

(2012) 04 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 60567 of 2007

Amir Singh and Others

APPELLANT

Vs

Additional Commissioner, Agra Division, Agra and Others

RESPONDENT

Date of Decision : 26-04-2012

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 174

Citation : (2012) 6 ADJ 342 : (2012) 4 AWC 5233

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : K.S. Chauhan, for the Appellant; Vivek Mishra and C.S.C, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble B. Amit Sthalekar, J.—This writ petition has been filed by the petitioners challenging the orders dated 6.9.2007 passed by the Addl. Commissioner, Agra, 8.4.2003 passed by the Sub-Divisional Officer, Mainpuri, 28.3.2003 passed by the Sub-Divisional Officer, Mainpuri and 17.2.2000 passed by Tehsildar, Mainpuri. The facts of the case, in brief, are that the land in question was inherited by one Smt. Bhawani Kunwar from her husband late Ganga Prasad. Smt. Bhawani Kunwar acquired bhumidhari rights and got the names of Pooran Chand, Udai Chand and Brindaban added with her in Khata No. 62 of the basic year; name of Pooran Chand and Brindaban added with her in Khata No. 63 of the basic year and the names of Udai Chand, Pooran Chand and Smt. Chandrawati added with her in the land of Khata No. 64 of the basic year. Khata No. 104 remained recorded in the sole name of Smt. Bhawani Kunwar.

2. On commencement of consolidation in the area, the respondent Nos. 5 and 6, namely, Jagdish and Brahmanand filed their objections claiming sole bhumidhari rights in all the khatas. Their claim was that Smt. Chandrawati was daughter of late Bhawani Kunwar, and they are her sons. Brindaban also filed objections

claiming to inherit the property of late Bhawani Kunwar through survivorship u/s 174 of the U.P. Z.A. & L.R. Act on the ground that Jagdish and Brahmanand, respondent Nos. 5 and 6 are sons of Smt. Chandrawati, the sister of Pooran Chand.

3. Pooran Chand also filed objections claiming half share in the land of all the khatas claiming his rights on the basis of a registered gift deed, said to have been executed by late Bhawani Kunwar on 29.4.1961. It is also stated that he had executed a registered sale-deed transferring half of his share to Amir Singh and others.

4. The petitioners also filed their objections claiming half share in the share of Pooran Chand in the land of all the khatas on the basis of registered sale-deed, said to have been executed by Pooran Chand in their favour on 23.2.1965.

5. The Consolidation Officer decided the consolidation case No. 2322 of 1970 by his judgment dated 5.11.1971 in the following manner:

(a) Adding of all the names with late Bhawani Kunwar was held to be illegal;

(b) It was held that Pooran Chand acquired no rights in the land on the basis of gift deed, alleged to have been made in his favour by late Bhawani Kunwar;

(c) The petitioners do not get any rights in the disputed land on the basis of alleged sale-deed executed by Pooran Chand in their favour on 23.2.1965;

(d) Jagdish and Brahmanand (respondent Nos. 5 and 6) being the sons of Brindaban and Smt. Chandrawati who were the daughters of late Bhawani Kunwar were held to be sole owners of all the lands in the khata Nos. 62, 63, 64 and 104 as successors of late Bhawani Kunwar.

6. Chaks were proposed and the shares of respective share holders were shown in CH Form V of khata Nos. 62, 63, 64 and 104 of the basic year.

7. Aggrieved by the aforesaid judgment of the Consolidation Officer, 8 appeals were filed before the Assistant Settlement Officer, Consolidation (ASOC). The said appeals were allowed by the judgment of the ASOC vide order dated 4.9.1971 and the khatas were partitioned in the following manner:

Names with shares

khata Nos.

