

the property and puts the transferee in possession with the clear animus and on the distinct understanding that from that time onwards he shall have no right of title to the property. In such a case the owner of the property does not retain any vestige of right in regard to the property and his mental attitude towards the property is that it has ceased to belong to him altogether. The transferee after getting into possession retains the same with the clean animus that he has become the absolute owner of the property and in complete negation of any right or title of the transferor, his enjoyment is solely as owner in his right and not derivatively or in recognition of the title of any person. So far as the vendor is concerned both in mind and actual conduct, there is a total divestiture of all his right, title and interest in the property. This applies only in a case where there is a clear manifestation of the intention of the owner to divest himself of the right over the property. On the other hand in the case of an executory contract the possession of the transferee until the date of registration of the conveyance is permissive or derivative and in law is deemed to be on behalf of the owner himself. The correctness of the decision in Annamalai v. Muthiah (supra) cannot, therefore, be doubted.

(Emphasis supplied)

18. The above consideration is squarely applicable in present case on facts also that a purchaser who got into possession under an executory contract of sale would be on only permissive in character, he cannot contend that his possession was adverse and it will remain as a permissive possession in contradiction to a possession in the case of sale. Judgments relied by learned Senior Advocate for petitioner in **Puttu Singh (supra)** and **Bharit (supra)** would,

therefore, not be applicable in present case since it was in regard to 'sale' and not in regard to an 'executory contract'. Present case is squarely covered by **Achal Reddy (supra)** on facts as well as on law against the petitioner's case.

Conclusion

19. The outcome of above discussion is that there is no ground to interfere in concurrent findings of three Revenue Courts. Therefore, present writ petition is accordingly, dismissed.

(2024) 11 ILRA 205

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 21.11.2024

BEFORE

**THE HON'BLE SAURABH SHYAM
SHAMSHERY, J.**

Writ- B No. 3143 of 1993

Beer Singh

...Petitioner

Versus

Board of Revenue Alld. & Ors.

...Respondents

Counsel for the Petitioner:

C.S. Sharma, A.K. Sharma, Ajai Shankar Pathak, R.P. Singh

Counsel for the Respondents:

D.N. Tyagi, A.B.L. Gaur, Amar Jeet Singh, Ashish Kumar Shukla, Deepak Sharma, G.M. Tripathi, Gayyoor Ali, Girish Chandra Shukla, H.N. Sharma, Mahima Kushwaha, Mukesh Kumar Kushwaha, P.S. Chauhan, Raj Kamal Singh, Raj Kishore Yadav, Rajiv Sisodia, S.C.

(A) Land Revenue Law - U.P. Zamindari Abolition and Land Reforms Act, 1950 - Section 198(2) - Writ jurisdiction - Article

226 - Court of law - Court having extraordinary, equitable and discretionary jurisdiction - In extraordinary circumstances the High Court under writ jurisdiction may exercise equitable jurisdiction in the interest of justice would be relevant - Cardinal principle of exercise of extraordinary jurisdiction - In a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties - power to pass such orders as public interest dictates & equity projects.(Para - 18)

Dispute arose regarding piece of land - being part of two resolutions (1972 and 1975) - for allotment of Patta under provisions of U.P.Z.A. - 1972 resolution, though upheld, was not acted upon - 1975 resolution granted possession to petitioners - Petitioners were beneficiaries under the 1975 resolution - their possession protected by interim orders for decades - earlier resolution was later challenged on equity grounds.

(Para - 1 to 10)

HELD:- Court exercised equitable jurisdiction. Set aside orders dated 24.09.1992 and 15.07.1981. Protected petitioners' possession and directed fresh allotment proceedings to include eligible contesting respondents. (Para - 19)

Petition disposed of. (E-7)

List of Cases cited:

C.C.R.A.S. & anr. Vs Bikartan Das & ors., 2023 INSC 733

(Delivered by Hon'ble Saurabh Shyam Shamsbery, J.)

