

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE ACTING CHIEF JUSTICE SHRI MANOJ KUMAR TIWARI

22ND DECEMBER, 2023

WRIT PETITION (M/S) No. 1885 OF 2020

Bhushan Bhatia

.....Petitioner

Versus

State of Uttarakhand & others.

...Respondents

with

WRIT PETITION (M/S) No. 507 OF 2022
WRIT PETITION (M/S) No. 1903 OF 2020
WRIT PETITION (M/S) No. 1908 OF 2020
WRIT PETITION (M/S) No. 1919 OF 2020
WRIT PETITION (M/S) No. 1933 OF 2020
WRIT PETITION (M/S) No. 1934 OF 2020
WRIT PETITION (M/S) No. 1935 OF 2020
WRIT PETITION (M/S) No. 1936 OF 2020
WRIT PETITION (M/S) No. 1937 OF 2020
WRIT PETITION (M/S) No. 1938 OF 2020
WRIT PETITION (M/S) No. 1939 OF 2020
WRIT PETITION (M/S) No. 1940 OF 2020
WRIT PETITION (M/S) No. 1941 OF 2020
WRIT PETITION (M/S) No. 1942 OF 2020
WRIT PETITION (M/S) No. 1943 OF 2020
WRIT PETITION (M/S) No. 1944 OF 2020
WRIT PETITION (M/S) No. 1945 OF 2020
WRIT PETITION (M/S) No. 1952 OF 2020
WRIT PETITION (M/S) No. 1953 OF 2020
WRIT PETITION (M/S) No. 1954 OF 2020
WRIT PETITION (M/S) No. 1955 OF 2020
WRIT PETITION (M/S) No. 1956 OF 2020
WRIT PETITION (M/S) No. 1957 OF 2020
WRIT PETITION (M/S) No. 1958 OF 2020
WRIT PETITION (M/S) No. 1959 OF 2020
WRIT PETITION (M/S) No. 1964 OF 2020
WRIT PETITION (M/S) No. 1965 OF 2020
WRIT PETITION (M/S) No. 1974 OF 2020
WRIT PETITION (M/S) No. 1993 OF 2020
WRIT PETITION (M/S) No. 2000 OF 2020
WRIT PETITION (M/S) No. 2003 OF 2020
WRIT PETITION (M/S) No. 2025 OF 2020
WRIT PETITION (M/S) No. 2027 OF 2020

WRIT PETITION (M/S) No. 2033 OF 2020
WRIT PETITION (M/S) No. 2034 OF 2020
WRIT PETITION (M/S) No. 2038 OF 2020
WRIT PETITION (M/S) No. 2039 OF 2020
WRIT PETITION (M/S) No. 2040 OF 2020
WRIT PETITION (M/S) No. 2041 OF 2020
WRIT PETITION (M/S) No. 2101 OF 2020
WRIT PETITION (M/S) No. 2105 OF 2020
WRIT PETITION (M/S) No. 2110 OF 2020
WRIT PETITION (M/S) No. 2111 OF 2020
WRIT PETITION (M/S) No. 2112 OF 2020
WRIT PETITION (M/S) No. 276 OF 2021
WRIT PETITION (M/S) No. 282 OF 2021
WRIT PETITION (M/S) No. 283 OF 2021
WRIT PETITION (M/S) No. 509 OF 2022

Present:

Mr. Ramji Srivastava, Advocate for the petitioners.

Mr. Yogesh Tewari & Mr. Rajesh Pandey, Standing Counsels for the State of Uttarakhand.

Mr. Ashish Joshi, Advocate of Nagar Nigam, Dehradun.

Upon hearing the learned Counsel, the Court made the following

JUDGMENT:

Since common questions of law and fact are involved in these writ petitions, therefore are being taken up together and are being decided by this common judgment. However, for the sake of brevity, facts of Writ Petition (M/S) No. 1885 of 2020 alone are being considered.

2. Petitioners in these writ petitions have challenged the eviction order passed by Additional Tehsildar, Sadar, Dehradun in proceedings under Section 122-B of Zamindari Abolition and Land Reforms Act, 1950 (for short 'ZA&LR

Act'). Petitioners challenged the eviction order in a revision petition filed under Section 122-B(4-A) of the aforesaid Act, their revision petitions were dismissed by the Additional Collector.

3. It is not in dispute that show cause notice under Section 122-B of the ZA&LR Act was issued to petitioner by the Additional Tehsildar. Petitioner entered appearance and produced certain documents to show their continuous possession over the land in question, namely electricity bills, bill of water charges and certain tax receipts.

