
(2006) 02 AHC CK 0146

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 2603 of 1982

Baldeo

APPELLANT

Vs

Asstt. Director of Consolidation, Varanasi & Ors.

RESPONDENT

Date of Decision : 27-02-2006

Acts Referred:

Citation : (2006) 02 AHC CK 0146

Hon'ble Judges : Krishna Murari, J

Final Decision : Allowed

Judgement

Krishna Murari, J.—This writ petition arises out of proceedings under U.P. Consolidation of Holdings Act (for short the Act). The dispute relates to plot No. 93 of Khata No. 177. In the basic year the said khata was recorded in the name of the petitioner respondents No. 3 and 5 filed an objection under Section 9 of the Act that they are in possession over 2.94 acres of the said plots and have constructed their house, "nad", "charan" etc. and are entitled to be recorded in the records after expunging the name of the petitioner. The petitioner contested the claim inter alia on the ground that his name was rightly recorded and the land in dispute was in the nature of Abadi and as such the consolidation authorities had no jurisdiction to adjudicate in respect of the plot in dispute.

2. The Consolidation Officer vide order dated 31101973 directed that name of the petitioner be expunged from the record and the plot in dispute be recorded as Abadi in Class VI of the Khatauni. Against the order of the Consolidation Officer, the petitioner as well as contesting respondent No. 4 both filed appeals which were dismissed by the Settlement Officer Consolidation by a common order dated 1831978. He also found that the land in dispute being Abadi the Consolidation Authorities have no jurisdiction. He however, confirmed the order of the Consolidation Officer directing the name of the petitioner to be expunged on the ground that his name was wrongly recorded. Feeling aggrieved, the petitioner went up in revision, the Deputy Director of Consolidation vide order dated 1521982 dismissed the revision.

3. I have heard Sri Ram Niwas Singh, learned Counsel appearing for the petitioner and Sri Shankatha Rai for the contesting respondent.

4. It has been urged by the learned Counsel for the petitioner that the land being in the nature of Abadi is not covered by the provisions of the Act and thus can not be subject matter of dispute before the Consolidation Courts and the said Courts have no jurisdiction to decide the question of title between the parties or even the correct entries of basic year record in respect of Abadi.

5. In reply, it has been submitted that mere use of land in question for nonagricultural purposes would not change the nature of the land unless a declaration in this regard is made under Section 143 of U.P.Z.A. and L.R. Act. Unless such a declaration is made the holding continue to retain the character of land and the jurisdiction of Consolidation Court will not be ousted. The second submission advanced by the learned Counsel is that under the provisions of the Consolidation of Holdings Act it is the duty of the authorities to correct the record of rights and even though the plot in dispute may not be covered under the definition of land the authorities are bound by the provisions of the Act to correct the record by expunging the bogus and forged entries.

6. All the three Consolidation Courts have recorded a clear finding that the land in dispute is in the nature of Abadi and there is no issue on this point between the parties.

7. The sole question which requires consideration is whether the Consolidation authorities will have jurisdiction over the land which is in the nature of Abadi or in other words the land which is not being used for the purpose connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming, would be covered under the definition of land contained in the Act.

8. This question came up for consideration before a Division Bench of this Court in the case of Triloki Nath v. Ram Gopal & Ors., 1974 RD 5.

9. After analysing the definition of the land as contained in Section 3 (5) of the Act and other relevant provisions it was observed by the Division Bench as follows:

9. From a perusal of the aforesaid definitions there can be no doubt that the provisions of Consolidation of Holdings Act can be made applicable only to that area which is covered by the definition of the word 'land' and with respect to which the land as defined is narrow in its application and refers to that area alone which is used for agricultural purposes etc. If any area is used for purposes other than agriculture horticulture etc. It would not be covered by the definition of the word land and as such the provisions of Consolidation of Holdings Act cannot apply to that area.

It has further been observed by the Division Bench.

In our opinion, therefore, land not covered by the provisions of Consolidation of

Holdings Act cannot be a subject matter of dispute before the Consolidation Courts and the said Courts will have no jurisdiction to decide the question of title between the parties thereto.?

10. In the present case, all the three Courts found that land in dispute was an Abadi even from before the date of vesting. Such a land would not be covered under the definition of land for the purposes of Act and cannot be subject matter of dispute before the Consolidation Courts and the said Courts will have no jurisdiction.

11. The arguments advanced by the learned Counsel for the respondent based on Section 143 of the U.P.Z.A. and L.R. Act was also repealed by the Division Bench in the case of Triloki Nath (*supra*) while distinguishing the decision of a learned Single Judge in *Allauddin alias Makki v. Hamid Khan*, 1971 AWR 193, in cited in support of the proposition that unless a declaration is made under Section 143 of U.P.Z.A. and L.R. Act are concerned, but it cannot apply to the land even though used for purposes unconnected with agriculture will retain the character of the land, it was observed.

?The ruling relied upon may be acceptable so far as provisions of U.P.Z.A. and L.R. Act are concerned, but it cannot apply to the provisions contained in the Consolidation of Holdings Act.?

12. The Second argument advanced by the learned Counsel for the respondent that the Consolidation Authorities have the jurisdiction to correct the record of rights was also repealed by the Division Bench in the aforesaid case and it was held that the Consolidation Courts have no power to correct the record of rights with respect to those areas which do not come within the purview of land as contemplated by the Consolidation Act and it can only be done after the rights of the parties have been decided by a competent Court.

13. In view of the law laid down by the Division Bench in Triloki Nath's case, the arguments advanced by the learned Counsel for the respondents are not liable to be accepted.

14. The land in dispute being in the nature of Abadi, the Consolidation Authorities have no jurisdiction to direct the name of the petitioner to be expunged from the revenue record.

15. In the result, the writ petition succeeds and is allowed. The impugned orders of the Consolidation Authorities directing the name of the petitioner to be expunged from plots No. 93 of Khata No. 177 is quashed.

16. However, in the facts and circumstances of the case, there shall be no order as to costs.