1. In the present case, a piece of land was being part of two resolutions for allotment of Patta under the provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950, which has created a

controversy and matter is reached upto this Court.

2. First resolution was adopted on 11.09.1972 and number of beneficiaries were 58. It was challenged before Additional Collector, however, rejected by order dated 10.09.1973. Surprisingly, despite this writ petition is pending for last more than three decades, copy of same was not placed on record.

3. Said order was challenged before Commissioner and a reference dated 10.06.1974 was prepared, however, copy of same is also not on record. Said reference was accepted by Board of Revenue vide order dated 29.04.1977 and revision was dismissed. Copy of order was placed on record by way of filing a supplementary affidavit and for reference the same is reproduced hereinafter:

“This is a revision petition against the order dated 10.09.1973 passed by Additional Collector, Saharanpur, in a case u/s 198(2) of the U.P. Z.A. & L.R. Act.

2. No objection has been filed against the recommendation of the Additional Commissioner. I have gone through the record. Agreeing with the recommendation of the Additional Commissioner, I dismiss the revision.”

4. During pendency of above revision, said land was again become a subject matter of a subsequent resolution dated 28.12.1975 and number of beneficiaries were 90. Said resolution was challenged, however, except that some of the beneficiaries were removed from list on the ground that they were not qualified, rest of resolution was upheld vide order dated 30.03.1978. Surprisingly, earlier resolution dated 11.09.1972 as well as proceedings

referred above which reached till Board of Revenue, were not even referred in said order.

5. Above referred order dated 30.03.1978 was challenged and a reference dated 15.07.1981 was made. Relevant part of the order dated 30.03.1978 and reference dated 15.07.1981 is reproduced hereinafter:

Relevant part of order dated 30.03.1978:

"लेखपाल के बयान तथा तहसील आख्या से यह सिद्ध होती है कि प्रस्ताव दिनांक 28-12-1975 की समस्त कार्यवाही नियमानुसार की गई है जो लेखपाल के बयान तथा अन्य साक्ष्यों से यह भी सिद्ध होता है कि प्रस्ताव के समय विवादित भूमि खाली थी और गाँव सभा सम्पत्ति थी जिसको आबन्टन करने का पूरा अधिकारी भू० प्र० सं० को था ।

वादी पक्ष के विद्वान अभिभाषक ने मेरा ध्यान लेखपाल के बयान की ओर आकर्षित किया तथा तर्क किया कि इस प्रस्ताव द्वारा कुछ ऐसे व्यक्तियों को आबन्टन किया गया है जो पात्र व्यक्ति नहीं थे और उनमें से कुछ के पास 12 एकड़ से भी अधिक भूमि है। लेखपाल के बयान से यह सिद्ध होता है कि महावीर तथा सतबिरम के पिता के पास 12 एकड़ से अधिक भूमि है और सब इकट्ठे ही रहते हैं। इसके अतिरिक्त दयाराम, रघुवीर तथा समवा पुत्रगण नरपत तथा कलीराम तथा बीर के पास आबन्टन से पूर्व 55 बीघा

पुख्ता से अधिक भूमि थी। और वर्तमान विवादित प्रस्ताव द्वारा उनके पक्ष में 2-2 बीघा पुख्ता भूमि का आबन्टन और कर दिया गया है जिस कारण से उन सबके पास 31/8 एकड़ से अधिक भूमि हो गई है जो कानून के अर्न्तगत नहीं हो सकती है।

जहाँ तक शेष व्यक्तियों के आबन्टन का प्रश्न है लेखपाल के बयान से सि.. कि वे भूमिहीन तथा खेतिहर मजदूर हैं और उनके पास किसी के पास भी अलाट शुदा भूमि को सम्मिलित करते हुये 31/8 एकड़ से अधिक भूमि नहीं है। इस कारण शेष व्यक्तियों के पक्ष में किया गया प्रस्ताव नियमित है और उसमें किसी प्रकार कौहित की आवश्यकता मैं नहीं समझता हूँ ।