4. Learned Additional Tehsildar passed eviction order against petitioner on 13.12.2019, which is challenged in this writ petition. Perusal of the eviction order reveals that petitioner had contended that the land does not belong to the State Government and the same belongs to Cantonment Board, and the tax receipts have also been issued by the Cantonment Board. Petitioner had questioned maintainability of the proceedings at the instance of Gram Sabha *Mitthi Behari*, on the ground that land belongs to Cantonment Board.

5. On the other hand, it was contended on behalf of Gram Sabha that the land in question is recorded as *banjar* (barren) in revenue records, which belongs to Gram Samaj,

and the petitioner has unauthorisedly occupied the said land, which is causing loss to the Gram Sabha. It was further contended on behalf of the Gram Sabha that as per the Chalani Report of the Revenue Sub Inspector, the petitioner is liable to pay damages to the tune of Rs.8,100/-.

6. The contention raised on behalf of Gram Sabha found favour with the Additional Tehsildar, who ordered for petitioner's eviction, after recording a finding that petitioner has unauthorisedly occupied the land belonging to Gram Sabha.

7. The eviction order passed by Additional Tehsildar was unsuccessfully challenged by petitioner in Revision before Additional Collector (Administration), Dehradun. The judgment dated 09.10.2020 passed by Additional Collector, Dehradun is on record as Annexure-6 to the writ petition.

8. Perusal of the judgment passed by Revisional Court reveals that petitioner took u-turn by contending that as the land in question is now included within the limits of Municipal Corporation, Dehradun, therefore, proceedings under Section 122-B, initiated at the instance of Gram Sabha, Mitthi Behari, are not maintainable. The said contention was repelled by the Revisional Court by holding that proceedings initiated by Gram Sabha *Mitthi Behari*

cannot be held to be not maintainable only on the ground that the land in question was included within limits of Municipal Corporation, Dehradun. It was further held that the land in question is recorded in revenue records as *banjar* (barren) and there is no entry of Municipal Corporation in revenue records as owner thereof. The Revisional Court has noted in paragraph no. 2 of the judgment dated 09.10.2020 that only part of territory of Gram Sabha Mitthi Behari was included within Municipal Corporation, Dehradun and the remaining territory still continues to be within Gram Sabha. Revisional Court has placed reliance upon provision contained in Section 122-B(1) of ZA&LR Act, which authorizes the 'Land Management Committee' or a 'Local Authority' on which any property is vested under provisions of ZA&LR Act to institute proceedings for eviction and/or compensation.

9. In the judgment rendered by Revisional Court, reference to Section 47 of the U.P. Land Revenue Act, 1901 is made, which according to learned State Counsel, is a typing mistake and should be read as Section 44 of U.P. Land Revenue Act, 1901.

10. It is not in dispute that in the annual register made under sub-section (3) of Section 33 of U.P. Land

Revenue Act, 1901, the land in question is recorded as *banjar* (barren). Section 44 of the same Act provides that all entries in the annual register made under sub-section (3) of Section 33, shall be presumed to be true, until the contrary is proved.

11. Learned Revisional Court has taken note of the direction issued by Division Bench of this Court in Writ Petition (PIL) No. 47 of 2013, whereby authorities of Dehradun District were directed to remove encroachment from public roads. The Revisional Court has observed that the direction issued in the PIL was carried out and all encroachments were removed, however, petitioner again made encroachment over roadside land.

12. A conjoint reading of the eviction order and the judgment rendered by Revisional Court reveals that the stand taken by petitioner before the Revisional Court was contrary to his stand taken before the Additional Tehsildar. Before the Additional Tehsildar, petitioner had contended that the land in question belongs to Cantonment Board and the State Authorities have no concern with the said land, however, before the Revisional Court, he took the stand that the land in question was vested with the Gram Sabha *Mitthi Behari*, however, since the land in question was included

within Municipal Corporation, Dehradun by a notification issued in 2004, therefore, Gram Sabha lost the right to initiate eviction proceedings under Section 122-B of the ZA&LR Act. Petitioner, thus, admitted that the land in question belonged to Gram Sabha.

13. Learned Revisional Court has rightly relied upon Section 44 of U.P. Land Revenue Act, 1901, which creates presumption regarding correctness of entries made in the annual register/record of rights. Section 57 of the said Act also contains similar provision regarding correctness of entries in record of rights.

