
(1984) 09 AHC CK 0086
In the Allahabad High Court
Case No : Writ Petition No. 2108 of 1978

Betal Singh

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 28-09-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 12, 154, 48, 5, 5(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 163, 167, 209, 210, 229B

Citation : (1985) AWC 170 : (1985) RD 29

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Advocate : Prakash Chandra and K.B. Garg, for the Appellant; M.C. Tewari, S.C. and B.P. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—This petition under Article 226 of the Constitution of India is directed against the judgment and order dated 27-1-1978, 6-3-1974 and 11-9-1972 passed by Respondents Nos. 1, 2 and 3 respectively in a suit u/s 229-B/209 of the UP ZA and LR Act (hereinafter referred to as the Act for the sake of brevity). This suit was filed by Respondents Nos. 6 and 7 on the allegations that one Ajmer Singh was a tenant of the land in dispute. On his death he left behind bhumidhari and sirdari holdings. Smt. Sumitra inherited his holding after his death. She executed a sale deed on 13-7-1960 in favour of the Petitioner, Betal Singh during consolidation operation and the Petitioner applied for mutation of his name before the Assistant Consolidation Officer on the basis of the sale deed. The Petitioner's mutation application during consolidation operation was dismissed partly in respect of sirdari holdings and it was allowed in respect of bhumidhari holdings by the Deputy Director of Consolidation. As regards the claim in respect of sirdari holdings being disallowed, the Petitioner did not prefer any writ petition in this Court, whereas Jangjeet Singh who claimed rights from

Smt. Sumitra on the basis of succession, alleging sale deed to be illegal, preferred a writ petition before this Court being Civil Miscellaneous writ No. 3140 of 1961, Jangjeet Singh v. Deputy Director of Consolidation, Agra. This petition was allowed by Hon"ble S.N. Dwivedi, J. as he then was, by his judgment and order dated 9-12-1966. It was held in the writ petition that as permission of the Deputy Director of Consolidation was not obtained as required by Section 5(c)(ii) of the U.P. Consolidation of Holdings Act, hence the same even in respect of bhumidhari holding was illegal and as Betal Singh, the Petitioner inspite of his sale having been held to be illegal interfered with the rights and title of the Plaintiffs, hence the necessity for the filing of suit for declaration and in the alternative for possession arose.

2. The aforesaid suit was contested by the Petitioner in whose favour the sale deed was earlier held to be illegal in the aforesaid writ petition filed in this Court. He alleged that even though the sale deed in his favour may be held to be illegal, but as the sale deed was executed on 13-7-1960 when the consolidation operation was in progress, hence he matured rights by adverse possession as even though the sale deed may be illegal, but his possession became adverse from the date of sale and he further alleged that the suit was time barred and in any case the suit could have been filed by the Gaon Sabha and not by the Respondents Nos. 6 and 7. The Respondent No. 3 by his judgment and decree dated 11-9-1972 decreed the suit. Against that decree the Petitioner preferred an appeal before the Additional Commissioner who by his order dated 6-5-1974 allowed the appeal and dismissed the suit. The Respondents Nos. 6 and 7 preferred a second appeal before the Board of Revenue which was allowed on 27-1-1978 and the suit was decreed. Now the Petitioner has preferred the present petition against the judgment and order of the Board of Revenue dated 27-1-1978.

3. I have heard Sri Prakash Chandra, learned Counsel for the Petitioner and Sri B.P. Agrawal, learned Counsel for the Respondents. It has been urged by the learned Counsel for the Petitioner that the Petitioner matured rights u/s 210 of the Act as the sale deed dated 13-7-1960 in favour of the Petitioner having been held to be illegal by the judgment of this Court, hence from the date of sale his possession would be deemed to be that of a trespasser. It was further contended that even though the sale deed was executed during consolidation operation but nevertheless the possession of the Petitioner would become adverse and as the suit u/s 209 was not filed by the Plaintiffs, the Respondents Nos. 6 and 7 within limitation, hence their claim became time-barred. He further contended that it is only the Gaon Sabha and the State Government who could have filed a suit for the ejectment of the Petitioner in case of void transfer in view of Section 163 read with Section 167 of the Act. But as no suit was filed by the Gaon Sabha and the State of U.P. the present suit filed by the Respondents Nos. 6 and 7 against the Petitioner was not maintainable and was liable to be dismissed. In this connection he relied upon Dilawar Singh v. Gram Samaj 1972 AWR 557. This was a Division Bench decision of this Court. It was held in that case that right of

