
(1984) 09 AHC CK 0061

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8557 of 1974

Bhawani Prasad and Another

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 26-09-1984

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143,
143(1) , 209, 331(1A)

Citation : (1984) AWC 622 Supp

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : G.P. Bhargava, A.N. Bhargava and B.D. Tripathi, for the Appellant;
R.K. Sharma, N.S. Singhal and Chandra Prakash, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Singh, J.—This writ petition arises out of a suit u/s 209 of the U.P. ZA and LR Act.

2. The Plaintiff opposite party had claimed sirdari right in the disputed plot No. 338/2 and that the Defendant had dispossessed the plaintiff, hence the suit. The claim of the Plaintiff opposite party was contested by the Defendant Petitioner on various grounds. One of the pleas raised was that the disputed land was not agricultural land and there existed constructions due to which the disputed land under went a change and acquired the character of Abadi.

3. All the revenue courts have decreed the Plaintiffs' suit. Aggrieved by their judgments the Defendant Petitioners have approached this Court under Article 226 of the Constitution.

4. The only question pressed on behalf of the Petitioners before me is that the decrees passed by all the revenue courts are without jurisdiction, hence they should be quashed. It has been emphasized that according to later evidence

about declaration of the disputed land as Abadi the question of jurisdiction can be raised on behalf of the Petitioners and since the judgments and decrees are without jurisdiction, they deserve to be quashed. The learned Counsel for the Petitioners has placed reliance upon the rulings reported in 1966 RD page 1 Sonawati and Others Vs. Sri Ram and Another, Smt. Sonawati v. Sri Ram 1970 ALJ 1145 Balbodh v. Mahabir AIR 1976 SO 49 Rameshwar v. Jat Ram and 1978 RD 124 Pearey Lal v. SDO Budhana.

5. The learned Counsel for the Plaintiff contesting opposite party has emphasized in reply that when the Plaintiff opposite party filed a suit in the Civil Court a plea was raised by the Defendant Petitioner to the effect that the civil court had No. jurisdiction and when the revenue courts have decreed the Plaintiffs' suit the Defendant Petitioner is raising a plea regarding jurisdiction of the revenue courts which is not fair and proper hence the same should not be entertained at the stage of writ. It has also been suggested that the question of jurisdiction in the circumstances of the present case cannot be entertained at the instance of the Defendant Petitioner due to bar of the principle of res judicata. He has placed reliance upon the ruling reported in 1979 AWC 635 Avtar Singh v. Jagjit Singh. He has also emphasized that the Defendant Petitioner has failed to show any failure of justice due to the decrees passed by the revenue courts hence the plea regarding jurisdiction should not be entertained at the stage of writ in view of the provisions of Section 331 (1-A) of the UP ZA and LR Act.

6. I have considered the contentions raised on behalf of the parties. My attention has been drawn by the learned Counsel for the Petitioners to a decision dated 14-6-1984 in a proceeding u/s 143 of the UP ZA and LR Act and it has been emphasized that the disputed land has been held as Abadi by the Sub Divisional Officer, hence due to the changed circumstance the question of jurisdiction should be entertained and the decrees passed by the revenue courts should be characterised as without jurisdiction. In this connection the learned Counsel for the opposite party stated that the aforesaid judgment is under appeal and operation of the order dated 14-6-1984 has been stayed, hence No. question of jurisdiction on that score arises in the present case.

7. Section 143 of the U.P. ZA and LR Act reads as below:

Where a bhumidhar uses his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, the Assistant Collector in-Charge of the Sub-Division may, suo motu or on an application, after making such enquiry as may be prescribed, make a declaration to that effect;

(1-A) Where a declaration under Sub-section (1) has to be made in respect of a part of the holding the Assistant Collector in-Charge of the sub-division may in the manner prescribed demarcate such part for the purposes of such declaration.

(2) Upon the grant of the declaration mentioned in Sub-section (1) the provisions of this Chapter (other than this notion) shall case to apply to the bhumidhar with

respect to such land and he shall thereupon be governed in the matter of devolution of the land by personal law to which he is subject.

(3)....

8. The bare reading of Section 143 Indicates that when a Bhumidhar uses his holding for a purpose not connected with agriculture, horticulture, animal husbandry etc. the other sub-clause of Section 143 would be attracted. In the present case the disputed land has been declared as Abadi at the Instance of the Defendant Petitioner (trespasser) who had raised constructions over the disputed land, hence in my opinion the Defendant Petitioner cannot derive any benefit out of the decision dated 14-6-1984 filed with the writ petition. Moreover upon the grant of declaration, the provisions of Chapter VIII of U.P. Act. No. I of 1951 would be attracted to the land in question. In the present case the operation of the order dated 14-6-1984 whereby the disputed land has been declared as Abadi is under suspense, hence the Petitioners cannot successfully urge that the decrees passed by the revenue courts would be without jurisdiction.

9. It is also note-worthy that the Defendant Petitioner had taken a plea that the civil court had No. jurisdiction to deal with the claim of the opposite party and on his plea the Plaintiff was forced to come before the revenue courts hence the question of jurisdiction is barred by the principle of res judicata. In 1979 AWC 633 Avtar Singh v. Jagjit Singh their Lordships of the Supreme Court have observed as below vide para 6 of the ruling:

We do not approve at all the view as expressed by the learned Single Judge of the Allahabad High Court. If the Defendant does not appear and the court on its own returns the plaint on the ground of lack of jurisdiction the order in a subsequent suit may not operate as res judicata but if the Defendant appears and an issue is raised and decided then the decision on the question of jurisdiction will operate as res judicata in a subsequent suit although the reasons for its decisions may not be so.

10. In my opinion, the question of jurisdiction cannot be raised by the Defendant Petitioner in view of the facts and circumstances involved in the present case. The Defendant Petitioner had raised the plea of jurisdiction before the Civil Court and the Plaintiff opposite party had to bring the suit, giving rise to the present writ petition, before the revenue court, I think that the Defendant Petitioner's plea of jurisdiction is not bonafide and cannot be entertained at this stage.

11. The learned Counsel for the Petitioners has not been able to demonstrate as to failure of justice due to the decrees passed by the revenue courts against him. On the findings of fact the Defendant Petitioner had trespassed over the Plaintiffs' tenancy land in the year 1372 F. and that the suit was filed within time, hence the decrees passed by the revenue court have advanced substantial justice between the parties I think that in view of the provisions of Section 331(1-A) of U.P. Act No. 1 of 1951, the Defendant Petitioner should not be permitted to rake up the question of jurisdiction. The aforesaid provision reads as below:

(1-A) Notwithstanding anything in Sub-section (1), an objection that a court mentioned in column 4 of Schedule II or, as the case may be, a civil court, which had No. jurisdiction with respect to the suit, application or proceeding, exercised jurisdiction with respect thereto shall not be entertained by any appellate or provisional court unless the objection was taken in the court of first Instance at the earliest possible opportunity and in all cases where Issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

12. Since I am not satisfied that any failure of justice has occurred to the Defendant Petitioner, I think that the Defendant Petitioner cannot challenge the impugned judgments and decrees on the ground of want of jurisdiction.

13. In view of my conclusions above, it is not necessary to deal with various cases cited at the bar.

14. In the result, the writ petition fails and it is accordingly dismissed. Parties are directed to bear their own costs.