14. The sole contention raised by learned counsel for the petitioner is that since part of territory of Village *Mitthi Baheri* was included within Municipal limits and control over the land in question stood transferred to the Municipal Corporation, therefore, Gram Sabha *Mitthi Baheri* was not competent to initiate proceedings under Section 122-B of ZA&LR Act, 1950.

15. Learned State Counsel submits that the land in question, which was unauthorisedly occupied by the petitioner, is still recorded in the name of Gram Sabha as *banjar* (barren). He further submits that under Section 122-B (1) of ZA&LR Act not only a Gram Sabha, but, any local

authority can also initiate eviction proceedings. Thus, he submits that the ground taken for challenging the eviction order passed by Additional Tehsildar, as affirmed by Additional Collector, is not tenable in the eyes of law. Learned State Counsel further submits that an entry in the record of rights has to be presumed to be corrected and no material was brought on record by petitioner to show that the entry in the revenue record is incorrect.

16. The question regarding maintainability of the proceedings at the instance of Gram Sabha, as raised by learned counsel for the petitioner, is no longer *res integra*. A Division Bench of Hon'ble Allahabad High Court as far back as on 20.05.1970 has decided the said question in the case of *Mohammad Shafi v. Gram Sabha*, 1970 SCC OnLine All 93, in which after considering the scheme of ZA&LR Act, 1950 it was held that Gaon Sabha is entitled to perform, discharge or exercise the functions, duties and powers mentioned under the Act even when a particular parcel of land goes outside the territorial limits of the Gaon Sabha, unless a declaration transferring the rights, powers and functions in respect of such land to another local body is issued by the State Government. Paragraph nos. 14 to 19 of the said judgment are reproduced below:-

“14. Under Sec. 117, the State Government can vest in a Gaon Sabha lands whether cultivable or otherwise, which are not, for the time being, comprised in any holding or grove. This vesting has to be done by a notification in the Gazette. It is admitted between the parties that plot No. 861 was so vested in the Gaon Sabha, Bisauli. This plot was, at that time, situate within the territorial limits of Gaon Sabha, Bisauli. The vesting thus came under Sec. 117(1). Under sub-sec. (2) of Sec. 117, the State Government has been authorised to declare, by a notification, that land, which has been vested in a Gaon Sabha, shall vest in any other local authority (including a Gaon Sabha) established for the whole or part of the village, in which such land was situate. Thus, the Government can, by a notification, declare that plot No. 861 shall vest in a local authority or a Gaon Sabha other than Gaon Sabha, Bisauli, provided such other local authority or Gaon Sabha was established for the whole or part of the village in which this plot was situate. The town Area, Achhalda, was established for a part of the village Bisauli, in which this plot was situate. Hence, the State Government could have, by a notification in the Gazette, declared that the rights in this plot would vest in the Town Area, Achhalda. But, no such notification has been made.

15. Sub-sec. (2) of Sec. 117 clearly points that the mere change in the territorial limits of a Gaon Sabha by transferring particular areas from the territorial limits of the Gaon Sabha to the territories of any other local authority (including a Town Area) would not automatically divest the Gaon Sabha of the tilings specified in clauses (i) to (vi) of sub-sec. (1) (Like lands, forests, fisheries hats, bazars, etc.). The rights in such things would stand diverted transferred only if a notification in the Gazette declaring such divesting, and vesting in the Town Areas, is published. Since no such notification was made by the State Government, the rights in plot No. 861, which was vested in the Gaon Sabha, Bisauli, continued to remain so vested, and would not vest in the Town Area, Achhalda.

16. In this connection, reliance was placed upon Rule S-AAA of the Rules framed under the Panchayat Raj Act. This Rule provides that if the whole of the area of a Gaon Sabha is included in a Municipality, cantonment, notified area or Town Area, the Gaon Sabha shall cease and its assets and liabilities shall be transferred to the local body in which such area is included. Sub-Rule (2) deals with a situation when only a part of the Area is so included. Clause (a) of sub-sec. (2) provides that the funds, properties and liabilities shall be divided between the Gaon Sabha and the local body in which a part of its area has been included on the basis of population. Clause (b) then says that the immovable property shall belong to the Gaon Sabha or the local body, in which the area, on which it exists, falls, as the case may be, and its value shall not be taken into account in dividing cash money. Thus, under this Rule, the immovable property in a plot of land transferred from the