अतः विपक्षीगण सिधा पुत्र बारु, सरथा, रघुवीर तथा दया राम पुत्रगण नरपत कलोराम पुत्र बारु तथा महावीर एवं सतबिरम पुत्रगण रतन के पक्ष में किया गया प्रस्ताव निरस्त किया जाता है विवादित भूमि खसरा नम्बर 344/1-4-0, 341/0-16-0, 341/2--0, 4/0-9-15, 1-0/0-9-10, 341/1-4-0, 292/0-12-0, 293/0-13-0, 294/0-12, 290/0-2-0, 292/0-2-0, 136/2-6-7, 300/2-0-0 तथा 300/2-0-0 ग्राम सभा में नीहित की जाती है। विपक्षीगण को तुरन्त विवादित भूमि से बेदखल किया जावे तथा राजस्व अभिलेख तदानुसार दुरुस्त किये जावे। भू०प्र०सं० विवादित भूमि का कब्जा विपक्षीगण से प्राप्त करें।

आदेश की प्रति तहसीलदार/भू० प्र०स० को सूचनार्थ तथा आवश्यक कार्यवाही हेतु भेजी जावे।"

Relevant part of order dated 15.07.1981:

"माननीय राजस्व परिषद के आदेश दिनांक 29-4-77 को देखने से स्पष्ट है कि आबन्टन दिनांक 11-9-72 को वैध माना गया है अतः जब तक राजस्व परिषद की इस फाइन्डिंग को किसी उच्च न्यायालय से रद्द नहीं किया जाता तब तक यह नहीं समझा जा सकता कि वह आबन्टन अवैध है। 11-9-72 का आबन्टन जब तक वैध है तब तक गाँव सभा को दुबारा इस भूमि का आबन्टन करने का कोई अधिकार नहीं है।

उपरोक्त परिस्थिति में अवर न्यायालय का आदेश गलत है।

निगरानी स्वीकार किये जाने की संस्तुति माननीय राजस्व परिषद से की जाती है। तथा अवर न्यायालय का आदेश निरस्त किया जाता है।

असन्तुष्ट पक्ष अपनी आपत्ति यदि कोई हो 30 दिन के अन्दर प्रस्तुत कर सकता है।"

6. Thereafter, Board of Revenue accepted the reference and revision was allowed vide order dated 24.04.1992 and relevant part thereof is mentioned hereinafter:

"5. स्पष्ट है कि जो आबन्टन जिला वगैरह को 11-9-72 को हुआ था वह

अन्ततोगत्वा राजस्व परिषद द्वारा 24-7-77 को वैध माना गया, जब इसे चुनौती नहीं दी जा सकती और एक बार आबन्टित भूमि दोबारा किसी को आबन्टित नहीं की जा सकती। जिला के लिए यह जरूरी नहीं था कि सभी आबन्टियों को फरीक बनाये क्यों कि सन् 75 के प्रस्ताव में और भी भूमि निहित है वह केवल उसी भूमि के आबन्टन को चुनौती दे सका था जो सन् 72 के प्रस्ताव में थी और उन व्यक्तियों को फरीक बनाया गया। यदि कुछ भूखण्ड आबादी हो गये हैं तो आबादी की भूमि से किसी को बेदखल नहीं किया जा सकता। जहाँ तक चारागाह सुरक्षित करने का प्रश्न है एक बार आबन्टित भूमि को दोबारा आबन्टन करने का अधिकार गाँव सभा को नहीं था। इन परिस्थितियों में बाद का आबन्टन अवैध है।

विपाक्षीगण के विद्वान अधिवक्ता ने यह भी तर्क प्रस्तुत किया कि आबन्टिगण भूमिहिन हरिजन हैं अतः उन्हें कब्जे के आधार पर धारा 122 बी (4-एफ) के अन्तर्गत असंक्रमणीय भूमिधर के अधिकार मिलने चाहिए, मैं इस तर्क से सहमत नहीं हूँ जो भूमि एक बार आबन्टित कर दी गयी है उस पर यदि किसी का कब्जा भी है और पट्टे के आधार पर वह काबिज है तो उस कब्जे के आधार पर किसी को अधिकार नहीं मिल सकते। अपर जिलाधिकारी के निर्णय के अवलोकन से स्पष्ट है कि उन्होंने 11-9-72 के प्रस्ताव

