

CASE NO.:
Appeal (civil) 4654 of 1998

PETITIONER:
MANOREY ALIAS MANOHAR

RESPONDENT:
BOARD OF REVENUE (U.P.) & ORS.

DATE OF JUDGMENT: 02/04/2003

BENCH:
K.G. BALAKRISHNAN & P. VENKATARAMA REDDI

JUDGMENT:

JUDGMENT

P.VENKATARAMA REDDI, J.

Aggrieved by the following order of the Board of Revenue, U.P., the appellant herein preferred Writ Petition under Article 226 of the Constitution in the High Court at Allahabad:

"The proceedings began on an application dt. 20-12-1990 moved by Manorey for declaration of rights u/s 122-B (4-F) Z.A. Act. Two courts have allowed.

No application is supportable under this Section. Revision is allowed. Orders of two courts below is set aside. Application is dismissed."

The High Court upheld the view of the Board of Revenue and dismissed the Writ Petition. In doing so, the High Court followed its earlier decision reported in Ramdin Vs. Board of Revenue [(1994) Revenue Decisions, Page 388]. The present appeal is directed against that order of the High Court.

Going by the orders of the Board of Revenue and the High Court, the maintainability of an application seeking recognition of right under Section 122B(4F) of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as 'the Act') is the issue that loomed large before the Board and the High Court. We are of the view that it would be travesty of justice to deny relief to the appellant who is a Scheduled caste agricultural labourer and relegate him to an unfortunate situation of being left without remedy though he has a statutory right to continue in possession and enjoyment of the land. The High Court seems to have taken a narrow view of the rights and remedies of the appellant, leaving him to pursue a tortuous course of litigation to safeguard his rights.

The brief facts are these: The appellant who is a landless labourer belonging to scheduled caste filed an application before the S.D.O., Konch on 20.12.1990 stating that he had been cultivating the land admeasuring 2.45 acres since 14-15 years and that the said land was leased out to others (respondents herein) in the year 1990 by the Gaon Sabha of Torna village treating it as fallow land. The said allotment was approved by the S.D.O., Konch on 14.11.1990. Apprehending that the appellant will be evicted, he filed an application on 20.12.1990 before the S.D.O., Konch for

protection of his right under sub-Section (4F) of Section 122B of the Act and to direct necessary amendments to be made in the revenue records. It appears that in the relevant record, the Gaon Sabha was shown to be holding the land in question which got vested in it under Section 117-(1)(i) of the Act, on the publication of a Notification under Section 4. The S.D.O. on inquiry held that the petitioner was continuously in possession prior to 30th June, 1975 (it is not clear whether the correct year is 1975 or 1985) and continued to be so even on the date of allotment of the land to a third party. He referred to sub-Section 4F of Section 122B and held that rights over the land accrued to him under the said provision. He therefore directed that the name of the appellant should be recorded as bhumidhar with non transferable right by deleting the name of Gaon Sabha in the records. On appeal preferred by the State of U.P., the Gaon Sabha and the allottees of land (R-2 to R-5 herein) the appellate authority i.e., Additional Commissioner (Judicial), Jhansi Division agreed with the findings of the S.D.O. that the respondent (appellant herein) had been in continuous possession prior to and after 30th June, 1985 and as he is a member of Scheduled caste, his right under Section 122B(4F) was established. The appellate authority also observed that the land was not vacant at the time of grant of lease by the Gaon Sabha. Both the authorities referred to entries in khasras for the crop years 1389-1391 faslis (corresponding to 1979-1981) and irrigation receipts pertaining to 1393-1397 faslis.

Though all the respondents were served, none of them entered appearance and therefore the appeal has been considered ex-parte.

To appreciate the issue, the reference to Section 122B is necessary. The said Section prescribes the procedure for eviction of a person wrongfully occupying or damaging or misappropriating the property vested in a gaon sabha or a local authority. The Land Management committee or local authority, as the case may be, shall inform the Assistant Collector and thereupon the Assistant Collector should issue notice to the person concerned to show cause. If the Assistant Collector is not satisfied with the explanation, he may direct eviction by using force if necessary and may further direct that compensation be recovered from such person as arrears of land revenue. The person aggrieved has a right of revision to the Collector and he can also file a suit to establish his right. Sub-Section (4F) is the crucial provision which at the relevant time reads as follows:

"[4F] Notwithstanding anything in the foregoing sub-Sections, where any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe is in occupation of any land vested in a Gaon Sabha under Section 117 (not being land mentioned in Section 132) having occupied it from before June 30, 1985 and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asami, does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and it shall be deemed that he has been admitted as bhumidhar with non-transferable rights of that land under Section 195.]"

It is true that the application of the nature filed by the appellant does not fall within the four corners of Section 122B. Sub-Sections (1), (2) & (3) of Section 122B only empower the Assistant Collector to initiate action on the basis of information received by him to put an end to misuse or unauthorized occupation of the property

belonging to Gaon Sabha or a local authority. It does not specifically provide for the entertainment of an application by a person who seeks protection of his rights under sub-Section (4F). But, that is of no material consequence in view of what emerges from the discussion that follows.