Gaon Sabha to the Town Area, shall belong to the Town Area. This would suggest that the transfer of rights in such land takes place by force of this Rule automatically, without any action or order of any authority. The learned counsel for the applicant urged that this Rule was void, because it was in conflict with sub-sec. (2) of Sec. 117, Zamindari Abolition Act; and, in the alternative, this Rule will not apply in a case of Town Area, because Town Area is, in view of the provisions of the Town Areas Act, not a body corporate. It was not entitled to hold property. Consequently, no Rule could provide that an immovable property shall belong to a Town Area. It is unnecessary to examine these contentions, because, even if it is assumed that the immovable property of the Gaon Sabha in the Area transferred to the Town Area does not stand transferred to the Town Area, the applicant's case will not improve. This, like a void transfer of property, would not, *ipso facto*, mean divesting the property rights of the Gaon Sabha. Rule 3-AAA does not provide that the situation obtaining under sub-sec. (2) of Sec. 117 would remain, if clause (b) of sub-rule (2) of Rule 3-AAA were held invalid or inapplicable. On the other hand, if it is held that the property in the plot in dispute belonged to the Town Area, then it will be a case of statutory assignment, to which Order 22, Rule 10, C.P.C., does apply, as held in *Karka Somulu v. Reddy Appalanaidu* [A.I.R. 1958 A.P. 507.] , *Rai Charan Mandal v. Bishwanath*, [A.I.R. 1915 Calcutta 103.] *Joti Lal Sah v. Sheodhayan Prashad Sah* [A.I.R. 1936 Patna 420.] . From that point of view, the decision of Dhawan, J. in *Salik Shukla's* [1962 A.L.J. 1080.] case and of A.P. Srivastava, J., in *Karan Singh's case* [Second Appeal No. 2008 of 1952, decided on October 17, 1962.] would really not apply to the instant case. Those cases were not of statutory assignments. Under the Zamindari Abolition Act, the existing rights of all persons were extinguished. The other provisions of the Act then conferred fresh rights of a different character on the occupants and other persons connected with the land. This is not a case of statutory transfer. In *Rameshww v. Mst. Ganpati Devi* [A.I.R. 1936 Lahore 652.] , Tek Chand, J., speaking for the Division Bench, held that interest referred to in Order 22, Rule 10 is the interest of a person who was a party to the suit. Under this provision, it is the transfer by assignment, creation or devolution pendente lite of the interest of such a person to another which entitles the latter to make an application to continue the suit or appeal, and not the creation of an independent right in him. Under the Zamindari Abolition Act, the preexisting rights were extinguished, and different kinds of rights were created. This was not a case of statutory assignment, but of the creation of fresh and independent rights. In the present case, whatever rights belonged to the Gaon Sabha in virtue of Sec. 34 of the U.P. Panchayat Raj Act read with Sec. 117 of the U.P. Zamindari Abolition and Land Reforms Act, stood transferred to the Town Area under Clause (b) of sub-rule (2) of Rule 3-AA. Under Sec. 34, the property belonged to the Town Area. The same stood transferred to the Town

Area. There was no change in the nature, or quality or quantum of the rights. This is a case of assignment of the interest. Since it has been effected by force of a statutory rules, the assignment is statutory, to which Order 22, Rule 10, C.P.C. will apply. The question whether Order 22, Rule 10 will apply to cases of extinguishment of interest and creation of a fresh and independent rights, upon which there was a conflict of opinion between Dhawan, J., and A.P. Srivastava, J., does not really arise in the present case.

17. Sub-sec. (3) of Sec. 117, U.P. Zamindari Abolition Act expressly provides for extra-territorial vesting of property. Under it, if a declaration has been made vesting lands in a particular Gaon Sabha, and the village or part of the village in which such land is situate, falls outside the circle of the Gaon Sabha, even then, such Gaon Sabha is entitled to perform, discharge and exercise functions, duties and powers assigned by the Zamindari Abolition Act, or the Panchayat Raj Act on a Gaon Sabha, as if the village or part of the village lay within that circle. Thus, even though a particular plot of land may go outside the territorial limits of a Gaon Sabha, yet the Gaon Sabha is entitled to continue to perform, discharge or exercise the functions, duties and powers under the mentioned Act, in spite of such transfer on the footing that part of the village lay within its circle. So, so long as the State Government does not make a declaration transferring the rights in a particular plot as well as the powers and functions in relation to that land to another local body, the pre-existing Gaon Sabha would continue to exercise its rights and perform its functions, as previously. Mere transfer of the territory from a Gaon Sabha to a Town Area will not divest the Gaon Sabha of its rights in such lands. Under sub-sec. (6), the State Government can at any time amend or cancel any declaration or notification made in respect of any of the thing mentioned in sub-sec. (1), including lands, and resume such things, and, on such resumption, the Gaon Sabha is entitled to be paid compensation on account of developments, if any, effected by it on the land. This will show that the resumption by the State Government is not automatic. It can be brought about only by a notification in the Gazette.