को प्रस्ताव ही नहीं माना क्यों कि न इसका अमलदरामद किया गया और न कोई पट्टा लिया गया। यह वैधानिक स्थिति उचित नहीं है। जब प्रस्ताव को ही चुनौती दे दी गयी तो जब तक मुकदमा अंतिम रूप से निर्णीत न हो पट्टा करने का प्रश्न ही नहीं था। अपर जिलाधिकारी को राजस्व परिषद का आदेश हो जाने के बाद 11-9-72 के प्रस्ताव में कोई भी कमी निकालने का कोई अधिकार ही नहीं था। वह मामला अब अतिम हो चुका है। यह भी तर्क प्रस्तुत किया गया कि 28-12-75 के आबन्टिन के समय जब एक बार प्रस्ताव हो गया तो यदि कब्जा नहीं दिलाया गया और मुकदमा चलने लगा तो उससे भूमि खाली है या नहीं इससे कोई अन्तर नहीं पड़ेगा ।

7. इन परिस्थितियों में अपर आयुक्त की सुस्तुति पूर्णतया स्वीकार करने योग्य है अतः मैं यह सन्दर्भ स्वीकार करके निगरानी स्वीकार करते हुए अपर जिलाधिकारी का आदेश इस सीमा तक संशोधित करता हूँ कि 11-9-72 के प्रस्ताव द्वारा जो भूमि जिला तथा अन्य व्यक्तियों को आबन्टित की गयी है उस भूमि का आबन्टन दोबारा करना अवैध है और वह आबन्टन निरस्त किया जाता है।"

7. Aforesaid orders are challenged before this Court at the behest of petitioners, i.e., as many as 64 beneficiaries of subsequent resolution.

8. This Court vide order dated 03.02.1993 directed that writ petitioners will not be dispossessed from land in dispute in pursuance of impugned order.

9. Sri Ajay Kumar Sharma, learned counsel for petitioners submitted that earlier resolution dated 11.09.1972 was void ab initio since it was neither approved nor it was acted upon, whereas proceedings arising out of subsequent resolution dated 28.12.1975 were not only with prior approval but it was acted upon so much as that allotted land was handed over to its beneficiaries, i.e., atleast to the petitioners.

10. Learned counsel for petitioners further referred few paragraphs of counter affidavit filed by State-Respondents that it was admitted that a meeting of Land Management Committee of concerned Gaon Sabha was conducted on 11.09.1972 but it was not approved. Learned counsel also submitted that equity is in favour of petitioners as their possession is protected since 1975 and even by this Court for last more than three decades.

11. Per contra, Sri Rajeev Sisodia as well as Sri Girish Chandra Shukla, Advocates for contesting-respondents, submitted that once the earlier resolution dated 11.09.1972 was got confirmed upto Board of Revenue, Gaon Sabha was not empowered to put the said land for the purpose of allotment of Patta again and he referred relevant paragraphs of impugned orders dated 15.07.1981 and 24.09.1992, which were passed on same reasons. They further submitted that question of equity will rise only if subsequent resolution dated 28.12.1975 was legally adopted, however, the facts as referred above and noted in impugned orders, the said exercise of allotment was void ab initio.

12. Sri Abhishek Kumar Srivastava, learned Additional Chief Standing Counsel for State-Respondents, has not denied that resolution dated 11.09.1972 was adopted but it was not approved in accordance with law, however, he also referred later part of counter affidavit that legal position, so far as no subsequent resolution could be adopted of the same land when earlier resolution was specifically stated and that it was rightly upheld by impugned orders and that in subsequent part of counter affidavit the averments of writ petition were specifically denied.

