

## **Hinch Lal Tiwari vs Kamala Devi And Ors on 25 July, 2001**

**Equivalent citations: AIR 2001 SUPREME COURT 3215, 2001 (6) SCC 496, 2001 AIR SCW 2865, 2001 ALL. L. J. 2035, 2001 (4) LRI 861, 2002 (1) UJ (SC) 102, 2002 UJ(SC) 1 102, (2001) 6 JT 88 (SC), 2001 (7) SRJ 444, 2001 ALL CJ 2 1604, (2001) REVDEC 689, (2001) 3 ALL WC 2398, (2001) 4 SCALE 670, (2001) 3 SCJ 51, (2001) 2 UC 247**

**Bench: Syed Shah Mohammed Quadri, S.N. Phukan**

CASE NO. :  
Appeal (civil) 4787 of 2001

PETITIONER:  
HINCH LAL TIWARI

RESPONDENT:  
KAMALA DEVI AND ORS.

DATE OF JUDGMENT: 25/07/2001

BENCH:  
SYED SHAH MOHAMMED QUADRI & S.N. PHUKAN

JUDGMENT:

JUDGMENT 2001 Supp(1) SCR 23 The Order of the Court was as follows :

Leave is granted.

This appeal is from the judgment and order of the High Court of Judicature at Allahabad allowing in part Civil Miscellaneous Writ Petition No. 26572 of 1999, filed by Respondents 1 to 10, on 16-8-2000.

The dispute relates to Plot No. 774-KA measuring 15 biswas situated in Village Ugapur, Taluka Asnao, District Sant Ravidas Nagar (U.P.) (hereinafter referred to as "the pond"). It appears that proceeding was initiated by the Lekhpal of the village to allot plots of land to an extent of 15 biswas of the pond area on 11-8-1988. The SDO allotted 250 sq. yards to each of Respondents 1 to 10 who are said to belong to one family. Seventeen persons of that village objected to the said allotment under Rule 115-P of the U.P. Zamindari Abolition and Land Reforms Rules (for short "the Rules"). The Additional Collector called for a report from the Tahsildar on their objections but the matter seems to have rested there as the objectors withdrew their objections. At that stage the appellant filed an application praying the Additional Collector to cancel the allotment of land in favour of Respondents 1 to 10. On

25-2-1999 the Additional Collector cancelled the allotment in question made in their favour. They carried the matter unsuccessfully in revision before the Commissioner who by order dated 12-3-1999 dismissed the revision. Challenging the correctness of the order of the Divisional Commissioner the said respondents filed Writ Petition No. 26572 of 1999 in the High Court of Judicature at Allahabad. By the impugned order the High Court partly allowed the writ petition by confirming the allotment in respect of 10 biswas and cancelling in respect of 5 biswas, which led to filing of this appeal.

Mr. Ranjit Kumar, the learned Senior Counsel for the appellant vehemently contends that the power of allotment of the land is available in respect of abadi site and not in respect of a pond which is a public utility and meant for public use; that no part of it could have been allotted in favour of any person, much less in favour of Respondents 1 to 10 who do not fall in the specified categories of the beneficiaries under the Rules. He invited our attention to Section 122-C(1) which specifies the classes of land which can be earmarked for the provisions of abadi sites and pointed out that pond (talab) area is not among them. Mr. Dwivedi, the learned Senior Counsel appearing for the official respondents argued that having regard to the provisions of the Act and the Rules, it is difficult to support the allotment of the pond land in favour of Respondents 1 to 10 and that the order of cancellation of allotment is justified and valid. Mr. Garg, the learned counsel appearing for Respondents 1 to 10 submits that the Lekhpal forwarded proposals for allotment of house sites on the land which ceased to be a pond, to the Additional Collector who allotted the plots in their favour, therefore, it must be assumed that the land was treated as an abadi site in respect of which allotment of house site would be permissible.

The short question that arises for our consideration is whether the allotted land forms part of a pond (talab) and if so, can it be allotted under Section 122-C(1) of the Act.

It would be useful to refer to the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (referred to in this judgment as "the Act"). Under Section 4 of the Act, all estates shall vest in the State from the specified date. Section 117 of the Act deals with vesting of certain lands in a Gaon Sabha. Clause (vi) of the said section which is relevant for our purpose reads thus :

"117. Vesting of certain lands, etc. in Gaon Sabhas and other local authorities. - (1) At any time after the publication of the notification referred to in Section 4, the State Government may, by general or special order to be published in the manner prescribed, declare that as from a date to be specified in this behalf, all or any of the following things, namely -

(i)-(v) \* \* \*

(vi) tanks, ponds, private ferries, water channels, pathways and abadi sites, -

which had vested in the State under this Act shall vest in a Gaon Sabha or any other local authority established for the whole or part of the village in which the said things are situate, or partly in one such local authority (including a Gaon Sabha) and partly in another :Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions and conditions as may be specified in such order."