appeal was a vested right and before the right to approach the superior court came to an end, notification u/s 52 was issued and that did not have the effect of destroying the right which the Petitioner had and the proceedings initiated u/s 12 of the Act (U.P. Consolidation of Holdings Act) had not come to end would revive later on and it was held that the revision u/s 48 of the U.P. Consolidation of Holdings Act was maintainable. This was cited by counsel for Petitioner with a view that even though the sale deed was executed during consolidation operation and mutation proceedings might have been fought out upto the High Court u/s 12 of the U.P. Consolidation of Holdings Act, but nevertheless its effect cannot be wiped out, rather it shall have to be considered and given effect to. He wanted to emphasize that even though his adverse possession started during consolidation operation, but that would continue and as no suit for ejectment was filed within time, hence the claim of the Respondents Nos. 6 and 7 became time barred.

4. He next relied upon *Bideshi and Another Vs. Board of Revenue and Another*, . It has been ruled in this decision that even though the possession of the trespasser might have commenced during consolidation operation after delivery of possession by consolidation authorities, but nevertheless the limitation would run following the date of such trespass and not from the notification u/s 52 of the U.P. Consolidation of Holdings Act. The reliance was again placed on *Faqirey v. Board of Revenue 1968 RD 49*. The ratio of this decision was that in case a sale deed has been executed in contravention of the provisions of Section 154, the transferee would be liable for ejectment on the suit of the Gaon Sabha and in case no such suit was filed, the transferee would mature his rights. Reliance was again placed on *Kunwar Wasiq Ali v. Director of Consolidation, Agra 1973 AWR 34* a Division Bench decision of this Court, the ratio being that if a person comes in possession under an invalid grant, the nature of his possession was adverse and if he continues in such possession, he acquires title by adverse possession on the expiry of statutory period.

5. Sri B.P. Agrawal, learned Counsel for the Respondent replied that during consolidation operations no adverse possession can start nor any right can be acquired on the basis of adverse possession which started during consolidation operation as no suit u/s 209 could have been filed during consolidation operation. Even if any such suit could, have been filed, it would have abated u/s 5(2)(a) of the U.P. Consolidation of Holdings Act as a suit u/s 209 or u/s 229-B would be covered by the term "every suit and proceeding in respect of declaration of rights or interest in any land lying in the area". He further urged that as the remedy of filing a suit u/s 209 was barred during consolidation operation, hence no right based on adverse possession can be matured during consolidation operations. He further urged that as in view of the amendment of Section 210 of the Act by U.P. Act No. 34 of 1956 and U.P. Act No. 8 of 1977, limitation for filing a suit on behalf of the Gaon Sabha not having expired, non filing of the suit cannot be of any avail to the Petitioner. He further urged that as the rights of the Gaon Sabha for filing the suit has not become time barred, hence it cannot be said that any right has been matured by the Petitioner on account of non-filing of the suit u/s

209 as contemplated by Sections 163/167 of the UPZA and LR Act. In support of the proposition that no suit u/s 209 could have been filed during consolidation operation as the suit u/s 209 was also covered by Section 5(2)(a) of the U.P. Consolidation of Holdings Act and such suit even if filed would have abated on account of the progress of consolidation operation, he placed reliance upon *Badal v. Deputy Director of Consolidation* 1970 AWR 456 (FB), *Abdul Waheed Khan v. Deputy Director of Consolidation* 1968 AWR 27 (FB), *Ram Adhar Singh v. Ram Rup Singh* 1968 AWR SC 414, *Smt. Umrai v. State of U.P.* 1967 AWR 47, *Smt. Krishna Devi v. Joint Director of Consolidation*, 1973 AWR 599 (DB) and *Ram Samhi Lal v. Board of Revenue* 1974 RD 241.

