

Reserved on 27.02.2025

Delivered on 18.03.2025

Court No. - 50

Case :- WRIT - B No. - 34034 of 2003

Petitioner :- Dharmendra And Others

Respondent :- State of U.P. and Others

Counsel for Petitioner :- S.U. Khan,Kamleshwar Singh,Ram Milan Singh,Santosh Kumar Tiwari,Sudama Ji Shandilya,Tufail Hasan

Counsel for Respondent :- C.S.C.,Anuj Kumar,S P Singh,Shreeprakash Singh,Smt Archana Singh

Hon'ble Chandra Kumar Rai,J.

Order on C.M. Impleadment Application No.278416 and C.M.Stay Vacation Application No.278421 of 2015

- 1.Heard Sri Shreeprakash Singh, learned counsel for the applicant.
2. Learned counsel for the applicant submitted that applicant-Natthu should be impleaded as respondent No.6 in the instant writ petition on the ground that they are recorded tenure holders of the adjacent plot. The instant writ petition arising out of proceeding under Section 198(4) of U.P.Z.A. & L.R. Act, 1950 in respect to the agricultural lease executed in favour of petitioners, as such applicant is the necessary party in the instant petition.
3. Considering the facts and circumstances that applicant is tenure holder of the adjacent plot, the impleadment application as well as stay vacation application cannot be entertained as the present proceeding arises out of Section - 198(4) of U.P.Z.A. & L.R. Act in respect to different plot.
4. Applications are accordingly rejected.

Order on Writ Petition

1. Heard Mr B. Malik learned counsel for the petitioners, Mr Tarun Gaur learned standing counsel for the state respondents, Mr Deepak Gaur learned counsel for the Land Management Committee and Sri Shreeprakash Singh, who has applied for impleadment in the matter.

2. Brief facts of the case are that Petitioner No.1 was granted agricultural lease in respect to Plot No.133/2 area 0.065 hectare and Plot No. 1164-M area 0.010 hectare, Petitioner No.2 was granted agricultural lease in respect to Plot No.412/1 area 0.352 hectare, Petitioner No.3 was granted agricultural lease in respect to Plot No.952 area 0.093 hectare and Plot No.142/1 area 0.121 hectare, Petitioner No.4 was granted agricultural lease in respect to Plot No. 381/4 area 0.021 hectare, Petitioner No.5 was granted agriculture lease in respect to Plot No.53/-4 area 0.214 hectare and Petitioner No.6 was granted agricultural lease in respect to Plot No.381/4 area 0.211 hectare in the year 1997. On the basis of the aforementioned agricultural lease executed in favour of petitioners, the possession was delivered to the petitioners and the name of the petitioners were recorded in the revenue record. Respondent No.5-Tahsildar submitted a report dated 14.3.1997 to the effect that agricultural lease of one lease holder namely kallu has been cancelled vide order dated 20.12.1996 as such the agricultural lease executed in favour of the petitioners should be cancelled. Petitioners filed their objection on 06.09.1997 stating that they are landless labourers and the agricultural lease were executed in favour of petitioners after completion of all the formalities as required under Rule 173 of Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 (hereinafter referred to as "U.P.Z.A. & L.R. Rules"). The objection was also filed on behalf of petitioners that agricultural lease executed in favour of the petitioners was also approved Sub Divisional Magistrate, as such there is no illegality in the agricultural lease executed in favour of the petitioners. Respondent No.3-Additional Collector Jhansi Division, Jhansi vide order

dated 07.08.2000 cancelled all the agricultural lease executed in favour of the petitioners in view of the order dated 20.12.1996 passed in Case No.83 of 1993-94. Against the order dated 07. 08.2000 passed by Respondent No.3-Additional Collector, Jhansi Division, Jhansi, petitioners filed revisions before the Commissioner Jhansi Division, Jhansi which were registered as Revision No.67/3, 66/4, 68/8, 65/2, 81, 79 under section 333 of Uttar Pradesh Zaminidari Abolition and Land Reforms Act, 1950 (hereinafter referred to as U.P.Z.A.& L.R. Act). The aforementioned revisions filed by petitioners were consolidated and heard together. Respondent No.2-Additional Commissioner (Administration) Jhansi Division, Jhansi vide order dated 24.06.2003 dismissed the revisions filed by petitioners hence this Writ Petition before this Court for following reliefs:-

"(a). Issue a writ, order or direction in the nature of certiorari quashing the judgment and order dated 24.06.2003 passed by respondent No.2 contained in (annexure-6) and dated 07.08.2000 passed by respondent No.3 contained in (annexure-5) to this writ petition after summoning and perusing the original records.

(b). issue a writ, order or direction in the nature of mandamus directing the respondents not to interfere with the peaceful possession of the petitioners over their respective land being validly allotted to them."

3.This Court vide order dated 08.08.2003 entertained the matter and stayed the operation of the order dated 24.06.2003 and 07.08.2000.

4. In pursuance of the order dated 08.08.2003 no counter affidavit has been filed by State or gaon Sabha rather impleadment application along with stay vacation application as well as counter affidavit has been filed on behalf of one Natthu s/o Bajinath.