A perusal of the provision extracted above makes it clear that tanks, ponds, private ferries, water channels, pathways and abadi sites which had vested in the State under Section 4 of the Act shall vest in the Gaon Sabha or any other local authority established for the whole or any part of the village in which the said things are situate, or partly in one such local authority and partly in another, from the date specified in the notification issued by the Government in this behalf. Section 122-C authorises the Assistant Collector, in charge of the sub-division to earmark the classes of land noted hereunder either on his own motion or on the resolution of the Land Management Committee, for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans. It would be apt to refer to clause (a) of sub-section (1) of Section 122-C which reads as follows :

"122-C. Allotment of land for housing site for members of Scheduled Castes, agricultural labourers etc. - (1) The Assistant Collector in charge of the sub-division of his own motion or on the resolution of the Land Management Committee, may earmark any of the following classes of land for the provision of abadi sites for the members of the Scheduled Castes and the Scheduled Tribes and agricultural labourers and village artisans -

(a) lands referred to in clause (i) of sub-section (1) of Section 117 and vested in the Gaon Sabha under that section;"

And the said clause (i) runs as follows :

" 117. (1)(i) lands, whether cultivable or otherwise, except lands for the time being comprised in any holding or grove,\* \* \*"

The term "land"

is defined in Section 3, sub-section (14) to mean land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming. The definition excludes land dealt with in Sections 109, 143, 144 and Chapter 7. We may note that we are not concerned with the excepted categories. From a combined reading of the provisions aforementioned, it is plain that the subject-matter of allotment of house sites is lands referred to in clause (i) of sub-section (1) and not tanks, ponds, private ferries, water channels, pathways referred to in clause (vi) of sub-section (1) of Section 117 of the Act. It appears to us that due to inappropriate drafting the expression "and abadi sites" is wrongly placed in clause (vi).

It would not be out of place to notice here that Section 122-C enumerates the categories of persons who are entitled to allotment of land and they are (1) Scheduled Castes, (2) Scheduled Tribes, (3) agricultural labourers, and (4) village artisans. For disposal of this case it is unnecessary to go into the question whether in a case of allottable land, the said respondents answer the description of the beneficiaries specified in sub- section (3) of Section 122-C of the Act.

Reverting to the first part of the question, from the report of the Tahsildar dated 18-4-1990 which is termed as the first report, it is clear that in the said Survey No. 774-KA, there is a pond (talab). The same is the substance of the report of the SDO dated 20-4-1990. Two more reports were called for by the orders of the High Court. They are dated 12-9-1999 and 3-4-2000. We do not find any substantial difference between these reports and the reports prepared by the Tahsildar and the SDO. We may also mention here that in khasra khatauni for the years 1387 to 1392 Fasli (corresponding to years 1980 to 1985) and 1393 to 1398 Fasli (1986-92) the description of the said survey number is given as pond. Consistent with those entries the Additional Collector found it to be a pond (talab) and cancelled the allotment of plots in favour of the said respondents. The Commissioner rightly confirmed the order of the Additional Collector. In writ petition, the High Court, in the impugned order, noted :

"From the report of the Sub-Divisional Officer dated 3-4-2000 it is clear that the land had the character of a pond but due to passage of time most of its part became levelled. But some of the portion had still the character of a pond and during the rainy season it is covered by water. The area which is covered by water or may be covered by water in the rainy season could not be allotted as abadi site to any person."

On this finding, in our view, the High Court ought to have confirmed the order of the Commissioner. However, it proceeded to hold that considering the said report the area of 10 biswas could only be allotted and the remaining five biswas of land which have still the character of a pond, could not be allotted. In our view, it is difficult to sustain the impugned order of the High Court. There is concurrent finding that a pond exists and the area covered by it varies in the rainy season. In such a case no part of it could have been allotted to anybody for construction of house building or any allied purposes.

It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in

non-abadi sites. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will, however, be permitted to take away the material of the houses which they have constructed on the said land. If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride.

The appeal is accordingly allowed. There shall be no order as to costs.