6. I have considered the arguments of the learned Counsel on either side. The ratio in *Badal v. Deputy Director of Consolidation* supra is applicable. In that case relying upon the Supreme Court decision in *Ram Adhar Singh v. Ram Rup Singh* supra it was held that just like any other suit, a suit for ejectment u/s 209 even though filed during consolidation operation or prior to it but that shall abate u/s 5(2)(a) of the U.P. Consolidation of Holdings Act. As the suit cannot be filed hence an inference has been drawn by learned Counsel for Respondent that as the suit, if filed, would abate, hence there is no question of any right having been matured by the Respondents on account of non-filing of the suit. The case of *Abdul Waheed v. Deputy Director of Consolidation* supra has already been referred in the case of *Badal v. Deputy Director of Consolidation*. The Supreme Court decision in *Ram Adhar v. Ram Rup* supra was the basis of aforesaid Full Bench decision in *Badal v. Deputy Director of Consolidation*. *Smt. umrai v. Stute of U.P.* supra has got entirely different facts and it has got no relevance. In *Smt. Krishna Devi v. Joint Director of Consolidation* supra It was held that if consolidation proceedings had commenced no suit u/s 209 of the UP ZA and LR Act can be filed. If the jurisdiction of the court is barred no person can file a suit. Non-filing of the suit u/s 209 during consolidation operations would not confer rights on the person who was in possession on the date the consolidation proceedings had started provided the limitation of suit u/s 209 had not till then run out. In view of discussions made above it is clear that during consolidation operation no right can be matured by non-filing a suit u/s 209 of the Act. Nor such right is available to any person as a trespasser or a person in possession otherwise than in accordance with law and against the consent of the true owner.

7. Further it is well known principle of jurisprudence that rights and duties are correlated i.e. we cannot have a right without corresponding duty or a duty without a corresponding right. In the instant case as the remedy by filing a suit u/s 209 to get the trespasser ejected was barred, hence no right can be matured by the person who claimed the right of trespasser.

8. In *Halsbury's Laws of England*, Fourth Edition, Vol. 10, para 716, It has been provided;

The general rule is that wherever there exists a right recognised by the law, there exists also a remedy for any infringement of such right. In the words of the

old maxim ubi jus, ibi remedium, such an infringement of a legal right is known to the law as injuris"....See Ashby v. White (1703) 2 Ld. Raym 938 at 952 per hol-Cj. "Indeed, it is vain thing to imagine a right without a remedy as both are reciprocal". See also Constantine v. Imperial Hotel Ltd. 1944 KB 693 ; (1944) 2 All ER; Rees v. Hughes 1946 KB 517 ; (1946) 2 ER 47; Best v. Samuel Fox & Co. Ltd. (1952) AC 716 ; (1952) 2 All 394 HL.

The discussion made above leads to the inescapable conclusion that as the remedy to bring suit u/s 209 is barred on account of the consolidation operation, In view of Section 5(2)(a) of U.P. Consolidation of Holdings Act, hence the Petitioner could not mature right u/s 210.

9. As regards the case law referred to by the Petitioner the same has already been discussed earlier and in view of the Full Bench decision of this Court in Badal v. Deputy Director of Consolidation (supra), those cases are not applicable. Further in Smt. Krishna Dei v. Joint Director of Consolidation supra a Division Bench of this Court has held that after consolidation operation, a suit u/s 209 cannot be instituted. Consolidation operations bar the jurisdiction of the court to entertain the suit u/s 209. If the jurisdiction of the court is barred no person can file suit. Hence no filing would not confer any right on the person who was in possession before the consolidation proceedings had started, provided the limitation of suit u/s 209 has not till then run out.

10. As regards argument of learned Counsel for I he Petitioner that Gaon Sabha or State of U.P. in view of Section 163 read with Section 167 alone could have filed suit for the ejectment of the Petitioner, suffice it to say that in view of the amendment made by Eighth Amendment Rules 1977 dated, 9th March, 1977 substituting serial No. 30, for a suit u/s 209 on Appendix 3 with a period of limitation for filing a suit by Gaon Sabha has not as yet run out. Hence that argument is not available to the Petitioner.

11. In view of the discussion made above the writ petition Jacks merits and is accordingly dismissed. But there shall be no order as to costs.