
(1998) 12 AHC CK 0093
In the Allahabad High Court
Case No : C.M.W.P. No. 12996 of 1985

Ayodhya Prasad

APPELLANT

Vs

Assistant Settlement Officer (Consolidation), Basti and others

RESPONDENT

Date of Decision : 21-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 3(2), 3(4C), 3(5), 4, 4(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 132

Citation : (1998) 4 AWC 669 : (1998) AWC 669 : (1999) RD 122

Hon'ble Judges : Shitla Prasad Srivastava, J

Bench : Single Bench

Advocate : Sabhapati Tewari, for the Appellant; S.C. and Dinesh Kumar Singh, for the Respondent

Final Decision : Disposed Of

Judgement

Shitla Prasad Srivastava, J.—This writ petition, under Article 226 of the Constitution of India, has been filed by the petitioner for quashing the orders dated 22.4.1985 and 28.5.1984 passed by the Assistant Director of Consolidation and Assistant Settlement Officer Consolidation, respectively.

2. The brief fact, as stated in the present writ petition are that plot No. 281 situated in village Sungaha Badii, Pargana Amaurha, Tehsil Haraiya, district Basti is a big plot out of which plot No. 281/1 measuring 10 biswas was recorded in the name of Daya Ram and Kanhaiya who have deposited 20 times land revenue and have acquired bhumidhari right and subsequently sold it to the petitioner on 11.9.1975 through a registered sale deed. It is stated that in the aforesaid sale deed, Ram Asrey, who had filed complaint, was a marginal witness. It is stated that petitioner's name was recorded on the basis of the sale deed and he continues in possession. It is stated that in the year. 1977, the petitioner constructed his house over plot in question and is in occupation of the same and he has no other place of residence. The plot in question became abadi and the

petitioner has his house, sehan, Ghari and Charan."etc. The petitioner has further stated that due to election rivalry. Ram Asrey filed objection u/s 9 of the Consolidation of Holdings Act. which was rejected by the Consolidation Officer on 21.3.1983 and the name of the petitioner continued in revenue record. Respondent No. 3, Gaon Sabha, filed an appeal against the order of the Consolidation Officer, which was allowed by the Settlement Officer Consolidation, Basti, on 28.5.1984. Against the aforesaid order the petitioner filed revision, which was rejected on 22.4.1985. The petitioner has challenged the aforesaid two orders by means of the present writ petition.

3. The grounds of attack of the petitioner against the two Judgments are that the petitioner has purchased the plot in dispute from its owner and it was recorded in the basic year khatauni as bhumidhari of the petitioner, his name should not have been expunged on the basis that the petitioner has not filed any extract or khatauni. His further contention is that the petitioner had filed before the Consolidation Officer register of malkan of 1383 fasli in which Daya Ram and Kanhaiya Lal transferors of the petitioner were recorded. Therefore, the observation made by the Settlement Officer Consolidation and the Dy. Director of Consolidation that no Khatauni was filed is not correct and that the register malkan was sufficient to prove all these facts that the property was purchased by the petitioner from the original owner. The third ground of challenge of the order passed by the consolidation authorities is that the property in dispute was abadi on the spot. Therefore, the consolidation authorities have no power to decide the title in respect of the abadi as the property in dispute was not land when consolidation operation started. He has further submitted that the finding of the Dy. Director of Consolidation that there was no mention of abadi is also not correct.

4. Heard learned counsel for the petitioner and perused the record. From the judgment of the appellate authority, it is apparent that appeal was filed by Ram Asrey on behalf of the Gaon Sabha on the ground that the property in dispute was abadi and it was the property of the Gaon Sabha. Therefore, the name of the petitioner recorded as owner was against the record. The other ground which was taken by the Gaon Sabha is that the entry-in the name of the petitioner was farzi. It also appears that sale deed in favour of the petitioner was challenged and it is stated that it was farzi, khatauni 1366 fasli were on record in which plot No. 281/5-15/18 was recorded as banfar, the property of the gaon sabha. Khatauni 1371 fasli to 1373 fasli was also on record in which Daya Ram and Kanhaiya Lal were recorded as bhumidnar but plot in question, i.e., 281/10-5 is not entered in their names. The Settlement Officer. Consolidation found that from 1366 fasli to 1373 fasli. the names of Daya Ram and Kanhaiya Lal were not recorded in revenue record, rather was the property of the gaon sabha. Khatauni 1386 fasli to 1391 Jasli was also on record in which plot was recorded in the name of Ayodhya as Bhumidhar and there was an entry to the effect that on the basis of Case No. 2197 and 2199 u/s 5 and order dated 2.11.1982. entry was made and there are further entry of abadi. The Settlement Officer, Consolidation

held that the property in dispute is gaon sabha's property, therefore, the sale deed is illegal.