Area in acre

62

63

104

64

Amir Singh

6.32 - 4.57

Virendra Singh

1/4-1/3

1/3-

1/2

3/8

Rajendra Singh

Pooran Chandra

1/4 - 1/3

1/2 -

-

3/8

Brindaban

1/2 - 1/3

1/3

Nil

Nil

Jagdish,

Nil Nil

Nil

Nil

1/8

Brahmanand

Nil Nil

Nil

Nil

1/8

8. From a perusal of the ASOC's order and the partition made between the various authorities, it can be seen that the respondent Nos. 5 and 6 were not

given any share in khata Nos. 62, 63 and 104 and in khata No. 64 the share of respondent Nos. 5 and 6, namely, Jagdish and Brahmanand was held to be 1/8 share each.

9. Aggrieved by the said devolution of property, by virtue of settlement, the respondent Nos. 5 and 6 filed revision No. 3250 of 1971 u/s 48 of the U.P. Consolidation of Holdings Act before the Dy. Director of Consolidation, Mainpuri. The said revision was dismissed on 7.11.1973.

10. Aggrieved by the order of the Dy. Director of Consolidation, Mainpuri dated 7.11.1973, the respondent Nos. 5 and 6 filed writ petition No. 7792 of 1973 before this Court. The said writ petition was dismissed by the High Court vide order dated 31.7.1979. Thus the order of the ASOC and the devolution of the shares of the petitioners and the respondents stood confirmed.

11. On the basis of the share holdings of the petitioners as well as respondent Nos. 5 and 6 as prepared by the ASOC, a reference No. 67 was prepared under Rule 109 of the Consolidation of Holdings Act and the same was affirmed by the order dated 24.2.1986. The respondent Nos. 5 and 6 sought a recall of the order dated 24.2.1986 by filing an application. This recall application was rejected by the order dated 20.4.1989.

12. Aggrieved, respondent Nos. 5 and 6 filed revision No. 121 before the Dy. Director of Consolidation, Mainpuri challenging the order dated 20.4.1989. This revision was dismissed by the Dy. Director of Consolidation by his order dated 6.3.1991. Accordingly the reference prepared under Rule 109 was given due affect and the mutation carried out in the khatauni of 1408 fash to 1413 fasli recording the new plots in the names of the petitioners in the following manner:

Plots No.

Area in acre

1631

0.85

1615

1.37

1630

1.55

1190

2.15

13. However, to negate the various orders referred to herein above, the respondent Nos. 5 and 6 executed a sale-deed on 9.11.2000 transferring the plot No. 1631 area 0.344 hectare belonging to the petitioners to the respondent No.

7. Thereafter the respondent Nos. 5 and 6 initiated mutation proceedings and without impleading the petitioners obtained an ex-parte order dated 17.12.2000 (impugned order) from the Tehsildar, Mainpuri mutating the name of respondent No. 7 on the said plot in the mutation proceedings No. 172/2000. As soon as the petitioners came to know of the said malafide proceedings, they filed a recall application before the Tehsildar, Mainpuri on 30.12.2000.

14. The said recall application was still pending orders when the respondent Nos. 5 and 6 through mala fide motive got the respondent No. 4 to file appeal No. 95 of 2000-01, who had no concern with the plots in question and who had never appeared in any of the consolidation proceedings or subsequent proceedings.

15. In the appeal No. 95 of 2000-01 the petitioners filed an application dated 28.5.2001 seeking their impleadment. This impleadment application of the petitioners was rejected by the Sub-Divisional Officer, Mainpuri by his order dated 28.3.2003 (impugned order).

16. Thereafter the Sub-Divisional Officer by his final order dated 8.4.2003 (impugned order) dismissed the appeal No. 95 of 2000-01 filed by the respondent No. 4 but while doing so he also by the same order rejected the recall application dated 30.12.2000 filed by the petitioners before the Tehsildar, Mainpuri as well as the order dated 6.1.2001 whereby the Tehsildar, Mainpuri had passed the stay order in the mutation proceedings.

