

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 10374 of 2022

Committee of Management, Imambara
Qadeem, Manauri, District Prayagraj through
its Secretary and another Petitioners

Through :- Mr. V.M. Zaidi, Senior Advocate assisted by
Mr. S.M.A. Iqbal Hasan, Advocate

v/s

Union of India and others Respondents

Through :- Mr. Manish Goel, Additional Advocate General
assisted by Ms. Akansha Sharma, Standing
Counsel for respondent nos.2, 4, 5 and 6 and Mr.
Pranjal Mehrotra, Advocate for respondent nos.1
and 3

**CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE J.J. MUNIR, JUDGE**

ORDER

1. The petitioners, who are the Committee of Management of the *Imambara Qadeem*, Manauri and its Secretary, have moved this Court to quash the notification dated 28.06.2012, issued by the Government of U.P., insofar as it resumes the petitioner's land, situate in Plot No. 146, admeasuring 1500 square meters, Village Manauri, District Prayagraj.

2. The aforesaid notification has been issued by the State Government in exercise of their powers under Section 117(6) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (for

short, 'the Act') to the extent it adversely affects the petitioners. The said notification shall be referred to hereinafter as the 'impugned notification'.

3. The petitioners' case in brief is that the second petitioner is a native of Village Manauri, *Tehsil* Sadar, District Prayagraj. He and his forefathers have lived in the said village since a very long time. The second petitioner's father constructed a building known as *Imambara Qadeem* over an area 1500 square meters, situate on Plot No.146. The aforesaid *Imambara* is said to be more than 100 years old. The aforesaid property has now come down to the second petitioner from his forefathers. He is now managing the affairs of the *Imambara* along with some members of the religious community, to which he belongs. The second petitioner and other members of the community formed a Committee of Management, which this Court gathers to be a society of sorts. The pleadings about the precise legal character of the body that manages the affairs of the *Imambara* are vague and non-descript.

4. The short case of the petitioners is that the State wish to illegally and arbitrarily take possession of the 1500 square meters of land in Plot No.146, and for the purpose, have invoked their powers of resumption under Section 117(6) of the Act. This they have done through the impugned notification. The petitioners had earlier moved this Court through Writ – C No.30758 of 2021 without laying any challenge to the impugned notification or any reference to it. The case

taken in the aforesaid writ petition was that the State and the respondent Authorities may be forbidden from taking possession of Plot No.146, above described (for short, 'the property in dispute'), which the respondents were moving to take possession of for the purpose of Railways, without proceedings for acquisition or requisition. The second petitioner, therefore, sought the following material reliefs in Writ – C No.30758 of 2021:

(A). Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent authorities to not to acquire and taken possession of the land Gata No.146 measuring area 1500 sq.meter approximately the structure constructed on the land.

(B). Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent authorities not to take any coercive measure against the petitioner.

5. It is the petitioners' case that it was through the counter affidavit dated 18.12.2021 filed in Writ – C No.30758 of 2021 on behalf of the Union of India and the Mukhya Pariyojna Prabandhak, Dedicated Freight Corridor Corporation of India, Prayagraj that the petitioners came to know about the impugned notification issued by the State Government resuming the property in dispute. Accordingly, they have instituted the present writ petition challenging the said notification.

6. Writ – C No.30758 of 2021 has also come up today along with this writ petition and in view of the fact that the petitioners have now challenged the impugned notification, the aforesaid writ petition was

withdrawn, which we have permitted to be withdrawn by an order of date passed in the said writ petition.

7. Assailing the impugned notification, Mr. V.M. Zaidi, learned Senior Advocate assisted by Mr. S.M.A. Iqbal Hasan, learned Counsel for the petitioners submits that the property in dispute is recorded as *abadi* and being a building, would be deemed to be settled with the petitioners under Section 9 of the Act. According to the learned Counsel, *abadi* sites, particularly, buildings do not vest in the *Gaon Sabha*, so as to be amenable to the State's power of resumption under sub-Section (6) of Section 117 of the Act. It is argued that the second petitioner and his forefathers have been in occupation of the property in dispute for the past 100 years and more, and they have constructed the building, where the *Imambara* is situate, also more than 100 years ago. In the circumstances, on the date of vesting, that is to say, 7th July, 1949, the *Imambara* being a building held by the second petitioner and his forefathers, it shall be deemed to have been settled with them by the State Government. According to the learned Senior Advocate appearing for the petitioners, the property in dispute being a building and not any of the 'things' specified under Clauses (i) to (vi) of sub-Section (1) of Section 117 of the Act, cannot be held to have ever vested in the State, and by a declaration of the State, in the *Gaon Sabha*. As such, the property in dispute, that is settled under Section 9

of the Act with the second petitioner and his forefathers, cannot be resumed under sub-Section (6) of Section 117 of the Act.

8. Mr. Manish Goel, learned Additional Advocate General assisted by Ms. Akansha Sharma, learned Standing Counsel, appearing for respondent nos.2, 4, 5 and 6 and Mr. Pranjal Mehrotra, Advocate appearing on behalf of respondent nos.1 and 3, have opposed the motion to admit this petition to hearing.