5. The Dy. Director of Consolidation has also placed reliance on the same entry which was taken into consideration by the Settlement Officer. Consolidation and Form 2K in which property was mentioned as abadi but held that the sale deed dated 11.9.1975 does not mention the abodi. Therefore, it cannot be said that the sale deed was of abadi land. He was of the opinion that even if Ram Asrey was marginal witness of the sale deed, that will not prove the title in favour of the petitioner as property is of the gaon sabha. He further held that the sale deed is forged and fictitious document. Learned counsel for the petitioner has vehemently urged that the Dy. Director of Consolidation and Settlement Officer, Consolidation have not considered the contention of the petitioner that the consolidation authorities had no jurisdiction to decide the title in respect of the abadi. He has further submitted that the consolidation authorities have not considered as to whether they had jurisdiction to cancel the sale deed. His further submission that at the time of inspection the plot was found to be abadi and when the finding of the consolidation authorities is that it is entered as abadi in the revenue record then they should have considered the legal point of jurisdiction raised by the petitioner. Learned counsel for the petitioner has placed reliance in a case in Kamla Shankar and others v. Dy. Director of Consolidation and others 1979 RD 78 ; Triloki Nath v. Ram Gopal and others. 1974 RD 5 and Chakat and others v. Babu Ram and another 1987 RD 85.

6. Before dealing with the argument of the learned counsel for the petitioner, it is necessary to see the relevant provisions giving jurisdiction to the consolidation authorities and the principles in respect of which consolidation proceeding shall go on.

7. U. P. Consolidation of Holdings Act was an Act to provide for Consolidation of Agricultural Holdings in Uttar Pradesh for the Development of Agriculture. Therefore, it is apparent that the Act was for the purpose of Consolidation of Agricultural Holdings. Section 3 (2) of the Act defines "Consolidation" means rearrangement of holdings in a unit amongst several tenure-holders in such a way as to make their respective holdings more compact and the Explanation added to this section is that the holding shall not Include the following :

(i) land which was grove in the agricultural year immediately preceding the year in which the notification u/s 4 was issued ;

(ii) land subject to fluvial action and intensive soil erosion ;

(iii) land mentioned in Section 132 of the U. P. Zamindari Abolition and Land Reforms Act, 1950 :

(iv) such compact area as are normally subject to prolonged waterlogging :

(v) usar, kallar and rihala plots forming a compact area including cultivated land within such area ;

- (vi) land in use for growing pan. rose. bela. jasmine and kewra ; and
- (vii) such other area as the Director of Consolidation may declare to be unsuitable for the purpose of Consolidation,

8. Section 3 (4C) of the Act defines "holding" means a parcel or parcels of land held under one tenure by a tenure-holder singly or jointly with other tenure-holders. The "Land" has been defined under sub-section (5) of Section 3 means land held or occupied for purposes connected with agriculture, horticulture and animal husbandry (including pisciculture and poultry farming), and includes :

- (i) the site, being part of a holding, of a house or other similar structure ; and
- (ii) trees, wells and other improvements existing on the plots forming the holding.

9. Section 4 of the Act deals with declaration and notification regarding consolidation. Relevant paragraph is quoted herein below :

"4. Declaration and notification regarding consolidation.--(1) (a) The State Government may, where it is of opinion that a district or part thereof may be brought under consolidation operations, make a declaration to the effect in the Gazette, whereupon it shall become lawful for any officer or authority who may be empowered in this behalf by the District Deputy Director of Consolidation."

From a bare perusal of this section it is also clear that proceeding u/s will start in respect of any land in such area.

10. Section 5 of the Act is further relevant, which is quoted herein below :

"5. Effect of notification u/s 4 (2).--(1) Upon the publication of the notification (under sub-section (2) of Section 4) in the Official Gazette, the consequences, as hereinafter set forth, shall subject to the provisions of this Act. from the date specified thereunder till the publication of notification u/s 52 or sub-section (1) of Section 6, as the case may be, ensure in the area to which the (notification) under sub-section (2) of Section 4 relates."

11. Section 5 (1) (c) of the Act says that no tenure-holder except with the permission in writing of the Settlement Officer, Consolidation previously obtained shall :

"(i) use his holdings or any part thereof for the purposes connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming."

12. Section 5 (2) (a) of the Act says :

"(a) every proceeding for the correction of records and every suit and proceeding in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act. pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an

order being passed on that behalf by the Court or authority before whom such suit or proceeding is pending stand abated."