17. Aggrieved by the order dated 8.4.2003 of the Sub-Divisional Officer, the petitioners filed revision No. 84 of 2003 and 85 of 2003 challenging the two orders of the Sub-Divisional Officer dated 28.3.2003 and 8.4.2003. However, the Addl. Commissioner, Agra Division, Agra-respondent No. 1 by his consolidated judgment dated 6.9.2007 (impugned order) dismissed both the revisions.

18. I have heard Shri K.S. Chauhan, learned counsel for the petitioners and Shri Vivek Misra appearing on behalf of respondent No. 7. Counter-affidavit has also been filed by respondent No. 7. No one appeared on behalf of respondent Nos. 4, 5 and 6 nor any counter-affidavit has been filed on their behalf. Learned standing counsel has also not filed any counter-affidavit. However, the matter is being disposed of with the consent of learned counsel including the standing counsel.

19. Shri K.S. Chauhan, learned counsel for the petitioners submits that the mutation proceedings No. 172 of 2000 were initiated in a malafide manner by the respondent Nos. 5 and 6 without even impleading the petitioners in the said proceedings. The said proceedings were initiated with the sole motive of giving legitimacy to the otherwise illegal transfer of plot No. 1631 area 0.344 hectare belonging to the petitioners, in favour of respondent No. 7 through an alleged registered sale-deed dated 9.11.2000.

20. It is further submitted that in the appeal No. 95 of 2000-01 filed by the respondent No. 4, who never participated in the consolidation proceeding or subsequent proceeding at any stage and who had no concern with the land at all

and had only been set up as a front for executing the illegal and mala fide intentions of respondent Nos. 5 and 6, the petitioners filed their impleadment application. This impleadment application was however, rejected by the Sub-Divisional Officer, Mainpuri by his order dated 28.3.2003. Thereafter, the Sub-Divisional Officer dismissed the appeal No. 95 of 2000-01 but in a most illegal and arbitrary manner he proceeded to reject the recall application dated 30.12.2000 filed by the petitioners in mutation proceedings No. 172 of 2000-01 and also set aside the stay order of the Tehsildar, Mainpuri dated 6.1.2001 in the said mutation proceedings. The submission of learned counsel for the petitioners is that since the recall application dated 30.12.2000 was filed in mutation case No. 172 of 2000 and a stay order had also been granted by the Tehsildar, Mainpuri and no challenge had been made to the said proceedings in the appeal before the Sub-Divisional Officer, Mainpuri, the Sub-Divisional Officer had transcended his jurisdiction by interfering in the said proceedings by setting aside the impleadment application dated 30.12.200 and the stay order dated 6.1.2001.

21. Shri Vivek Misra, appearing for the respondent No. 7 rebutting the submissions of Shri Chauhan justified the order passed by the Tehsildar on 17.12.2000 in mutation proceedings No. 172 of 2000 substituting the name of respondent No. 7 over the plot No. 1631 area 0.344 hectare. He also justified the order of the Addl. Commissioner, Agra Division, Agra dated 6.9.2007, as well as the order of the Sub-Divisional Officer, Mainpuri dated 28.3.2003 and 8.4.2003.

22. I have given my anxious consideration to the various submissions of learned counsel for the petitioners as well as learned counsel appearing for respondent No. 7. From the perusal of the impugned orders it will be seen that once it had been held that the respondent Nos. 5 and 6 had only 1/8 share each in khata No. 104 they had no concern with the disputed plot No. 1631, and the sale-deed in favour of respondent No. 7 was a completely fraudulent act executed merely for the purposes of defeating the claims of the petitioners over the plot No. 1631.

