

HINCH LAL TIWARI
v.
KAMALA DEVI AND ORS.

JULY 25, 2001

[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

U.P. Zamindari Abolition and Land Reforms Act, 1950/U.P. Zamindari Abolition and Land Reforms Rules, 1950.

Ss. 117(1)(i), (vi) and 122C(1)/Rule 115-P—Allotment of land for housing site to Scheduled Castes/Scheduled Tribes etc.—Pond area allotted to respondents—Objection to—Additional Collector as also Commissioner cancelled allotment—High Court in writ petition confirming allotment in respect of part of pond area—Held, subject matter of allotment of house sites is lands referred to in clause (i) of sub-section (1) and not tanks, ponds, etc. referred to in clause (vi) of sub-section (1) of S. 117—Order of High Court cannot be sustained—There is concurrent finding that area covered by the pond varies in rainy season—No part of it could have been allotted to respondents—Respondents shall vacate the land.

Ecology—Pond belonging to Gram Sabha—Allotment of pond area to members of Scheduled Caste for house site—Held, material resources of community like forests, tanks, ponds, hillock, mountain etc. maintain delicate ecological balance they need to be protected for a proper and healthy environment—Government having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same—State would restore the pond, develop and maintain it.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4787 of 2001.

From the Judgment and Order dated 16.8.2000 of the Allahabad High Court in C.M.P. No. 26572 of 1999.

Ranjit Kumar, Pramod Swarup, B.M. Sharma, H.L. Srivastava, C.M. Patel and T.N. Singh for the Appellant.

Dinesh Dwivedi, Kamendra Misra, R.C. Verma, Ashok Sharma and

A D.K. Garg for the Respondents.

The following Order of the Court was delivered :

Leave is granted.

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

C The dispute relates to plot No. 774-KA measuring 15 biswas situated in village Ugapur, Talluka Asnao, District Sant Ravidas Nagar (U.P.) (hereinafter referred to as pond). It appears that proceeding was initiated by Lekhpal of the village to allot plots of land to an extent of 15 biswas of the pond area on August 11, 1988. The S.D.O. 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 & Land Reforms Rules (for short, 'the Rules').

D Additional Collector called for a report from the Tehsildar on their objections but the matter seems to have rested there as the objectors withdrew their objections. At that stage the appellants filed an application praying the Additional Collector to cancel the allotment of land in favour of respondents 1 to 10. On February 25, 1999 the Additional Collector cancelled the allotment

E in question made in their favour. They carried the matter unsuccessfully in revision before the Commissioner who by order dated March 12, 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

F the High Court partly allowed the Writ Petition of confirming the allotment in respect of 10 biswas and cancelling in respect of 5 biswas, which led to filing of this appeal.

G Mr. Ranjit Kumar, the learned senior counsel for the appellants 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 122C(1) which specifies the classes of land which can be earmarked for the provisions of abadi sites and pointed out that pond (Talab)

H area is not among them.

A 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 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 122C which reads as follows:

C *"122C. Allotment of land for housing site for members of Scheduled Castes, agricultural labourers etc.*

D (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 (j) of sub-section (i) of Section 117 and vested in the Gaon Sabha under that section."

E And the said clause (i) runs as follows:

"Land whether cultivable or otherwise, except lands for the time being comprised in any holding or grove."

F 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 excluded 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 afore-mentioned 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).

H It would not be out of place to notice here that Section 122C 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 122C of the Act. A

Reverting to the first part of the question, from the report of the Tehsildar dated April 18, 1990 which is termed as the first report, it is clear that in the said survey number 774-KA there is a pond (Talab). The same is the substance of the report of the S.D.O. dated April 20, 1990. Two more reports were called for by the orders of the High Court. They are dated September 12, 1999 and April 3, 2000. We do not find any substantial difference between these reports and the reports prepared by the Tehsildar and the S.D.O. 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 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: B C D

“From the report of the Sub-Divisional Officer dated 3.4.2000 it is clear that the land had a character of the pond but due to passage of time its most of the part became levelled. But some of the portion had still the character of the 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 abadi site to any person.” E F

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 has still the character of 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 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. G

It is important to note that material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain H

A delicate ecological balance. They need to be protected for a proper and healthy environment which enable people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution. The government, including 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 public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.

For the afore-mentioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated February 25, 1999 confirmed by the Commissioner on March 12, 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 villages. Further it will also help in maintaining ecological balance and protecting 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.

R.P.

Appeal allowed.