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ALLAHABAD HIGH COURT (LUCKNOW BENCH)

RAM BHUJHARAT SINGH INTER COLLEGE, ERSTWHILE JANTA
JANARADAN — Appellant

Vs.

BOARD OF REVENUE, U.P.LUCKNOW AND OTHERS — Respondent

(Before : Shri Narayan Shukla, J)

Writ Petition No. 4965 of 2010 (M/S)

Decided on : 25-08-2010

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 195

A. Land Revenue Act, Section 33/39 — Correction of Entries — Substantial Rights — Section 33/39 of the Land Revenue Act (likely U.P. Land Revenue Act, 1901) is intended to correct clerical errors, not to divest a party of substantial rights, especially where a long tenure entry in revenue records and a lease are present. (Para 2)

B. Land Allotment — Educational Institutions — Private Institutions — Section 195 of the U.P. Zamindari Abolition and Land Reforms Act (U.P.Z.A. & L.R. Act) does not permit land allotment by the Land Management Committee to private educational institutions. Erroneous allotment or long possession based on such an invalid lease does not create a perpetual right. (Paras 5, 6)

C. Bona Fide Belief — Legitimate Expectation — Equitable Relief — Where a party has constructed a building and is running a school based on a bona fide belief in the validity of a long-standing lease, and expresses willingness to offer equivalent private land to the Gaon Sabha, authorities may be restrained from taking adverse action, subject to the exchange of land. This provides an

equitable solution despite the initial invalidity of the lease. (Para 6)

D. Abatement of Proceedings — Final Determination — When a writ petition finally determines the rights and issues in dispute, a pending revision before a lower authority (Board of Revenue) on the same matter stands abated in light of the High Court's observations and directions. (Para 7)

JUDGMENT

Shri Narayan Shukla, J

1. Supplementary affidavit filed today is taken on record. Heard learned Counsel for the petitioner and learned Standing Counsel.

2. On the basis of lease granted by the Land Management Committee to the petitioner institution as well as long tenure entry in the revenue record, the petitioner has challenged the order passed by the revenue authorities in exercise of power provided under section 33/39 of the Land Revenue Act, on the ground that under the provisions of that very section only the clerical error can be corrected, but substantial right of the petitioner cannot be taken away. In support of his submissions he also cited some decisions of the Board of Revenue as well as of this Court, which are quoted herein below:

(1) Janki Prasad v. Nand Kumar, 2004 (96) RD 151 (BR).

(2) M/s. Mahalakshmi Land and Finance Co. (Private) Ltd. v. Board of Revenue, U.P., Lucknow and others., 1997 (15) LCD 273.

(3) Smt. Saroj Singh and another v. Board of Revenue, Lucknow and others., 2008 (105) RD 698 (HCLB).

3. He further informs that though he has challenged the order passed by the Sub Divisional Officer and the Board of Revenue through the Revision No. 3084/LR/200910, but since he has a prima facie case he has approached this Court for declaration of his right for possession over the land in dispute during the pendency of revision.

4. The learned Counsel for the petitioner further informs that under the bonafide belief of his right, the petitioner has constructed the building also and a School after receiving recognition from the educational body is running thereon.

5. Thus, he submits that if this Court does not interfere in the matter, the institution, which is in the interest of students may be finished. He further informs that likewise several other institutions have been allotted the land where the schools are running without any action adverse against them. However, though he claims his substantive right of allotment under section 195 of the U.P.Z.A. and L.R.Act, but I am of the view that the same is not open for the private educational institution.

6. The lease was granted on 1.8.1967 and 5.10.1974 in favour of the petitioner. Since I am of the view that the land could not have been allotted to the petitioner institution i.e. private institution by the Land Management Committee, the possession or long entry of the lessee, cannot create a perpetual right in his favour. However, considering the submission of the learned Counsel for the petitioner that under the bonafide belief of his right accrued on the basis of lease, the petitioner already constructed a building and further in the legitimate expectation, he extends his willingness to offer the other private land of the same very area to the Gaon Sabha, in the interest of justice, I hereby restrain the authorities concerned to take any action against the petitioner subject to offer made by the petitioner of the private land, as aforesaid, within three months and thereafter the proceeding of exchange shall be completed within next three months. If the petitioner fails to offer the same very land within the period stipulated hereinabove, the authorities would be at liberty to proceed against him.

7. Since I have determined the question finally in the aforesaid manner, I hereby observe that the revision pending before the Board of Revenue shall stand abated in the terms of observations made hereinabove.

8. With the aforesaid observations and directions the writ petition is disposed of finally.