3, he was bound to have brought the fact, which the tenants themselves might not have been entitled to bring, to the notice of the Collector directly that the lands sought to be allotted were already leased out and were being subjected to cultivation. The counsel for the applicants says that no notice as required by law was served on the landlord and, therefore, the Collector had no power to make an allotment in favour of the Co-operative Society.

14. It is an admitted fact that the notice was not served personally on the landlord but was served on the Mukhtar-i-am. It is however urged by the learned counsel for the Co-operative Society and for the State that a notice served on the Mukhtar-i-am is sufficient. It is urged that when the first notice was issued correspondence with reference to it was carried on by a Mukhtar-i-am of the estate and that the letter, dated 9-8-1951, of the Manager himself does not show that the Mukhtar-i-am was not entitled to receive the notice. The question, therefore, is whether there is anything in the language of Section 3 which prohibits the service of a notice on a Mukhtar-i-am when it is clear that the Mukhtar-i-am is the person who normally acts for the landlord. Section 3 (2), U. P. Land Utilization Act (Act 5 of 1943) runs as follows:

"The notice shall be served on the landlord by delivering or tendering to him a copy of such notice. But if the landlord is not readily traceable or refuses to accept the notice, the service shall be effected by affixing a copy of such notice to the chaupal or some other public place in the village and thereupon the landlord shall be deemed to have been sufficiently served."

15. It is urged that the section indicates that service has to be effected on the landlord himself. Learned counsel for the applicants has drawn our attention to -- 'Bam Niranjana Lal v. Addl. Dist. Magistrate, Kanpur', AIR 1952 All 822 (A). In that case the Collector made an ex parte order under Section 3, U. P. Land Utilization Act on the finding that the notice on the landlord was properly served. The finding was based on the report of the process server which was not verified by him as required by Rule 78 of the Revenue Court Manual. It was held "that the finding that the landlord had been served with notice and had deliberately absented himself from Court was based upon evidence which was not admissible in law and therefore the Court had no material on which it could assume jurisdiction to proceed ex parte against the landlord and therefore the Court acted without jurisdiction and its order was liable to be quashed under Article 226 of the Constitution."

Learned counsel for the applicants says that this case is an authority for the proposition that where some essential preliminary has not been complied with the proceedings subsequent are invalidated. He submits that in the cited case the essential preliminary to holding that the notice had been duly served was the presence of the requisite affidavits. In the failure of those affidavits it could not have been held that there was proper service and in the failure of service there could have been no order of allotment. Learned counsel says that in the present case also the essential preliminary to an order of allotment under Section 3 was that a notice should have been served on the landlord by delivering or tendering to him a copy of such notice or if the landlord was not readily traceable or refused to accept the notice the service could have been effected by affixing a copy of such notice to the chaupal or some other public place in the village.

Learned counsel submits that whether or not the landlord had a Mukhtar-i-am on whom in the absence of any express provision a notice might have been served so as to be an effective notice on the landlord would not matter as in view of the statutory requirement of Section 3 (2) of the Act the notice in this case had to be served on the landlord personally. Learned counsel argues that since this was not done there was in effect no service at all and the essential preliminary to the passing of an order under Section 3 was lacking. It is not suggested that the Mukhtar-i-am brought the notice to the attention of the landlord prior to the date of hearing the representation either. In view of this learned counsel argues that the landlord was prevented from showing that the land had already been let and was being utilised for the purpose of cultivation. Learned counsel argues that in thus depriving the landlord of an opportunity the Collector (had incidentally deprived the tenants of an opportunity of having their case put up through the landlord and thus they have been adversely affected and though the landlord's application may now have to be dismissed because of the vesting order under the Zamindari Abolition and Land Reforms Act the order of allotment would not be protected by this latter fact since the allotment order was, in any case, tainted by invalidity on account of the failure to effect a proper service of notice under Section 3 (2).

16. In our view this submission has considerable force and as we have already indicated that there was sufficient material which could have been put before the Collector if notice had been served on the landlord which would probably have led the Collector not to re-allot the land. The failure to give a proper notice under Section 3 (2) becomes all the more important.

17. The fact that there was a subsequent representation made by the landlord and that a report was put up by the planning officer and an order passed thereon could not wipe off the effects of the failure to give notice under Section 3 (2) according to law. The approach in regard to a representation which is made against an order which has already been passed may not always be the same as the approach to a representation made before an order is passed.

18. At the time when the impugned order was passed under the U. P. Land Utilization Act the right of letting the lands within the zamindari was still with the landlord. The statute clearly made an inroad upon such rights. It was, therefore, essential that before the rights under the Act were exercised the pre-requisites to the exercise of those rights were satisfied.

19. In the present case there was a clear failure to serve a notice on the landlord as required by law in consequence of which the landlord was prevented from showing that the lands had already been let and were being utilised for cultivation and the denial of this opportunity to the landlord had adversely affected the applicants, the tenants. We hold, therefore, that the allotment order of the Collector in favour of the Krishna Co-operative Society, Limited, was without jurisdiction.

20. We accordingly issue a writ of certiorari quashing the proceedings taken by opposite party 1 under the provisions of the U. P. Land Utilization Act and we also direct opposite party 2 not to cultivate the land after 20-5-1953.

21. Writ Application No. 7951 of 1951 is dismissed.