

(2011) 08 AHC CK 0038
In the Allahabad High Court
Case No : Writ C No. 17464 of 2004

Aligarh Muslim University

APPELLANT

Vs

Har Prasad and Others

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Uttar Pradesh Panchayat Raj Act, 1947 — Section 106

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B, 333A

Citation : (2011) 08 AHC CK 0038

Hon'ble Judges : Bala Krishna Narayana, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bala Krishna Narayana, J.—Heard Smt. Sunita Agarwal, learned Counsel for the Petitioner, Sri Anupam Kulshrestha, learned Counsel for the Respondent Nos. 1 to 5 and learned Standing Counsel for the Respondent Nos. 6 to 10. This writ petition has been filed by the Petitioners with a prayer for issuing a writ, order or direction in the nature of certiorari quashing the order dated 10.2.2004 (annexure No. 5 to the writ petition) passed in Revision No. 29 of 1992-93 and order dated 22.9.1992 (annexure No. 4 to the writ petition) passed by Respondent Nos. 7 and 10 respectively.

2. Brief facts of the case as emerging from the pleadings of the parties are that Har Prasad-Respondent No. 1 and four others, Respondent Nos. 2 to 5 in this writ petition filed Suit No. 47 of 1989-90 u/s 229-B of the U.P.Z.A. & L.R. Act (hereinafter referred to as the Act) for being declared bhumidhars of Plot Nos. 81/1, 156, 157Aa, 161-v, 162, 163, 225, 226 area 1.843 hectares of Khata No. 22, Plot Nos. 82, 90-M, 135-M, 138-v, 140-c, 143-c, area 1.763 hectares of Khata No. 12 and plot Nos. 140-t area 0.127 hectares of Khata No. 125 situate in Village Bhamola Mafi, Tehsil Kole, District Aligarh (hereinafter referred to as the land in dispute) before the Sub-Divisional Officer/Assistant Collector-Ist, Aligarh

Respondent No. 9. In the said suit, the Respondent Nos. 6, 11 and 12 in this writ petition were arrayed as Defendants Nos. 1, 2 and 3.

3. The Plaintiffs-Respondent Nos. 1 to 5 claimed that the land in dispute was not located within the municipal limits on 7.7.1949 and its zamindari had been abolished and the provisions of the Act were applicable to the same. Plaintiffs further claimed that they were recorded as ex-proprietary tenants (Kastkar Sakitul Milkiyat) of Khata Nos. 2 and 12 and hereditary tenants (Maurusi Kastkar) of Khata No. 25 and upon abolition of zamindari they became sirdars of the land in dispute u/s 19 of the Act and had thereafter become bhumidhars with transferable rights of the same by virtue of the provisions of U.P. Act No. 8 of 1977. In the said suit written statement was filed by D.G.C. Revenue on behalf of the Respondent No. 6 and Gaon Sabha Bhamola Mafi denying the plaint allegations. Respondent Nos. 11 and 12 despite being served with the summons of the suit chose not to file any written statement. In order to establish their claim over the land in dispute, the Respondent Nos. 1 to 5 filed extracts of Khataunis of Khata Nos. 2, 12, 25 of Village Gram Bhamola Mafi of the years 1396-1401 fasli, copies of the notices given by the Plaintiffs to the State u/s 80 Code of Civil Procedure, Section 106 of U.P. Panchayat Raj Act, 1947, acknowledgement receipt No. 308, registry receipt Nos. 307 and 308 dated 18.9.1998, certificate of bhumidhari sanad No. 58965 dated 14.3.1972, photo-stat copies of extracts of Khataunis of Khata Nos. 26 and 27 of Village Bhamola Mafi Pargana & Tehsil Kole, District Aligarh of 1377 Fasli, photo-stat copy of the notification No. 1896/11-292-35 dated 25.7.1936, photo-stat copy of the notification dated 17.9.1995, photo-stat copy of the notification mentioning the areas comprised within the limits of Nagar Palika Aligarh, photo-stat copy of map of Village Bhamola Mafi, copy of non-Z.A. Khasra of Village Bhamola Mafi of 1395 fasli in which the names of the father of the Plaintiffs-Respondents Mohan Lal was recorded in column-4, photo-stat of khasra non-Z.A. of village Bhamola Mafi of 1377 fasli and copy of khasra non-Z.A. of village Bhamola Mafi 1359 Fasli.

4. The Plaintiffs examined Har Prasad Respondent No. 5 on their behalf as P.W. The Respondent No. 4 after taking into consideration the entire evidence on record and the respective claims set up by the parties in their pleadings in respect of the land in dispute decreed the Suit No. 47 of 1989-90 by his judgment dated 8.8.1990 and decree dated 3.12.1990 (annexure No. 12 to the writ petition) and declared the Plaintiff Respondent 5. Nos. 1 to 5 bhumidhars of the land in dispute.

5. Against the judgment dated 8.9.1990 and decree dated 3.12.1990 passed by Sub-Divisional Officer, Koil/ Assistant Collector, Ist Class, District Aligarh the Petitioner preferred a revision u/s 333A of the U.P.Z.A. & L.R. Act (hereinafter referred to as the Act) before the Commissioner, Agra Division, Agra which was numbered as Revision No. 29 of 1992-93 and heard along with Revision Nos. 20 of 1992 and 21 of 1992 preferred by the State Government against the same judgment and transferred for disposal before the Respondent No. 7 and

dismissed by him by his order dated 10.2.2004 (annexure No. 5 to the writ petition).

6. The trial court as well as the revisional court after going through the pleadings of the parties and the evidence on record concurrently held that the zamindari of the village where the land in dispute was situate was abolished on 1st July, 1952 and village Bhamola Mafi did not lie within the municipal limits on 7th July, 1949 on which date Uttar Pradesh Zamindari Abolition & Land Reforms Act had been enforced. The two courts further held that the Plaintiff-Respondents were exproprietary tenants of Khata Nos. 2 and 12 and hereditary tenants of the Khata No. 25 of the land in dispute and in possession whereof continuously for the last 40 years. The Respondent No. 3 while rejecting the Petitioners' revision had recorded a categorical finding in his order that the Petitioners had failed to prove by any evidence that the Petitioners were the zamindars of the land in dispute and the land in dispute was located in a non-Z.A. area.

7. Learned Counsel for the Petitioners despite making elaborate submissions failed to demonstrate that the findings recorded in the impugned judgments on issues of facts and law which are based upon relevant considerations and supported by cogent evidence are vitiated by any illegality, infirmity or perversity warranting any interference by this Court.

8. The writ petition lacks merit and is accordingly dismissed.