13. Heard learned counsel for parties and perused the material available on record.

14. The Court has heard this matter in writ jurisdiction under Article 226 of the Constitution which undisputedly not only a Court of law but it is a Court having extraordinary, equitable and discretionary jurisdiction also.

15. As referred above, a challenged to earlier resolution dated 11.09.1972 got failed and it was upheld up to Board of Revenue by order dated 29.04.1977 which has attained finality, therefore, without taking note of it a subsequent resolution for allotment of land and consequent granting possession on face of it was erroneous.

16. The question, whether earlier resolution was ever approved, could not be looked into without challenge to it. However even in such circumstances a fact remained undisputed that subsequent resolution was admittedly approved and possession was handed over to its beneficiaries atleast to the petitioners and is being protected for last three and half decades on basis of an interim order of this

Court, whereas admittedly no possession was handed over to beneficiaries in pursuance of earlier resolution.

17. In these circumstances this Court has to balance equity between petitioners' possession which is protected for last many decades without any dispute as they are eligible persons for allotment though procedure might not be proper and the earlier resolution which was upheld upto the Board of Revenue but no possession was handed over to its beneficiaries i.e. admittedly not acted upon. Therefore, the Court is of considered opinion that at this stage, in case petitioners are dispossessed they will be more prejudiced and will suffer irreparable loss in comparison to the beneficiaries of earlier resolution, who were never put into possession of allotted land.

18. At this stage, the Court refers relevant part of a judgment passed by Supreme Court in the case of **Central Council for Research in Ayurvedic Sciences and another vs. Bikartan Das and others, 2023 INSC 733** that in extraordinary circumstances the High Court under writ jurisdiction may exercise equitable jurisdiction in the interest of justice would be relevant and it's para 51 is, therefore, reproduced hereinafter:

“51. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an

extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.”

(Emphasis supplied)

19. In aforesaid circumstances, equitable jurisdiction of this Court is being exercised and possession of petitioners only is protected. Impugned judgment and orders dated 24.09.1992 and 15.07.1981 are interfered and accordingly set aside. However, it is directed that State will conduct a fresh allotment proceedings and will include contesting-respondents, if still they are eligible for allotment under relevant provisions, including others also. Said exercise will be concluded within a period of six months from today, if there is no legal impediment.

20. With aforesaid observations/directions, this writ petition is disposed of.

(2024) 11 ILRA 211
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 19.11.2024

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ- B No. 3319 of 2022

Suraj Singh @ Suraj Dev ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Bhupendra Kumar Yadav, Dinesh Rai,
 Manvendra Nath Singh

Counsel for the Respondents:

C.S.C., Shri Krishan Yadav, Vishnu Murti
 Tripathi

(A) Land Law - Consolidation of Holdings - Orders regarding Chak allotment under U.P.C.H. Act under challenge - Uttar Pradesh Consolidation of Holdings Act, 1953 - Section 19 - Conditions for Consolidation Scheme, Section 21(2) - Appeals, Section 48 - Revisional Powers of Deputy Director - Compact area - Source of irrigation - Rectangulation - Chak Objection - Chak Appeal - Chak revision - Tenure holder be allotted Chak as far as possible on his original largest holding considering the source of irrigation of tenure holder copuled with the process of rectangulation of Chak of tenure holder.(Para -11)

Petitioner, holder of Chak Nos. 799 and 800 - challenged allocation of chaks made under consolidation proceedings - objection was partially allowed by Consolidation Officer - subsequent appeal and revision were dismissed - sought allotment on his original holdings (536 and 539) - claiming that current allocation (496 and others) was unfit for cultivation due to its L-shape - which was denied by authorities. (Para 2, 4)

HELD: - Petitioner's allotment of Chak to his source of irrigation was adjusted on plot no. 496. No illegality in allotment of the Chak to the petitioner by Consolidation Officer. Consolidation Officer dismissed an appeal to allocate the Chak to other holdings. Deputy Director of Consolidation also dismissed a revision under