From this section also, it is clear that proceeding shall be in respect of a land and no person can use his land for any purpose except with the permission of the tenure-holder.

13. Section 8 of the Act is further relevant which is quoted below :

"8. Revision of the field book and the current annual register : Determination of valuations and shares in joint holdings.--(1) Upon the revision of the maps u/s 7, the District Deputy Director of Consolidation shall, subject to the provisions hereinafter contained, and in such manner as may be prescribed, cause to be-

(i) revised, the field-book of the unit after field to field partal and the current annual register after its test and verification ;

(ii) determine, in consultation with the Consolidation Commissioner the valuation of-

(a) each plot after taking into consideration its productivity, location and availability of irrigation facilities. If any, and

(b) all trees, well and other improvements existing in the plots for the purpose of calculating compensation thereof :

(iii) ascertained the share of each owner, if there be more owners than one, out of the valuation determined under sub-clause (b) of clause (ii) and

(iv) determine the shares of individual tenure-holder in joint holdings for the purpose of effecting partition to ensure proper consolidation.

(2) The District Deputy Director of Consolidation, shall cause to be prepared a khasra chakbandi in the form prescribed, in respect of all the plots falling in the units as also a statement showing the mistakes (undisputed cases of succession] and the disputes discovered during the test and verification of the annual register and in the course of the field-to-field partal.

Section 8 of the Act, thus, says that the improvement existing in the plots shall also be taken into consideration.

14. Section 9 of the Act is also relevant which is being quoted hereinbelow :

"9. Issue of extracts from records and statements and publication of records mentioned in Section 8 and 8A and the issue of notices for inviting objections.--

(1) Upon the preparation of records and the statements mentioned in Sections 8 and 8A. the Assistant Consolidation Officer shall-

(a) correct the clerical mistakes, if any, and send, or cause to be sent, to the tenure-holders concerned and other persons interested notices containing relevant extracts from the current annual register and such other records as may

be prescribed showing-

- (i) their rights in the liabilities in relation to the land ;
 - (ii) mistakes (undisputed cases of succession) and disputes discovered u/s 8 in respect thereof ;
 - (iii) specific shares of individual tenure-holders in joint holdings for the purpose of effecting partitions, where necessary, to ensure proper consolidation ;
 - (iv) valuation of the plot : and
- (b) valuation of trees, wells and other improvements for calculating compensation therefore and its apportionment amongst owners, if there be more owners than one ;
- (c) publish in the unit current khasra and current annual register, the khasra chakbandi, the statement of Principles prepared u/s 8A and any other records that may be prescribed to show, Inter alia, the particulars referred to in clause (a).

(2) Any person to whom a notice under sub-section (1) has been sent, or any other person Interested may, within 21 days of the receipt of notice, or of the publication under sub-section (1), as the case may be, file before the Assistant Consolidation Officer, objections in respect thereof disputing the correctness or nature of the entries in the records or in the extract furnished therefrom in the statement of principles or the need for partition.

A bare perusal of this section would also show that the word land has been used in respect of which objection can be filed.

15. From a perusal of the sections of the Act. It is clear that proceedings u/s 9 of the Act can only be taken in respect "Of the land as said above. Therefore, when the question arose as to whether the property in dispute was the land or not as defined under the Act on the date of notification aforesaid u/s 4 of the Act, then it was the duty of the consolidation authorities to ascertain this fact and then to decide the jurisdiction as to whether they had jurisdiction to entertain and dispose of the objection u/s 9 or not. The matter of jurisdiction goes to the very root of the case. Therefore, this question should have been decided by the consolidation authorities which has not been done in this case. It is settled law that the sale deed which is void can be ignored by the revenue authority but the document which is voidable can be cancelled by the revenue authority and the consolidation authorities. Here in this case the sale deed has been held to be farzi. It means it stands cancelled. This point as to whether the consolidation authorities had jurisdiction to cancel the said sale deed has not been considered by the Settlement Officer. Consolidation or the Consolidation Officer. Therefore, matter requires reconsideration. I accordingly set aside the order passed by the Settlement Officer, Consolidation and Consolidation Officer and remand the case back to the Settlement Officer Consolidation to consider the point of jurisdiction

first then to proceed further. No person has appeared to oppose the objection.

16. Accordingly, the writ petition is allowed. The judgments and orders passed by the Settlement Officer Consolidation and the Dy. Director of Consolidation are hereby set aside and remand the case back to the Settlement Officer Consolidation to restore the appeal to its original number and decide afresh as per observations made in the body of the judgment and in accordance with law. There shall be no orders as to cost.