9. Mr. Goel has submitted that for one the petition is highly belated with an enormous laches to confront. It ought to be dismissed on that ground alone. It is further argued that upon merits, the petitioners have *prima facie* not produced any evidence to show that on the date of vesting, the building, that is said to house the *Imambara*, was in existence. As such, according to the learned Additional Advocate General, the petitioners are not entitled to claim benefit of Section 9 of the Act.

10. We have considered the submissions advanced on both sides and carefully perused the record. We find that the impugned notification being one of the year 2012, a challenge to it 10 years later, would require the petitioners to explain why they did not come up earlier assailing it. All that we find for an explanation is a rather unconvincing case set out in Paragraph No.18 of the writ petition, where it is said that prior to filing the earlier writ petition (Writ – C No.30758 of 2021), petitioner no.2 had no knowledge about the

impugned notification. He came to know of the same when the respondents filed a counter affidavit in the last mentioned writ petition. It is said that from the aforesaid facts, we should infer a case of circumstances beyond the petitioners' control in the matter of delay and condone the laches. The petitioners' explanation is stated to be rejected.

11. Once the impugned notification has been published in the Gazette, constructive knowledge of its contents has to be imputed to one in all, including the petitioners. After all, the purpose of publication in the Official Gazette is information to the public at large. Even if the rigour of the law about constructive notice of a gazetted document is to be ignored in the interest of judging by a more equitable hand, we find that on facts, the petitioners cannot plead ignorance about the existence of the impugned notification.

12. A copy of the extract of the Six Yearly *Khatauni* relating to *Khata* No. 00119, that includes amongst others, the property in dispute (Plot No.146), has been annexed as Annexure No.3 to the writ petition. It is a *Khatauni* for the *Fasli* Year 1423-1428. There is, in the remarks column, a clear entry of the impugned notification issued by the State Government resuming the property in dispute. This entry was made on 15.05.2013. The extract of the *Khatauni* is one that is available on the website of the Government. In any case, it is a *Khatauni* that relates to the property in dispute, wherein the

petitioners claim their right, title and possession. It is, therefore, very difficult to believe that the petitioners would not know about the impugned notification, that was entered in the relative *Khatauni* way back on 15.05.2013. There is absolutely no reason, therefore, to accept the petitioners' explanation offered for the delay of 10 years in challenging the impugned notification. We, therefore, do not find it to be a case where the petitioners' laches can or ought to be condoned.

13. Nevertheless, since the learned Counsel for parties have addressed us on the merits of the matter also, we propose to examine the petitioners' contentions advanced to assail the impugned notification. The thrust of the petitioners' contention is that the property in dispute never vested in the *Gaon Sabha* under Section 117(1) of the Act so as to be amenable to resumption under Section 117(6) of the Act. Being a building, it vested in the second petitioner's forefathers under Section 9 of the Act on the date of vesting. The building of the *Imambara* is claimed to be 100 years old. We must remark that it is the petitioners' burden to establish that the building is 100 years' old or may be younger, but that it was in existence on the date of vesting, that is to say, 7th July, 1949. The benefit of Section 9 of the Act can be claimed only in respect of such buildings as were in existence on the date of vesting. A building, constructed later on, cannot be held to be settled with its owner, occupier etc. In this regard, reference may be made to the decision of this Court in **Basti**

Ram vs. Nagar Nigam, Ghaziabad and another, 1999 SCC OnLine

All 1850. In **Basti Ram** (*supra*), it has been held:

“9. Learned counsel for the appellant has argued that the land vested in the plaintiff/appellant under Section 9 of the U.P. Zamindari Abolition and Land Reforms Act Section 9 reads as follows:

“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 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.”

10. Provisions of Section 9 are applicable only when there is evidence and proof of the factum that there existed well or building on the land in question on the date of vesting. There is no averment in the plaint nor there is any finding of fact in this regard. Therefore, the finding of the lower appellate court that the land cannot be said to have been settled with the plaintiff is correct.”

(emphasis by Court)

14. Here, the petitioners have annexed no more, by way of evidence about the existence of the *abadi* in Plot No.146, than the

extract of the Six Yearly *Khatauni* for the Fasli Year 1423-1428, that would correspond to the Calendar Years 2015-16 to 2020-21. There is absolutely no evidence on record, by even as much as a hint, to show that the building that the petitioners claim to be a hundred years old *Imambara* was in existence on the date of vesting. No doubt, there is an averment to that effect, but it is sans evidence. It is difficult, therefore, to accept the petitioners' contention that there was an *Imambara* or a building, by whatever name called, belonging to the petitioners in existence on the date of vesting that could be held to be settled with the petitioners under Section 9 of the Act.

15. In the circumstances, we do not find any force in this petition. It is, accordingly, **dismissed**. No costs.

Allahabad
04.07.2022
Anoop

(J.J. Munir, J.)

(Rajesh Bindal, C.J.)

Whether the order is speaking :

Yes/No

Whether the order is reportable :

Yes✓/No