

(2011) 03 AHC CK 0089
In the Allahabad High Court
Case No : Writ Petition No. 1904 (MS) 2011

Anil Kumar Pal and Another	Vs	APPELLANT
Board of Revenue U.P. and Others		RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Uttar Pradesh Bhoodan Yagna Act, 1952 — Section 15A
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49, 52
Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122

Citation : (2011) 03 AHC CK 0089

Hon'ble Judges : Shabihul Hasnain, J

Bench : Single Bench

Judgement

Shabihul Hasnain, J.—Heard Mr. Mohd. Arif Khan, Senior Advocate, assisted by Sri Mohd. Aslam Khan, learned Counsel for the Petitioner, for quite some time. With his usual eloquence Mr. Mohd. Arif Khan assisted the Court with number of case laws including the judgment in Ram Dhani Singh and Anr. v. State of U.P. reported in 1986 RD 374 and several other judgments distinguishing the powers of the Collector viz a viz Assistant Collector I-Class. He has also referred the decision of full bench of this Court and has successfully established that u/s 15-A of the U.P. Bhudan Yagna Act, 1952, power of cancellation of Patta granted by Bhudan Yagya Samiti, solely lies with the Collector and it cannot be sub-delegated. The definition of Collector given in U.P.Z.A. & L.R. Act will not be applicable here. That definition is for the particular Act if not all pervasive and all inclusive. Without specific orders the delegation of powers to the Assistant Collector shall not be automatic. It is accepted by the learned standing counsel that in present case Assistant Collector shall have no jurisdiction to cancel a valid patta granted under the Uttar Pradesh Bhoodan Yagna Act.

2. However, learned standing counsel says that the Sub Divisional Officer has got jurisdiction to decide the proceedings u/s 33/39 of the U.P. Land Revenue Act and he says that the impugned order has been passed under the said Section. He

further argues that if the genesis of the entry is based on fraud, the subsequent correction can be made at any level. However, in the present case, earlier an order was passed ex-parte but later on, when the recall application was moved, the Petitioner was allowed opportunity of hearing.

3. Mr. Mohd. Arif Khan, Senior Advocate, has forcefully argued that in the concerned areas notification u/s 52 has already been issued. Right from the day of notification of consolidation in the area, no objection was ever filed u/s 9, till the notification of Section 52 of the Consolidation of Holdings Act. Nobody has come forward and put his claim over the said land. In such a situation, he says that the entries stand fortified by the consolidation proceedings and such long standing entries cannot be corrected in a proceedings under Sections 33/39 being barred by Section 49 of U.P. Consolidation of Holdings Act.

4. However, Sri G.S. Misra, learned standing counsel says under the consolidation proceedings, it was not incumbent upon the State to file objections on the government land as the consolidation proceedings relate to the land belonging to the tenure holder and the land of the State is exempted from the consolidation.

5. Mr. Mohd. Arif Khan, has replied that no action has been taken by the State since 1957, u/s 122-b of the U.P.Z.A. & L.R. Act. Sudden enlightenment of the State cannot give a right to the State to cancel the names of the Petitioners by one stroke of pen ignoring all the evidence on record.

6. Learned standing counsel, prays for and is granted three weeks" time to file counter affidavit. Rejoinder affidavit, if any, may be filed within a week.

7. List thereafter.

8. Till the next date of listing, operation and implementation of the orders dated 31.08.2007 passed by opposite party No. 3 and 03.08.2009 passed by opposite party No. 1 as contained in annexure No. 3 and 5 respectively, shall remain stayed.