First, the endeavour should be to analyze and identify the nature of the right or protection conferred by sub-Section (4F) of Section 122B. Sub-Sections (1) to (3) and the ancillary provisions upto sub-Section (4E) deal inter alia with the procedure for eviction of unauthorized occupants of land vested in Gaon Sabha. Sub-Section (4F) carves out an exception in favour of an agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe having land below the ceiling of 3.125 acres. Irrespective of the circumstances in which such eligible person occupied the land vested in Gaon Sabha (other than the land mentioned in Section 132), no action to evict him shall be taken and moreover, he shall be deemed to have been admitted as a Bhumidhar with non transferable rights over the land, provided he satisfies the conditions specified in the sub-Section. According to the findings of the Sub-Divisional Officer as well as the appellate authority, the appellant does satisfy the conditions. If so, two legal consequences follow. Such occupant of the land shall not be evicted by taking recourse to sub-Section (1) to (3) of Section 122B. It means that the occupant of the land who satisfies the conditions under sub-Section (4F) is entitled to safeguard his possession as against the Gaon Sabha. The second and more important right which sub-Section (4F) confers on him is that he is endowed with the rights of a Bhumidhar with non transferable rights. The deeming provision has been specifically enacted as a measure of agrarian reform, with a thrust on socio-economic justice. The statutorily conferred right of Bhumidhar with non-transferable rights finds its echo in clause (b) of Section 131. Any person who acquires the rights of Bhumidhar under or in accordance with the provisions of the Act is recognized under Section 131 as falling within the class of Bhumidhar. The right acquired or accrued under sub-Section (4F) is one such right that falls within the purview of Section 131(b). Thus, sub-Section (4F) of Section 122B not merely provides a shield to protect the possession as opined by the High Court, but it also confers a positive right of Bhumidhar on the occupant of the land satisfying the criteria laid down in that sub-Section. Notwithstanding the clear language in which the deeming provision is couched and the ameliorative purpose of the legislation, the learned single Judge of the High Court had taken the view in Ramdin Vs. Board of Revenue (supra) (followed by the same learned Judge in the instant case) that the Bhumidhari rights of the occupant contemplated by sub-Section (4F) can only blossom out when there is a specific allotment order by the Land Management Committee under Section 198. According to the High Court, the deeming provision contained in sub-Section (4F) cannot be overstretched to supersede the other provisions in the Act dealing specifically with the creation of the right of Bhumidhar. In other words, the view of the High Court was that a person covered by the beneficial provision contained in sub-Section (4F) will have to still go through the process of allotment under Section 198 even though he is not liable for eviction. As a corollary to this view, it was held that the occupant was not entitled to seek correction of revenue records, even if his case falls under sub-Section (4F) of Section 122B. We hold that the view of the High Court is clearly unsustainable. It amounts to ignoring the effect of a deeming provision enacted with a definite social purpose. When once the deeming provision unequivocally provides for the admission of the person satisfying the requisite criteria laid down in the provision as Bhumidhar with non-transferable rights under Section 195, full effect must be given to it. Section 195 lays down that the Land Management Committee,

with the previous approval of the Assistant Collector in-charge of the Sub Division, shall have the right to admit any person as Bhumidhar with non-transferable rights to any vacant land (other than the land falling under Section 132) vested in the Gaon Sabha. Section 198 prescribes "the order of preference in admitting persons to land under Sections 195 and 197". The last part of sub-Section (4F) of Section 122B confers by a statutory fiction the status of Bhumidhar with non transferable rights on the eligible occupant of the land as if he has been admitted as such under Section 195. In substance and in effect, the deeming provision declares that the statutorily recognized Bhumidhar should be as good as a person admitted to Bhumidhari rights under Section 195 read with other provisions. In a way, sub-Section (4F) supplements Section 195 by specifically granting the same benefit to a person coming within the protective umbrella of that sub-Section. The need to approach the Gaon Sabha under Section 195 read with Section 198 is obviated by the deeming provision contained in sub-Section (4F). We find no warrant to constrict the scope of deeming provision.

That being the legal position, there is no bar against an application being made by the eligible person coming within the four corners of sub-Section (4F) to effect necessary changes in the revenue record. When once the claim of the applicant is accepted, it is the bounden duty of the concerned revenue authorities to make necessary entries in revenue records to give effect to the statutory mandate. The obligation to do so arises by necessary implication by reason of the statutory right vested in the person coming within the ambit of sub-Section (4F). The lack of specific provision for making an application under the Act is no ground to dismiss the application as not maintainable. The revenue records should naturally fall in line with the rights statutorily recognized. The Sub-Divisional Officer was therefore within his rights to allow the application and direct the correction of the records. The Board of Revenue and the High Court should not have set aside that order. The fact that the Land Management Committee of Gaon Sabha had created lease hold rights in favour of the respondents herein is of no consequence. Such lease, in the face of the statutory right of the appellant, is nonest in the eye of law and is liable to be ignored.

It is surprising that the State of U.P. had chosen to file an appeal against the order of the S.D.O., in tandem with the Gaon Sabha. It seems to be a clear case of non-application of mind on the part of the concerned authorities of the State who are supposed to effectuate the socio-economic objective of the legislation.

The appeal is allowed. The orders of the Board of Revenue and the High Court are set aside. The S.D.O's order is restored. No costs.