5. Learned counsel for the petitioners submitted that agricultural lease were executed in favour of petitioners in accordance with the provisions contained under U.P.Z.A.& L.R. Act as well as Rule 173 of U.P.Z.A. &

L.R. Rules. He further submitted that on the basis of lease executed in favour of petitioners, petitioners came in possession and were recorded in the revenue record. He further submitted that cancellation proceeding has been initiated in illegal and arbitrary manner and lease has been cancelled on misconceived grounds. He further submitted that revisions filed by petitioners have also been dismissed without considering the grounds as set up in the revision as well as argued before the revisional court. He submitted that petitioners belongs to schedule caste community and were landless agricultural labourers at the time of execution of lease deed in their favour, as such the cancellation of lease on the ground mentioned in the impugned orders cannot be sustained in the eye of law. He placed reliance upon judgement of this Court reported in **2009 (108) RD 315 Shital Singh versus Board of Revenue, U.P. at Allahabad and others** in respect of his arguments.

6. On the other hand, Mr. Tarun Gaur, learned Standing Counsel and Mr Deepak Gaur learned Counsel for the gaon Sabha submitted that lease executed in favour of petitioners has been rightly cancelled by the Additional Collector and order has rightly been maintained in revision. They submitted that there were irregularities in the execution of the agricultural lease as such the lease of the petitioners were rightly cancelled. They submitted that in view of the impugned orders passed by Respondent No.2 and 3 cancelling the petitioners lease, no interference is required in the matter.

7. Sri Shreeprakash Singh, learned Counsel, who has applied for impleadment appearing on behalf of proposed respondents submitted that proposed respondents are recorded tenure holders of Plot Nos.819,1186, 1187 and 1415. He further submitted that during consolidation operation Plot No. 1164 area 0.1010 hectare was recorded as Naveen parti and Plot No. 1164 is covered from water as such Petitioner No.1 is trying to disturb the possession of the answering respondents. He submitted that lease executed in favour of petitioners

have been rightly cancelled as such no interference is required against the impugned orders.

8. I have considered the arguments advanced by learned counsel for the parties and perused the record.

9. There is no dispute about the fact that petitioners were granted agricultural lease in respect to plots in question. There is also no dispute about the fact that under the impugned orders, agricultural lease executed in favour of the petitioners have been cancelled as well as revisions filed by petitioners have also been dismissed under the impugned orders.

10. To appreciate the controversy involved in the matter, perusal of Section 198 (4) of U.P.Z.A. & L.R. Act will be relevant for perusal, which is as under:-

"Section 198(4). 'The [Collector] may of his own motion and shall on the application of any person aggrieved by an allotment of land inquire in the manner prescribed into such allotment and if he is satisfied that the allotment is irregular, he may cancel the allotment and the lease, if any.'"

11. Perusal of the provision as quoted above as well as pleadings set up in the writ petition demonstrate that lease executed in favour of lease holders cannot be cancelled in casual manner. This Court in case of **Shital Singh (Supra)** has held that the allotment made in favour of lease holders cannot be cancelled on the ground of irregularities which was not so serious so as to entail cancellation of the lease. Paragraph 6 of the judgement rendered by the court in **Shital Singh (Supra)** will be relevant for perusal, which is as under:

"(6) From a perusal of the judgment of the all the Courts below I find that none of the Courts below recorded any finding as to whether Indra Narain was interested person or not. The allotment has been cancelled only on the ground of

irregularity. In the opinion of the Court the irregularity was not so serious so as to entail cancellation of the lease. The procedure had been followed for the meeting fixed on 4.1.1967 and the meeting had been adjourned for 8.1.1967. No objections had been raised with regard to the meeting fixed for 4.1.1967. Even otherwise the banzar land had been given to the persons against whom no preferential right has been claimed by any person of the village. Further almost 42 years have passed since the allotment had been made. I find no justification for cancellation of the allotment at this stage as the petitioner had continued in possession for such a long period."

12. This Court in another case reported in **2018 All. C.J. 1181 Jitendra Kumar Urf Gopal versus State of U.P. and others** has held at lease executed in favour of lease holders cannot be cancelled after long period even after there are irregularities in the patta. Paragraph Nos. 8 and 9 of the judgement rendered by the court in **Jitendra Kumar Urf Gopal (Supra)** will be relevant which is as under:-

"(8) Having heard the learned counsel for the parties, I am of the view that the impugned orders cannot be sustained. First of all, the notice was barred by limitation. Secondly, the petitioner by an order of the State had been declared a bhumidhar with transferable rights and the cancellation of the patta was of no consequence and thirdly the ground taken for the cancellation of the patta was also not in existence. If the period of limitation as is prescribed under the Act of 1950 expires then no notice can be issued even if there are irregularities in the patta. Further even if a suo motu notice is to be issued by the Collector then also the question of limitation would arise and notices have to be issued well within the time prescribed by the 1950 Act.

(9). What is more, once when a tenure holder who was earlier granted a patta becomes a bhumidhar with transferable rights, then howsoever much the patta which was granted earlier is cancelled it would not affect his right as a bhumidhar and he shall continue to remain a bhumidhar over the land in question."

13. It is also material that petitioners belong to schedule caste community and were landless agricultural labourers as such the

cancellation of lease made in favour of the petitioners was not proper exercise of jurisdiction by Respondent Nos. 2 and 3.

14. It is also material to mention that no counter affidavit has been filed by State or Gaon Sabha in the instant matter even after expiry of more than 21 years, as such there is no option except to decide the Writ Petition on the basis of averments made in the Writ Petition.

15. Considering the entire facts and circumstances of the case, the impugned orders dated 24.06.2003 passed by Respondent No.2/Additional commissioner, Jhansi Division, Jansi and 07.08.2000 passed by respondent No.3/Additional Collector, Jhansi Division, Jhansi are liable to be set aside and same are hereby set aside.

16. The Writ Petition is allowed and respondents are directed to record the name of the petitioners in the record forthwith.

17. No order as to cost.

Order Date :- 18.3.2025/PS*