18. Our attention was invited to the decision of R.B. Misra, J., in *Town Area Committee Kora Jahanabad v. Rai Bahadur Adya Saran Singh* [Second Appeal No. 1983 of 1962, decided on 1st April, 1969.] , where it was held that the moment the Gaon Sabha ceased, the property would revert back to the State, from whom it had come to the Gaon Sabha, and a transfer would, therefore, have to be made by the State. This proposition may apply where the entire territories of the Gaon Sabha are transferred with the result that the Gaon Sabha ceased, but, we are unable to hold that the same consequence would follow where only a part of the area of the Gaon Sabha is transferred to a Town Area or any other local body. In such a case, the existing rights of the Gaon Sabha in the land would continue to

remain vested in the Gaon Sabha.

19. In the present case, there was no notification either under sub-sec. (3) or sub-sec. (6) of Sec. 117, Zamindari Abolition Act, divesting or resuming the property rights of the Gaon Sabha in plot No. 861. Consequently, the rights, which were vested in the Gaon Sabha, Bisauli, continued to vest in it. It was, therefore, competent to continue the appeal. The learned Civil Judge was justified in rejecting the application of the defendant-applicant. The revision has no merits, and is accordingly dismissed with costs.”

17. It is not the case of petitioner that any notification or order was issued under Section 117-A(2) divesting the powers available to Gaon Sabha in respect of the land in question and transferring the same to any other Local Authority/Municipal Corporation. Thus, the only logical conclusion would be that the Gaon Sabha *Mitthi Baheri* was competent to initiate eviction proceedings under Section 122-B of ZA&LR Act and challenge to the eviction order and the judgment rendered by Revisional Court on the ground of maintainability of proceedings is without any substance.

18. Even otherwise also, petitioner has not claimed ownership over the land in question, he has simply claimed possession. Possession, howsoever long, over public property do not create any title.

19. Thus, this Court does not find any reason to interfere with the eviction order and also the judgment passed by Revisional Court in these writ petitions.

20. Learned counsel for the petitioner then contended

that petitioners have become owner of the land in question by virtue of provision contained in Section 9 of ZA&LR Act.

Section 9 of the said Act reads as under:-

“9. Private wells, trees in *abadi* and buildings to be settled with the existing owners or occupiers thereof. - All wells, trees in *abadi* and all buildings situate within the limits of an estate belonging to or held by an intermediary or tenant or other person whether residing in the village or not, shall continue to belong to or be held by such intermediary tenant or person, as the case may be, and the site of the wells or the buildings within the area appurtenant thereto shall be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed.”

21. The said contention is bereft of merit. In the case of *Basti Ram v. Nagar Nigam Ghaziabad, 1999 RD 636*, Hon'ble Allahabad High Court held that Section 9 would be applicable only when there is evidence and proof of factum that there existed a well or building on the land in question, on the date of vesting. Section 4 of ZA&LR Act provides for vesting of estate in the State. In the case of *Ramji Rai v. Jagdish Mallah, 2004 (1) RD 568*, Hon'ble Allahabad High Court has held that right, title and interest of all intermediaries in every estate ceased and came to an end by virtue of Section 6 of the ZA&LR Act and that the same stand vested in the State of U.P. free from all encumbrances. It was further held that Section 6 is subject to the provision contained in Section 9 of the ZA&LR Act.

22. In the absence of any pleading that petitioner's

possession dates back to the date of vesting, the contention raised by learned counsel for the petitioners based on section 9 of ZA&LR Act cannot be accepted. It is not their case that their possession is prior to 01.07.1952. It is not in dispute that the vesting took effect from 01.07.1952, vide notification of the same date.

23. Even otherwise also, a new plea, which was not taken by the petitioners before learned Tehsildar or Additional Collector cannot be considered by this court in its supervisory jurisdiction.

24. In such view of the matter, writ petitions fail and are dismissed.

MANOJ KUMAR TIWARI, ACJ.

Dt: 22nd December, 2023
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