23. It is also to be noted that the petitioners had promptly on coming to know about the ex-parte mutation proceedings filed the recall application on 30.12.2000 and the Tehsildar had also granted a stay in respect of the mutation by his order dated 6.1.2001. The said mutation proceedings were still pending when the respondent Nos. 5 and 6 got the respondent No. 4, who had no concern with the plot in question or any of the khatas, which formed the subject-matter of the consolidation proceedings and who never participated either in the consolidation proceedings or in any of the subsequent litigation, to file appeal No. 95 of 2000-01. In this appeal also the petitioners were never made a party and, therefore, on coming to know about the pendency of the said appeal, they filed an impleadment application. This impleadment application was rejected by the Sub-Divisional Officer, Mainpuri by his order dated 28.3.2003. The reason given by the Sub-Divisional Officer is most strange. He recorded that since in the proceedings initiated through the recall application dated 30.12.2000

no decision has been taken by the Tehsildar, Mainpuri and because in the appeal No. 95 of 2000-01 the petitioners have not been made a party, therefore, the impleadment application of the petitioners is without any force. He has accordingly rejected the impleadment application by the impugned order dated 28.3.2003.

24. It is most surprising that while passing the order dated 28.3.2003 the Sub-Divisional Officer, Mainpuri did not care to notice that the Tehsildar while entertaining the recall application dated 30.12.2000 had granted a stay order dated 6.1.2001 in respect of the mutation and if in the appeal No. 95 of 2000-01, the petitioners had not been made party, the mala fide motive lay at the door of the respondent No. 4 who had filed the said appeal and thereafter on that ground the impleadment application of the petitioners could not have been rejected.

25. Even while passing the final order dated 8.4.2003, the Sub Divisional Officer, Mainpuri dismissed the appeal No. 95 of 2000-01 filed by the respondent No. 4 but by an act of overreach he also proceeded to reject the recall application of the petitioners dated 30.12.2000 filed in the mutation proceedings before the Tehsildar and also vacated the stay order granted by the Tehsildar on 6.1.2001.

26. The order of the Sub-Divisional Officer, Mainpuri dated 8.4.2003 is absolutely illegal and on the face of it without jurisdiction. The recall application dated 30.12.2000 was pending in the mutation proceedings before the Tehsildar and the stay order had also been granted by the Tehsildar on 6.1.2001. Neither those proceedings nor the stay order dated 6.1.2001 were the subject-matter of appeal No. 95 of 2000-01. Therefore, if the Sub Divisional Officer was dismissing the appeal itself there was no occasion for him to transcend his jurisdiction and enter into the mutation proceedings and reject the recall application dated 30.12.2000 and set aside the stay order of the Tehsildar dated 6.1.2001. The motive of the Sub-Divisional Officer, Mainpuri in passing such an order can only be said to be motivated by mala fides as there is no reasonable explanation or legal justification for this act.

27. When the petitioners preferred their revisions before the Addl. Commissioner, Agra Division Agra against the two orders of the Sub-Divisional Officer, Mainpuri dated 28.3.2003 and 8.4.2003, the Addl. Commissioner also without any application of mind either on facts or law or the orders passed consequently to the order of the Consolidation Officer, as well as the order of the High Court, has dismissed the said revisions without any cause or reason, which may be said to be justifiable in law.

28. In the above facts and circumstances of the case, the order dated 28.3.2003, 8.4.2003 and 6.9.2007 are quashed. So far as the order dated 17.12.2000 is concerned, the petitioners have filed recall application on 30.12.2000 and by the quashing of the orders dated 28.3.2003, 8.4.2003 and 6.9.2007 the stay order granted by the Tehsildar, Mainpuri dated 6.1.2001 stands revived and in these

circumstances it is not necessary for this Court to pass any order, as the issue is yet to be decided by the Tehsildar when he proceeds to consider the recall application of the petitioners dated 30.12.2000.

29. Directions are, therefore, issued to the Tehsildar, Mainpuri to proceed with the mutation proceedings No. 172 of 2000 and to decide the recall application of the petitioners dated 30.12.2000 expeditiously preferably within a period of six months from the date a certified copy of this order is filed before him. In view of the above facts and circumstances, the writ petition is partly allowed. There shall be no order as to cost.